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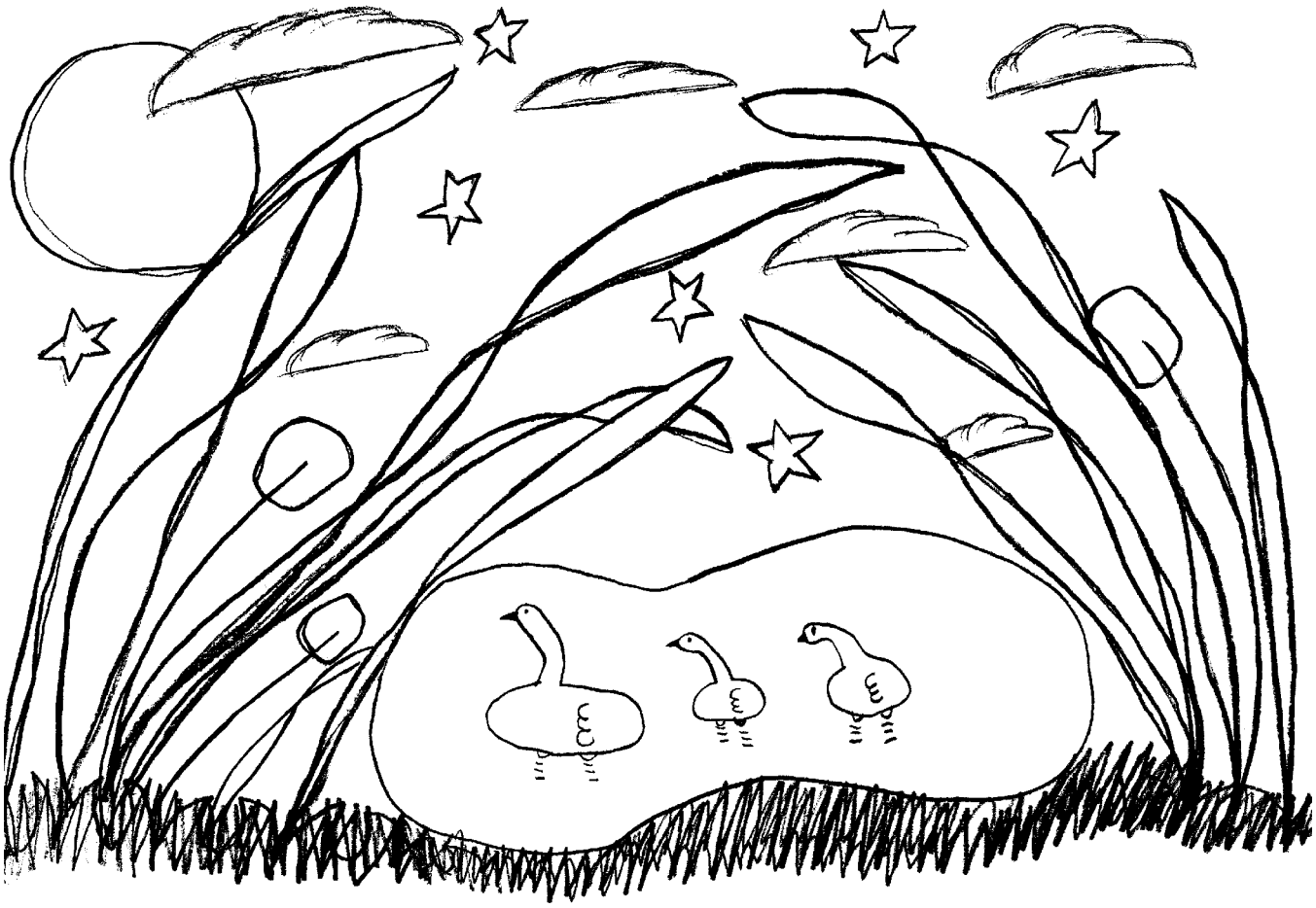

Ariel Piñon
4th Grade

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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Open Meetings

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

Notices are published in the electronic *Texas Register* and available on-line.
http://www.sos.state.tx.us/texreg

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

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

For on-line links to information about the Texas Legislature, county governments, city governments, and other government information not available here, please refer to this on-line site. http://www.state.tx.us/Government

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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.

Appointment

Appointment for April 30, 2003

Appointed to the Pilot Commission for the Sabine Bar, Pass and Tributaries for a term to expire August 22, 2003, George W. Brown, III of Beaumont. Mr. Brown is replacing Roy Steinhagen of Beaumont whose term expired.

Rick Perry, Governor

TRD-200302819

♦ ♦ ♦

THE ATTORNEY GENERAL

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

Opinion

Opinion No. GA-0067

The Honorable David Aken

County Attorney

San Patricio County Courthouse

Room 102

Sinton, Texas 78387

Re: Authority of a municipal judge to examine the state's witnesses if the state is not represented by counsel when the case is called for trial (RQ-0628-JC)

S U M M A R Y

A municipal judge does not have the authority to examine the state's witnesses if the state is not represented by counsel when the case is called for trial.

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

TRD-200302831
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: May 7, 2003

♦ ♦ ♦

Request for Opinions

RQ-0047-GA

Requestor:

The Honorable Sylvester Turner

Speaker Pro Tempore

Texas House of Representatives

P.O. Box 2910

Austin, Texas 78768-2910

Re: Meaning of the phrase "death in custody" for purposes of article 49.18, Code of Criminal Procedure (Request No. 0047-GA)

Briefs requested by June 6, 2003

RQ-0048-GA

Requestor:

The Honorable Marsha Monroe

Terrell County Attorney

P.O. Box 745

Sanderson, Texas 79848

Re: Permissible use of venue tax funds (Request No. 0048-GA)

Briefs requested by June 6, 2003

RQ-0049-GA

Ms. Peggy D. Rudd

Director and Librarian

Texas State Library and Archives Commission

P.O. Box 12927

Austin, Texas 78711-2927

Re: Whether a water supply corporation is subject to the Local Government Records Act and certain other statutes regarding records (Request No. 0049-GA)

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

TRD-200302829
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: May 7, 2003

♦ ♦ ♦

PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 10. DEPARTMENT OF INFORMATION RESOURCES

CHAPTER 201. PLANNING AND MANAGEMENT OF INFORMATION RESOURCES TECHNOLOGIES

1 TAC §201.2

The Department of Information Resources (department) proposes an amendment to 1 TAC §201.2, Procedures for Complaints, Vendor Protests and the Negotiation and Mediation of Certain Contract Disputes and Bid Submission, Opening and Tabulation Procedures.

The amendment is proposed to comply with Texas Government Code §2156.005(d), which requires state agencies that make purchases to adopt the Texas Building and Procurement Commission rules on bid openings and tabulation.

Larry Zeplin, Director of Administrative Services for the department, has determined that for each year of the first five years the amended rule will be in effect, there will be no fiscal implications for state government as a result of enforcing or administering the proposed amendment. There will be no foreseeable fiscal implications for local government as a result of enforcing or administering the proposed amendment.

Mr. Zeplin has determined that for each year of the first five years the amended rule will be in effect, the public will benefit by the prudent management of vehicle assets.

Mr. Zeplin believes there will be no different effect on small businesses than there is on large businesses and that there is no additional anticipated economic cost to persons required to comply with portions of the amended rule.

Comments on the proposed amendment may be submitted to Cynthia J. Hill, Attorney, Department of Information Resources, via mail to P.O. Box 13564, Austin, Texas 78711, or electronically to cynthia.hill@dir.state.tx.us no later than 5:00 p.m. CST, within 30 days after publication.

The amendment is proposed under §2156.005(d), Government Code, which requires the department to adopt the Texas Building and Procurement Commission rules relating to bid opening and tabulation.

Texas Government Code §2054.052(a) and §2156.005(d) are affected by the amended rule.

§201.2. Procedures for Complaints, Vendor Protests and the Negotiation and Mediation of Certain Contract Disputes and Bid Submission, Opening and Tabulation Procedures.

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

(d) The department adopts by reference the rule of the Texas Building and Procurement Commission relating to Bid Submission, Opening and Tabulation, as such rule may be amended from time to time. The Commission rule is codified in Title 1, Part 5, Texas Administrative Code, Chapter 113 and is located at the Office of the Secretary of State's website: www.sos.state.tx.us/tac/index.html.

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

Filed with the Office of the Secretary of State on May 1, 2003.

TRD-200302710
Renee Mauzy
General Counsel
Department of Information Resources
Earliest possible date of adoption: June 15, 2003
For further information, please call: (512) 475-2153

♦ ♦ ♦

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 17. MARKETING AND PROMOTION DIVISION

SUBCHAPTER G. GO TEXAN PARTNER PROGRAM RULES

4 TAC §§17.302 - 17.304, 17.306, 17.308

The Texas Department of Agriculture proposes amendments to §§17.302-17.304, §17.306 and 17.308, all concerning the administration of the department's GO TEXAN Partner Program (GOTEPP), a matching grant program. The amendments are proposed to clarify and update the sections, to establish a requirement that retailers or distributors applying to GOTEPP document a direct benefit to GO TEXAN members, to establish maximum grant award amounts and to establish a maximum number of projects that may be funded per biennium.

Delane Caesar, assistant commissioner for marketing and promotion, has determined that for the first five-year period the amendments are in effect, there will be no fiscal implication

for the state or local government as a result of enforcing or administering the sections as amended.

Ms. Caesar also has determined that for each year of the first five years the amendment are in effect, the public benefit anticipated as a result of enforcing the amendment will be clearer and more efficient requirements and procedures for the administration of the GOTEPP matching grant program. In addition, by requiring documentation of a direct benefit to GO TEXAN program members the amendments make it clearer that the program benefits those that were intended to benefit from the program, Texas agricultural producers. There is no anticipated impact on individuals, small businesses and micro-businesses to comply with the amendments as proposed.

Comments on the proposal may be submitted to Delane Caesar, Assistant Commissioner for Marketing and Promotion, Texas Department of Agriculture, P. O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The proposed amendment to §17.302 adds a representative of agricultural producers to the GOTEPP advisory board, provides that the board shall meet at least biannually and provides that a majority of the total board membership shall constitute a quorum. The proposed amendment to §17.303 provides additional eligibility requirements for retailers and distributors applying to the program, in order for the applicant to document a proposed project's direct benefit to GO TEXAN members. The proposed amendment to §17.304 adds a requirement to disclose names of owners having 10% or more ownership interest in an applicant business entity. The proposed amendment to §17.306 updates the address of the department's Marketing and Promotion Division, clarifies that at least a majority of a quorum of the board must approve or deny each project request, and adds new subsection (h) establishing maximum grant awards and a maximum number of projects that may be funded per biennium. The proposed amendment to §17.308 establishes a minimum amount of $10 that will be returned to a successful applicant as a refund.

The amendments are proposed under the Texas Agriculture Code, §46.012, which authorizes the department to adopt rules to administer the GO TEXAN Partner Program.

The code affected by the proposal is the Texas Agriculture Code, Chapter 46.

§17.302. Administration.

(a) (No change.)

(b) The board's responsibilities under this subchapter are as follows.

(1) The board shall be composed of the following members appointed by the commissioner:

(A) - (H) (No change.)

(I) one representative from the Internet website or electronic commerce industry; [~~and~~]

(J) one representative with demonstrated expertise in economic analysis ;and [~~.~~]

(K) one representative of agricultural producers.

(2) The board shall meet no less often than bi-annually [~~quarterly~~];

(3) A majority [~~Two-thirds~~] of the total board membership shall constitute a quorum;

(4) - (6) (No change.)

§17.303. Eligibility.

(a) An eligible applicant must be:

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

(6) any other entity or business, other than a business meeting the definition of small business, that promotes the marketing and sale of Texas agricultural products. If a retailer or distributor, the applicant must demonstrate a direct benefit to GO TEXAN members in the manner provided in subsection (b) of this section. For purposes of this section, the department shall have the sole discretion to determine whether an entity meets program eligibility requirements.

(b) A retailer or distributor who applies under the program, must meet the requirements of paragraph (b)(1) or paragraph (b)(2) of this section, in order to document a direct benefit to GO TEXAN members:

(1) Applying with GO TEXAN members.

(A) The retailer/distributor must apply jointly with GO TEXAN members, other than associate or other retail members, in order to submit a GOTEPP project proposal.

(B) All participating applicants must be GO TEXAN members.

(i) GOTEPP project proposals with a total project amount from $0.00 to $5,000.00 require a minimum of one applicant in addition to the applicant retailer or distributor .

(ii) GOTEPP project proposals with a total project amount from $5,001.00 to $30,000.00 require a minimum of three applicants in addition to the applicant retailer or distributor.

(iii) GOTEPP project proposals with a total project amount from $30,001.00 to $99,999.00 require a minimum of seven applicants in addition to the applicant retailer or distributor.

(iv) GOTEPP project proposals with a total project amount over $100,000.00 require a minimum of 10 or more applicants, in addition to the applicant retailer or distributor.

(C) All participating applicants and applicant retailers/distributors must submit all required GOTEPP documentation.

(D) A retailer/distributor is permitted to utilize the same additional applicants no more than twice in a biennium; or

(2) Demonstration of GO TEXAN members/vendors. Retailer/distributors can apply without applying with other GO TEXAN members if 70% of their members and/or vendors are GO TEXAN members, other than associate or retail members.

(c) All applicants will be required to provide documentation verifying the stated information, in addition, they will be required to report sales information.

§17.304. Requirements for Participation.

To be eligible for participation in the program through the use of matching funds under this subchapter, an applicant must:

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

(4) submit a notarized affidavit on a form provided by the department certifying and disclosing the following:

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

(D) disclosing names of owners having 10% or more ownership interest in a business entity;

(E) [~~(D)~~] that applicant meets all program requirements to apply for matching funds; and

(5) (No change.)

§17.306. Filing Requirements and Consideration of Project Requests.

(a) Project request. An applicant must submit a project request, completed in accordance with this subchapter, to the department's Marketing and Promotion Division, 1700 N. Congress Ave., 11th [~~10th~~] Floor, Austin, Texas 78711.

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

(e) Board review of eligible applicants. The board shall approve or deny each project request by at least a majority of the quorum of the board.

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

(h) Maximum grant awards; number of projects.

(1) A maximum grant award of $75,000 per project may be approved by the board, for a maximum total project amount of $150,000.

(2) A maximum grant award of $75,000 (total project amount of $150,000) per applicant, per biennium, may be approved by the board.

(3) No more than two projects per biennium may be approved for any one applicant.

§17.308. Use of Funds.

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

(g) Upon the completion or cancellation of a project, the department will refund to the successful applicant the applicant's share of any unexpended funds approved and contracted for the project, minus the 20% portion of funds allocated to the department's GO TEXAN program. A refund will be made after quantification information required by the project contract has been submitted to the department. The minimum amount of a refund that will be returned to the applicant by the department is $10.

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

Filed with the Office of the Secretary of State on May 5, 2003.

TRD-200302771
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: June 15, 2003
For further information, please call: (512) 463-4075

♦ ♦ ♦

TITLE 16. ECONOMIC REGULATION

PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 45. MARKETING PRACTICES

SUBCHAPTER D. ADVERTISING AND PROMOTION--ALL BEVERAGES

16 TAC §45.105

The Texas Alcoholic Beverage Commission proposes amendments to §45.105, relating to outdoor advertising by holders of Mixed Beverage permits. Restrictions on outdoor advertising by alcoholic beverage licensees and permittees are imposed by §108.52 of the Alcoholic Beverage Code. Pursuant to §108.07 of the code, those restrictions do not apply to Mixed Beverage permittees, however. The proposed amendment would operate to impose the outdoor advertising restrictions applicable to retail sellers of beer to Mixed Beverage permittees.

Lou Bright, General Counsel, has determined that for the first five-year period the proposed amendment is in effect there will be no fiscal impact on units of state or local government as a result of enforcing the proposed amendment. The proposed amendment would govern the placement and content of signs used by Mixed Beverage permittees, some of whom are small businesses. The proposed amendment may, therefore, cause some fiscal impact to some small businesses. The amount of that impact is not amenable to calculation as it will vary widely from one establishment to another.

Mr. Bright has determined that the proposed amendment will benefit the public by furthering the purposes underlying §108.52 of the Alcoholic Beverage Code and by imposing uniform conditions on similarly situated businesses.

Comments should be addressed to Lou Bright, General Counsel, P.O. Box 13127, Austin, Texas 78711.

This amendment is proposed under the authority of §5.31 of the Alcoholic Beverage Code, which authorizes the commission to prescribe and publish rules necessary to carry out the provisions of the code. The amendment is also proposed under the authority of §108.07 of the Alcoholic Beverage Code, which authorizes the commission to adopt rules regulating outdoor advertising by Mixed Beverage permittees.

Cross Reference: Alcoholic Beverage Code §108.07 is affected by this amendment.

§45.105. [~~Outdoor~~] Advertising by Mixed Beverage Establishments.

(a) This rule relates to §108.07 and §108.52 of the Alcoholic Beverage Code.

(b) The holder of any permit allowing the sale of mixed beverages shall conform to the same outdoor advertising standards imposed by §108.52 of the Alcoholic Beverage Code pertaining to all other retail licenses or permits.

(c) The permissible advertising in or on the premises of any location that holds a mixed beverage permit shall be the same as the permissible advertising in or on the premises of any location holding a license or permit to sell beer.

(d) In addition to the restrictions imposed by subsections (a) and (b) of this section, the [~~The~~] holder of any permit allowing the sale or service of mixed beverages may not advertise any prices which may be seen from the street on any sign, billboard, marquee, or any other display on or outside of the building or which may be seen from outside of the building.

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

Filed with the Office of the Secretary of State on April 30, 2003.

TRD-200302707

Jeannene Fox
Assistant Administrator
Texas Alcoholic Beverage Commission
Earliest possible date of adoption: June 15, 2003
For further information, please call: (512) 206-3204

♦ ♦ ♦

TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 9. PROGRAM DEVELOPMENT IN PUBLIC COMMUNITY/JUNIOR COLLEGE DISTRICTS AND TECHNICAL COLLEGES

SUBCHAPTER J. ACADEMIC ASSOCIATE DEGREE PROGRAMS

19 TAC §§9.181 - 9.186

The Texas Higher Education Coordinating Board proposes new §§9.181 - 9.186, concerning academic associate degrees. Specifically, these new sections will establish guidelines for Associate of Arts and Associate of Science degree programs offered by public community/junior colleges and state colleges authorized to offer transfer programs.

Dr. Glenda O. Barron, Assistant Commissioner for Community and Technical Colleges, has determined that for each year of the first five years the sections are in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Barron has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering the sections provide clear instructions to institutions about requirements for academic associate degree programs to harmonize with law and rules on the core curriculum, field of study curricula, and transfer of credit. There is no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposed new rules may be submitted to Dr. Glenda Barron, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711, or by e-mail to Glenda.Barron@thecb.state.tx.us.

The new sections are proposed under the Texas Education Code, §§61.003, 61.051(e) - (f), 61.0513, 61.053, 61.054, 61.055, 61.061, 61.062(c) - (d), 61.075, 130.001(b)(3) - (4), 130.003(e)(1)(2)(3) and (7) and 135.04, which authorize the Coordinating Board to adopt policies, enact regulations, and establish rules for the coordination of postsecondary certificate and associate degree programs eligible for state appropriations.

The new sections do not affect Texas Education Code §§130.001(b)(3) - (4), 130.003(e)(1)(2)(3) and (7) and 135.04.

§9.181. Purpose.

This subchapter provides rules for the structure of academic associate degree programs in public community/junior colleges eligible for state appropriations.

§9.182. Authority.

The Texas Education Code, §§61.003, 61.051(e) - (f), 61.0513, 61.053, 61.054, 61.055, 61.061, 61.062(c) - (d), 61.075, 130.001(b)(3) - (4), 130.003(e)(1)(2)(3) and (7) and 135.04, authorize the Coordinating Board to adopt policies, enact regulations, and establish rules for the coordination of postsecondary certificate and associate degree programs eligible for state appropriations.

§9.183. Degree Titles, Program Length, and Program Content.

(a) An academic associate degree may be called either an associate of arts (AA) or an associate of science (AS) degree.

(1) The associate of arts (AA) is the default title for an academic associate degree program if the college offers only one type of academic degree program.

(2) If a college offers both associate of arts (AA) and associate of science (AS) degrees, the degree programs may be differentiated in one of two ways, including:

(A) The AA program may have additional requirements in the liberal arts and/or the AS program may have additional requirements in disciplines such as science, mathematics, or computer science; or

(B) The AA program may serve as a foundation for the BA degree and the AS program for the BS degree.

(b) Academic associate degree programs must consist of a minimum of 60 SCH and a maximum of 66 SCH.

(c) Except as provided in paragraph (1) of this subsection, academic associate degree programs must incorporate the institution's approved core curriculum as prescribed by §4.28 of this title (relating to Core Curriculum) and §4.29 of this title (relating to Core Curricula Larger than 42 Semester Credit Hours).

(1) A college may offer a specialized academic associate degree that incorporates a Board-approved field of study curriculum as prescribed by §4.32 of this title (relating to Field of Study Curricula) and a portion of the college's approved core curriculum if the coursework for both would total more than 66 SCH.

(2) A college that has a signed articulation agreement with a General Academic Teaching Institution to transfer a specified curriculum may offer a specialized associate degree program that incorporates that curriculum.

§9.184. Approval.

Community colleges and state colleges authorized to offer transfer programs may offer academic associate degree programs that conform to these guidelines without requesting approval from the Board.

§9.185. Reporting to the Board.

Contact hours for courses in approved academic certificate and associate degree programs at public postsecondary institutions must be determined and reported in compliance with Board policy as outlined in the Lower-Division Academic Course Guide Manual and state law.

§9.186. Disapproval of Programs; Noncompliance.

No funds appropriated to any public postsecondary institution shall be expended for any academic associate degree program that is not in compliance with these rules. Existing academic degree programs must be brought into compliance by August 1, 2004.

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

Filed with the Office of the Secretary of State on May 1, 2003.

TRD-200302715
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: July 18, 2003
For further information, please call: (512) 427-6162

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CHAPTER 13. FINANCIAL PLANNING SUBCHAPTER K. TECHNOLOGY WORKFORCE DEVELOPMENT GRANT PROGRAM

19 TAC §13.193

Texas Higher Education Coordinating Board proposes an amendment to §13.193, concerning proposal solicitation under the Technology Workforce Development Grant Program. Specifically, this amendment will allow the Coordinating Board more flexibility in requesting proposal submissions that address the second purpose of the Technology Workforce Development Act: to increase collaborative efforts between universities, engineer and computer science departments, and private companies.

Dr. Linda Domelsmith has determined that for each year of the first five years the amended section is in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the amendment.

Dr. Domelsmith has also determined that for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of administering the amendment will be increase collaborations among higher education institutions. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the amendment as proposed. There is no impact on local employment.

Comments on the proposed amendment may be submitted to Dr. Glenda Barron, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711, or by e-mail to Glenda.Barron@thecb.state.tx.us.

The amendment is proposed under the Texas Education Code, §51.837(a), which provides the Coordinating Board with the authority to award grants under Technology Workforce Development Grant Program on a competitive, peer-review basis and Texas Education Code, §61.051(p), which provides the Coordinating Board with the authority to administer trusteed funds, grant programs, research competition awards, and other funds and program as directed by the legislature.

The amendment affects Texas Education Code, §51.837.

§13.193. Proposal Solicitation

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

(e) Eligible institutions shall submit their proposals in the manner and format specified by the Coordinating Board with all requested information included. [~~Each eligible institution shall be permitted to submit one sole proposal and one joint proposal for each academic program for which proposals are being requested.~~]

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

Filed with the Office of the Secretary of State on May 1, 2003.

TRD-200302716
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: July 18, 2003
For further information, please call: (512) 427-6162

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TITLE 22. EXAMINING BOARDS

PART 11. BOARD OF NURSE EXAMINERS

CHAPTER 215. NURSE EDUCATION

22 TAC §§215.1 - 215.13

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

The Board of Nurse Examiners for the State of Texas proposes the repeal of current 22 TAC §§215.1 - 215.13. These sections concern Nurse Education and are being repealed concomitant with the proposed adoption of new §§215.1 - 215.13. This proposed repeal is being done pursuant to the Board's rule review published in the April 5, 2002, issue of the *Texas Register* (27 TexReg 2845).

The Texas Government Code requires that each rule adopted by an agency after September 1, 1997 be reviewed within four years of the date it was adopted. The purpose of the review is to make a determination if the reason for adopting the rule continues to exist. The Board also received feedback from the education community that the current provisions of the rule were too burdensome. The current Chapter 215 has not been reviewed in its entirety since the repeal and adoption of a new chapter in December 1998. The chapter change became effective September 1999.

The Board's Advisory Committee on Education (ACE) began the process of discussing revisions to Chapter 215 in February 2002. The committee has now completed the review of the chapter. The committee and staff worked diligently to address the concerns expressed by the education community, specifically that sections of the chapter were too prescriptive. The committee and staff were resolved to create a workable solution that would address input from the nursing education programs. Consensus was reached in identifying an abbreviated process for meeting the intent of the proposed new chapter. This process would hold nursing programs accountable without compromising the purpose and function of the Board, which is to protect the citizens of Texas. The abbreviated process will reduce the work required by nursing programs when making major curriculum changes, as well as when expanding the program to other sites (DEI). Other changes to the chapter included the addition of clarifying comments throughout the chapter and deletion of areas that were no longer meaningful.

The proposed repeal of §§215.1 - 215.13 is made subject to §2001.039 of the Texas Government Code requiring rule review within four years of the date of a rule's repeal. This proposed

repeal is intended to comply with the requisite review of Chapter 215.

Katherine Thomas, Executive Director, has determined that for the first five-year period the proposed repeal is adopted there will be no fiscal implications for state or local government as a result of the repeal.

Ms. Thomas, has determined that for each year of the first five years the proposed repeal is adopted, the public benefit will be that adoption of a new chapter will address concerns from the education community by decreasing the work now required, as well as ensuring continued accountability to the Board. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed repealed sections.

Written comments on the proposal may be submitted to Katherine A. Thomas, MN, RN, Executive Director, Board of Nurse Examiners, P.O. Box 430, Austin, Texas 78767-0430.

The repeal is proposed pursuant to Texas Occupations Code §301.151 which authorizes the board to propose rules necessary for the performance of its duties and §301.157 which requires the Board to prescribe rules for its programs of study and accreditation.

No other statutes, articles, or codes will be affected by the proposed repeal.

§215.1. General Requirements and Purpose of Standards.

§215.2. Definitions.

§215.3. Program Development, Expansion, and Closure.

§215.4. Accreditation.

§215.5. Mission and Goals (Philosophy and Outcomes).

§215.6. Administration and Organization.

§215.7. Faculty Qualifications and Faculty Organization.

§215.8. Students.

§215.9. Program of Study.

§215.10. Management of Clinical Learning Experiences and Resources.

§215.11. Facilities, Resources, and Services.

§215.12. Records and Reports.

§215.13. Total Program Evaluation.

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

Filed with the Office of the Secretary of State on May 2, 2003.

TRD-200302767
Katherine Thomas
Executive Director
Board of Nurse Examiners
Earliest possible date of adoption: June 15, 2003
For further information, please call: (512) 305-6823

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22 TAC §§215.1 - 215.13

The Board of Nurse Examiners for the State of Texas proposes new 22 TAC §§215.1 - 215.13. These sections concern Nurse Education and are being proposed concomitant with the repeal of the current §§215.1 - 215.13. This proposal is being done pursuant to the Board's rule review published in the April 5, 2002, issue of the *Texas Register* (27 TexReg 2845).

The Texas Government Code requires that each rule adopted by an agency after September 1, 1997 be reviewed within four years of the date it was adopted. The purpose of the review is to make a determination if the reason for adopting the rule continues to exist. The Board also received feedback from the education community that the current provisions of the chapter were too burdensome. The current Chapter 215 has not been reviewed in its entirety since the repeal and adoption of a new chapter in December 1998. The chapter change became effective September 1999.

The Board's Advisory Committee on Education (ACE) began the process of discussing revisions to Chapter 215 in February 2002. The committee has now completed the review of the chapter. The committee and staff worked diligently to address the concerns expressed by the education community, specifically that sections of the chapter were too prescriptive. Committee members also discussed how the current chapter impacted their programs. There were three areas of the chapter that received the most discussion. The first area was the section which requires programs to submit major curriculum changes to board staff for approval. The second area of most concern was the process required to initiate a distance education site. Board staff shared concerns regarding deletion of these two requirements and provided a compilation of data for ACE to consider before making revisions to the chapter. The committee and staff were resolved to create a workable solution that would address input from the nursing education programs. Consensus was reached in identifying an abbreviated process for meeting the intent of the chapter. This process would hold nursing programs accountable without compromising the purpose and function of the Board, which is to protect the citizens of Texas. The abbreviated process for fully accredited programs will reduce the work required by nursing programs when making major curriculum changes, as well as when expanding the program to other sites (DEI). Also, DEIs would no longer have individual pass rates, but will be included in the program's general pass rate. Finally, the board will issue a warning to a program when the pass rate of first-time candidates is less than 80% for two consecutive examination years (§215.4(c)(2)(C)) as opposed to the current chapter's time period of two of the last three examination years. Other changes to the chapter included the addition of clarifying comments throughout the chapter and deletion of areas that were no longer meaningful.

The proposed new §§215.1 - 215.13 is made subject to §2001.039 of the Texas Government Code requiring rule review within four years of the date of a rule's adoption. This proposal is intended to comply with the requisite review of Chapter 215.

Katherine Thomas, Executive Director, has determined that for the first five-year period the proposed sections are adopted there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed sections.

Ms. Thomas, has determined that for each year of the first five years the proposed sections are adopted, the public benefit will be that adoption of the new chapter will address concerns from the education community by decreasing the work now required, as well as ensuring continued accountability to the Board. Additionally, these changes will not alter the purpose of the Board's mission to ensure public safety and will allow for collection and

comparison of data needed by the Governor's Office, the Legislature, and other entities interested in the nursing shortage. There will be no effect on small businesses. There is no additional anticipated economic cost to persons who are required to comply with the proposed new rules.

Written comments on the proposal may be submitted to Katherine A. Thomas, MN, RN, Executive Director, Board of Nurse Examiners, P.O. Box 430, Austin, Texas 78767-0430.

The new sections are proposed pursuant to Texas Occupations Code §301.151 which authorizes the board to propose rules necessary for the performance of its duties and §301.157 which requires the Board to prescribe rules for its programs of study and accreditation.

No other statutes, articles, or codes will be affected by these proposed sections.

§215.1. General Requirements and Purpose of Standards.

(a) General Requirements. The Dean/Director and faculty are accountable for complying with the Board's rules and regulations and the Nursing Practice Act.

(b) Rules for nursing programs shall provide reasonable and uniform standards within which flexibility and creativity, based upon sound educational principles, are possible.

(c) Purpose of Standards.

(1) To promote the safe and effective practice of nursing.

(2) To serve as a guide for the development of new nursing education programs.

(3) To provide criteria for the evaluation of new and established nursing education programs.

(4) To foster the continued improvement of established nursing education programs.

§215.2. Definitions.

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

(1) Accredited nursing program

(A) Board accredited nursing program--A nursing program approved by the Board of Nurse Examiners for the State of Texas.

(B) Voluntary accredited nursing program--A nursing program accredited by a Board approved voluntary nursing accrediting body (i.e. NLNAC, CCNE).

(2) Advisory Committee/Board--A group of individuals who provides input to the Board for consideration.

(3) Affiliate agency--An agency, other than the governing institution, which provides learning experiences for students.

(4) Alternative practice settings--settings which provide opportunities for clinical learning experiences although their primary function is not the delivery of health care.

(5) Articulation--A planned process between two or more educational systems to assist students to make a smooth transition from one level of education to another without duplication in learning.

(6) Baccalaureate degree program for registered nurses--A program leading to a bachelor's degree in nursing which admits only registered nurses.

(7) Basic nursing program--An educational unit whose purpose is to prepare practitioners of professional nursing and whose graduates are eligible to apply for initial licensure by examination.

(A) Associate degree program--A program leading to an associate degree in nursing conducted by an educational unit in nursing within the structure of a college or university.

(B) Baccalaureate degree program--A program leading to a bachelor's degree in nursing conducted by an educational unit in nursing which is a part of a senior college or university.

(C) Master's degree program--A program leading to a master's degree, which is an individual's first professional degree in nursing, and conducted by an educational unit in nursing within the structure of a senior college or university.

(D) Diploma program--A program leading to a diploma in nursing conducted by a single purpose school usually under the control of a hospital.

(8) Board--The Board of Nurse Examiners for the State of Texas composed of members appointed by the Governor for the State of Texas.

(9) Board survey visit--An on-site visit to a nursing program by a Board representative for the purpose of evaluating the program of learning and gathering data to support whether the program is meeting the Board's requirements as specified in §§215.2 - 215.13 of this chapter (relating to Definitions; Program Development, Expansion, and Closure; Accreditation; Mission and Goals (Philosophy and Outcomes; Administration and Organization; Faculty Qualifications and Faculty Organization; Students; Program of Study; Management of Clinical Learning Experiences and Resources; Facilities, Resources, and Services; Records and Reports; and Total Program Evaluation).

(10) Clinical learning experiences--Faculty-planned and guided learning activities designed to assist students to meet stated program and course outcomes and to safely apply knowledge and skills when providing nursing care to clients across the life span as appropriate to the role expectations of the graduates. These experiences occur in nursing skills and computer laboratories; in a variety of affiliate agencies or clinical practice settings including, but not limited to: acute care facilities, extended care facilities, clients' residences, and community agencies; and in associated clinical conferences.

(11) Clinical preceptor--A registered nurse or other licensed health professional who meets the minimum requirements in §215.10(f)(5) of this chapter (relating to Management of Clinical Learning Experiences and Resources), not paid as a faculty member by the governing institution, and who directly supervises a student's clinical learning experience. A clinical preceptor facilitates student learning in a manner prescribed by a signed written agreement between the educational institution, preceptor, and affiliate agency (as applicable).

(12) Clinical preceptorship--An organized system of clinical learning experiences which allows a nursing student, under the direction of a faculty member, to attain specific learning objectives under the supervision of a qualified clinical preceptor.

(13) Clinical teaching assistant--A registered nurse licensed in Texas, who is employed to assist and work under the supervision of a Master's or Doctorally prepared faculty member and who meets the minimum requirements in §215.10(g)(4) of this chapter.

(14) Coordinator--A qualified faculty who has the delegated responsibility for the day to day administration of an accredited professional nursing program or one or more distance education initiatives

(15) Course--A specific set of organized learning experiences that must be met within a stated time period. A course involves both organized subject matter and related activities. In a clinical nursing course, the didactic content shall be taught either prior to or concurrent with the related clinical learning experiences.

(16) Curriculum--Content designed to achieve specific educational outcomes.

(17) Dean/Director--A registered nurse who is accountable for administering one or more of the following: basic nursing program or a post-licensure baccalaureate or higher degree program for registered nurses and who meets the requirements as stated in §215.6(f) of this chapter (relating to Administration and Organization).

(18) Differentiated Entry Level Competencies--The expected educational outcomes to be demonstrated by nursing students at the time of graduation as published in *Differentiated Entry Level Competencies of Graduates of Texas Nursing Programs, Vocational (VN), Diploma/Associate Degree (Dip/ADN), Baccalaureate (BSN)*, September 2002.

(19) Distance education initiative--Instruction provided by an accredited nursing program utilizing a variety of instructional methods to any location(s) other than the program at the main campus and where students are required to attend activities such as testing, group conferences, campus laboratory. A distance education initiative may range from offering the entire identical curriculum to offering a single course or multiple courses.

(A) Complete program--Provides the entire program of study at a site other than the program at the main campus.

(B) Partial program--Provides a course or courses from the program of study at a site other than the program at the main campus.

(20) Examination year--A twelve month period defined by the Board.

(21) Faculty currency/clinical competence--Maintenance of up-to-date knowledge and professional practice as demonstrated by certification and/or through participation in: continuing education, professional conferences, advanced academic courses, workshops, research projects, seminars, publications, clinical practice, and/or extended orientation.

(22) Faculty member--An individual employed to teach in the nursing program who meets the requirements as stated in §215.7 of this chapter (relating to Faculty Qualifications and Faculty Organization).

(23) Faculty petition--A request submitted to the Board petitioning to employ an individual who does not meet the requirements stated in §215.7 of this chapter.

(24) Faculty role--The activities which require the time of the faculty member and are related, directly or indirectly, to the performance of his/her professional education duties and responsibilities.

(25) Faculty waiver--A waiver granted by the Board to an individual who has a baccalaureate degree in nursing and is currently licensed in Texas to be employed as a faculty member for a limited period of time.

(26) Governing institution--An accredited college, university, or hospital responsible for the administration and operation of a Board accredited nursing program.

(27) Health care professional--An individual other than a RN who holds at least a bachelor's degree in the health care field, including, but not limited to: respiratory therapists, physical therapists, occupational therapists, dieticians, pharmacists, physicians, social workers and psychologists.

(28) Instructional Methods--Includes traditional methods of delivering instruction such as lecture and group work, as well as innovative methods such as on-line courses and interactive television.

(29) Mission--The purpose and overall role of the educational unit in nursing which are consistent with those of the governing institution.

(30) Mobility--The ability to advance without educational barriers.

(31) Observational experience--An assignment to a facility or unit where students observe the functions of the facility and the role of nursing within the facility, but where students do not participate in patient/client care.

(32) Pass rate--The percentage of first-time candidates within one examination year who pass the National Council Licensure Examination for Registered Nurses.

(33) Philosophy--The underlying belief system of the educational nursing unit.

(34) Post-Licensure nursing program--An educational unit the purpose of which is to provide mobility options for registered nurses to attain undergraduate academic degrees in nursing. Post-licensure programs may be components of educational units within basic nursing programs or independent baccalaureate degree programs for registered nurses as defined in this section.

(35) Pre-Licensure nursing program--See basic nursing program.

(36) Professional Nursing Program--An educational entity that offers the courses and learning experiences that constitute the requirements for a basic nursing program (diploma program, associate degree program, baccalaureate degree program, master's degree alternate entry program) or a post-licensure program.

(37) Professional nursing student--An individual enrolled in a professional nursing program who has met admission criteria and is designated as a nursing student according to governing institution's policies.

(38) Program goals/outcomes--The expected competencies of program graduates with regard to professional nursing practice.

(39) Program of study--The courses and learning experiences that constitute the requirements for completion of a basic nursing program (associate degree program, baccalaureate degree program, master's degree program, or diploma program) or a post-licensure nursing program.

(40) Shall and must--Mandatory requirements.

(41) Should--A recommendation.

(42) Staff--Employees of the Board of Nurse Examiners.

(43) Supervision--Immediate availability of a faculty member, clinical preceptor, or clinical teaching assistant to coordinate, direct, and observe at first hand the practice of students.

§215.3. Program Development Expansion and Closure.

(a) New programs.

(1) Proposal to develop a professional pre-licensure or post-licensure nursing program.

(A) A governing institution accredited by a Board recognized accrediting body is eligible to submit a proposal to develop a professional nursing program. Notice of intent to establish a nursing program shall be submitted in writing 12 - 18 months prior to the anticipated start of the program.

(B) The proposal shall be completed under the direction/consultation of a registered nurse who holds at least a master's degree in nursing and who has teaching and administrative experience in the type of program being proposed.

(C) The proposal shall include information outlined in Board guidelines.

(D) The proposal will be considered by the Board following a public hearing at a regularly scheduled meeting of the Board. The Board may approve the proposal, may defer action on the proposal, or may deny further consideration of the proposal.

(2) Application for initial accreditation.

(A) Following approval to develop a professional nursing program, a director, faculty, and support staff shall be employed to develop the application for initial licensure as outlined in an Order of the Board.

(B) Initial accreditation must be granted prior to admission of students.

(C) The director and faculty shall plan the program of learning.

(D) The application shall include information outlined in Board guidelines.

(E) The Board shall review the application and supporting evidence at a regularly scheduled meeting. If the program is based upon sound educational principles and is in compliance with the Board's requirements as specified in §§215.2 - 215.13 of this chapter (relating to Definitions; Program Development, Expansion, and Closure; Accreditation; Mission and Goals (Philosophy and Outcomes); Administration and Organization; Faculty Qualifications and Faculty Organization; Students; Program of Study; Management of Clinical Learning Experiences and Resources; Facilities, Resources, and Services; Records and Reports; and Total Program Evaluation), then initial accreditation may be granted and an initial accreditation fee assessed per §223.1 of this title (relating to Fees).

(3) Survey visits shall be conducted, as necessary, by staff until full accreditation is granted.

(b) Program Expansion

(1) Only nursing programs that have full accreditation are eligible to initiate or modify distance education initiatives.

(2) Instruction provided for the distance education initiative may include a variety of instructional methods and shall be congruent with the program's curriculum plan and shall enable students to meet the goal, objectives, and competencies of the educational program and requirements of the Board as stated in §§215.2 - 215.13 of this chapter.

(3) A program intending to establish a distance education initiative shall:

(A) Notify the board at least four months prior to implementation of distance education initiatives by any accredited program, and

(B) Submit required information according to board approved guidelines.

(C) Provide documentation of notification to the Regional Council of the governing institution about plans for establishment of distance education initiatives shall be provided to the Board at least four months prior to implementation, as appropriate.

(D) Provide evidence of approval from the Texas Higher Education Coordinating Board and other regulating/accrediting bodies shall be provided to the Board prior to implementation, as appropriate.

(4) Nursing programs planning to close a distance education initiative shall submit notification to the Board at least four months prior to closing, using the board guidelines which includes the date of closure and rationale.

(5) Distance education initiatives of basic nursing programs which have been closed may be reactivated by submitting notification of reactivation to the Board at least 4 months prior, using the board guidelines for initiating a distance education initiative.

(c) Transfer of Administrative Control by Governing Institutions.

(1) A governing institution of a professional nursing education program which has Full Accreditation status may request permission from the Board to transfer administrative control.

(A) A governing institution that proposes to transfer administrative control of a nursing program to another governing institution accredited by aboard recognized accrediting body shall submit:

(i) notice of intent to transfer administrative control in writing to the Board 12 months prior to the anticipated date of transfer; and

(ii) a written plan for closure of the nursing program as required by subsection (d) of this section.

(B) The governing institution which will assume responsibility for the program shall submit a Proposal to Assume Administrative Control to the Board six months prior to a regularly scheduled Board meeting.

(i) The proposal shall be completed under the direction/consultation of a registered nurse who holds at least a master's degree in nursing and who has teaching and administrative experience in the type of program being proposed.

(ii) The proposal shall include information outlined inboard approved guidelines.

(iii) The proposal shall include documentation of Texas Higher Education Coordinating Board approval, as applicable.

(iv) The proposal will be considered by the Board at a regularly scheduled meeting.

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

(2) Accreditation status of transferred nursing program(s).

(A) If the governing institution that is assuming administrative control previously has been responsible for an accredited professional nursing program and does not intend to change the program of study then the professional nursing education program shall maintain its accreditation status.

(B) If the governing institution that is assuming administrative control previously has been responsible for an accredited professional nursing program and intends to alter the program of study then that governing institution shall submit a proposal to change the

program of study in accordance with §215.9(i) of this chapter (relating to Program of Study).

(C) If the governing institution that is assuming administrative control has not previously been responsible for an accredited professional nursing program then that governing institution shall submit an application for initial accreditation in accordance with subsection (a)(2) of this section.

(d) Closing a Program.

(1) When the decision to close a program which provides the entire program of study has been made, the director must notify the Board and submit a written plan for closure which includes the following:

(A) reason for closing the program;

(B) date of intended closing;

(C) academic provisions for students;

(D) provisions made for access to and safe storage of vital school records, including transcripts of all graduates; and

(E) methods to be used to maintain requirements and standards until the program closes.

(2) The program or distance education initiative shall continue within standards until all classes, which are enrolled at the time of the decision to close, have graduated. In the event this is not possible, a plan must be developed whereby students may transfer to other accredited programs.

(3) Programs that close a DEI which provides the full program of study shall notify the board office in writing at least four months prior to the intent to close, providing:

(A) location and name of the program;

(B) reason; and

(C) the date of the intended closure.

§215.4. Accreditation.

(a) The progressive designation of accreditation status is not implied by the order of the following listing. Accreditation status is based upon each program's performance and demonstrated compliance to the Board's requirements. Change from one status to another is based on NCLEX-RN® examination pass rates and annual reports or survey visits. Types of accreditation include:

(1) Initial accreditation. Initial accreditation is written authorization to admit students and is granted if the program meets the requirements of the Board.

(2) Full accreditation-basic nursing program. Full accreditation is granted to a basic nursing program after the program has documented compliance with subsection (c)(2)(A) of this section. Only programs with full accreditation status may propose distance education initiatives and petition for faculty waivers.

(3) Full Accreditation-post-licensure nursing programs. Full accreditation is granted to a post-licensure nursing program after one class has completed the program and is based upon evidence that the program meets the Board's legal and educational requirements.

(4) Warning.

(A) Issuance of warning. When the Board determines that a program is not meeting legal and educational requirements, the program is issued a warning, is provided a list of the deficiencies, and is given a specified time in which to correct the deficiencies.

(B) Failure to correct deficiencies. If the program fails to correct the deficiencies within the prescribed period the Board may restrict admissions or other program activities until the deficiencies are corrected or the Board may place the program on conditional accreditation or withdraw accreditation.

(5) Conditional accreditation. Conditional accreditation is granted for a time specified by the Board in order to provide additional time to correct deficiencies.

(A) The program shall not admit students while on conditional status.

(B) The Board may establish specific criteria to be met in order for the program's conditional accreditation status to be removed.

(C) Depending upon the degree to which the Board's legal and educational requirements are met, the Board may change the accreditation status to full, warning, or withdraw accreditation.

(b) Withdrawal of accreditation. A program which fails to meet legal and educational requirements of the Board within the specified time shall be removed from the list of state accredited nursing programs. Reasons for withdrawal of accreditation include but are not limited to:

(1) Continued lack of compliance with minimum requirements as set out in this chapter, and

(2) Failure to meet specific criteria set out by the Board.

(c) Accreditation procedures. The continuing accreditation status of each program shall be determined annually by the Board based upon:

(1) Review of annual report. Each accredited professional nursing program shall submit an annual report regarding its compliance with the Board's legal and educational requirements. Accreditation status is determined on the basis of the program's annual report, NCLEX-RN® examination pass rate, and other pertinent data when a program is not visited by staff during the examination year.

(2) Pass rate of graduates on NCLEX-RN® examination.

(A) In order for the nursing program to attain or maintain full accreditation, 80% of first-time candidates who complete the program of study must achieve a passing score on the NCLEX-RN® examination for two consecutive examination years.

(B) When first-time candidates who complete the nursing program of study fail to achieve at least 80% during one examination year, the nursing program shall submit a self-study report that evaluates factors which contributed to the graduates' performance on the NCLEX-RN® examination and a description of the corrective measures to be implemented. The report shall follow Board guidelines.

(C) A warning will be issued to the program based on the pass rate when the pass rate of first-time candidates, as described in subparagraph (A) of this paragraph, is less than 80% for two consecutive examination years.

(D) A program may be placed on conditional accreditation status if, within one examination year from the date of the warning, the performance of graduates fails to be at least 80%, or the faculty fail to implement appropriate corrective measures.

(E) Accreditation may be withdrawn if the performance of graduates fails to be at least 80% during the examination year following the date that the program is placed on conditional accreditation.

(F) A program placed on warning or conditional accreditation status may request a review of the program accreditation status by the Board at a regularly scheduled meeting if the program's pass rate for first-time candidates during one examination year is at least 80%.

(d) Survey visit. Each nursing program will be visited at least every six years after full accreditation has been granted, unless accredited by a Board recognized voluntary accrediting body.

(1) The Board may authorize staff to a conduct survey visit at any time based upon established criteria.

(2) After a program is fully accredited by the Board, a report from a Board recognized voluntary accrediting body regarding a program's accreditation status may be accepted in lieu of a Board survey visit.

(3) A written report of the survey visit, annual report, and NCLEX-RN® examination pass rate will be reviewed by the Board at a regularly scheduled meeting.

(e) Notice of a program's accreditation status will be sent to the director, chief administrative officer of the governing institution, and others as determined by the Board.

§215.5. Mission and Goals (Philosophy and Outcomes).

(a) The mission and goals (philosophy and outcomes) of the nursing program shall be consistent with the mission of the governing institution. They shall reflect the diversity of the community served and shall be consistent with professional, educational, and ethical standards of nursing.

(b) The written mission and goals (philosophy and outcomes) shall be used as a basis for planning, organizing, implementing and evaluating the program and shall be shared with the students.

(c) The program outcomes or objectives shall be consistent with the program's philosophy or mission.

(d) The faculty shall periodically review the mission and goals (philosophy and outcomes) and shall make revisions to maintain currency.

§215.6. Administration and Organization.

(a) The governing institution shall be accredited by a Board recognized accrediting agency.

(b) There shall be an organizational chart which demonstrates the relationship of the professional nursing program to the governing institution, and indicates lines of responsibility and authority, and channels of communication.

(c) In colleges and universities, the program shall have comparable status with other academic units in such areas as rank, promotion, tenure, leave, benefits and professional development.

(d) Salaries shall be adequate to recruit, employ, and retain sufficient qualified faculty members with graduate preparation and expertise necessary for students to meet program goals.

(e) The governing institution shall provide financial support and resources needed to operate a program which meets the legal and educational requirements of the Board and fosters achievement of program goals. The financial resources shall support adequate educational facilities, equipment, and qualified administrative and instructional personnel.

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

(1) hold a current license or privilege to practice as a registered nurse in the state of Texas;

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

(3) hold a doctoral degree, if administering a baccalaureate or master's degree program;

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

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

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

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

(2) A vitae and all official transcripts shall be submitted with the new director qualification form.

(3) If an acting director is appointed to fill the position of the director, this appointment shall not exceed one year.

(4) In a fully accredited professional nursing program, if the individual to be appointed as director does not meet the requirements for director as specified in subsection (f) of this section, the administration is permitted to petition for a waiver of the Board's requirements prior to the appointment of said individual.

(h) A newly appointed dean/director or acting dean/director of a professional nursing education program shall attend an orientation provided by the Board within one year of the appointment.

§215.7. Faculty Qualifications and Faculty Organization.

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

(1) Policies concerning workload for faculty and the dean/director shall be in writing.

(2) Sufficient time shall be provided faculty to accomplish those activities related to the teaching-learning process.

(3) Teaching activities shall be coordinated among full-time, part-time faculty, clinical preceptors and clinical teaching assistants.

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

(b) A nursing education program shall employ sufficient faculty members with graduate preparation and expertise necessary to enable the students to meet the program goals. The number of faculty members shall be determined by such factors as:

(1) The number and level of students enrolled;

(2) The curriculum plan;

(3) Activities and responsibilities required of faculty;

(4) The number and geographic locations of affiliate agencies and clinical practice settings; and

(5) The level of care and acuity of clients.

(c) Faculty Qualifications.

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

(A) Hold a current license or privilege to practice as a registered nurse in the State of Texas;

(B) Show evidence of teaching abilities and maintaining current knowledge, clinical expertise, and safety in subject area of teaching responsibility;

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

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

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

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

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

(2) Nursing as well as non-nursing faculty who teach non-clinical nursing courses, e.g., pathophysiology, pharmacology, research, management and statistics, shall have graduate level educational preparation appropriate to these areas of responsibility.

(3) Non-nursing faculty shall be required to co-teach with nursing faculty in order to meet nursing course objectives.

(d) Teaching assignments shall be commensurate with the faculty member's education and experience in nursing.

(e) The faculty shall be organized with written policies and procedures and/or bylaws to guide the faculty and program's activities.

(f) The faculty shall meet regularly and function in such a manner that all members participate in planning, implementing, and evaluating the nursing program. Such participation includes, but is not limited to the initiation and/or change of academic policies, personnel policies, curriculum, utilization of affiliate agencies, and program evaluation.

(1) Committees necessary to carry out the functions of the program shall be established with duties and membership of each committee clearly defined in writing.

(2) Minutes of faculty organization and committee meetings shall document the reasons for actions and the decisions of the faculty and shall be available for reference.

(g) There shall be written plans for faculty orientation, development, and evaluation.

(1) Orientation of new faculty members shall be initiated at the onset of employment.

(2) A program of faculty development shall be offered to encourage and assist faculty members to meet the nursing program's needs as well as individual faculty member's professional development needs.

(3) A variety of means shall be used to evaluate faculty performance such as self, student, peer and administrative evaluation.

§215.8. Students.

(a) Students should have mechanisms for input into the development of academic policies and procedures, curriculum planning, and evaluation of teaching effectiveness.

(b) The number of students admitted to the program shall be determined by the number of qualified faculty, adequate educational facilities and resources, and the availability of appropriate clinical learning experiences for students.

(c) Written policies regarding nursing student admission and progression shall be developed and implemented in accordance with the requirements that the governing institution must meet to maintain accreditation. Student policies which differ from those of the governing institution shall be in writing and shall be made available to faculty and students.

(d) Policies shall facilitate mobility/articulation, be consistent with acceptable educational standards, and be available to students and faculty.

(e) Students shall have the opportunity to evaluate faculty, courses, and learning resources and these evaluations shall be documented.

(f) Individuals enrolled in accredited professional nursing programs preparing students for initial licensure shall be provided verbal and written information regarding conditions that may disqualify graduates from licensure and of their rights to petition the Board for a Declaratory Order of Eligibility. Required eligibility information includes:

(1) Texas Occupations Code §301.253 and §§301.452 - 301.468.

(2) Sections 213.27 - 213.30 of this title (relating to Good Professional Character, Licensure of Persons with Criminal Convictions, Criteria and Procedure Regarding Intemperate Use and Lack of Fitness and Declaratory Order of Eligibility for Licensure).

(g) The nursing program shall maintain written receipt of eligibility notification for up to six months after the individual enrolled completes the nursing program or permanently withdraws from the nursing program.

(h) The Director of the Nursing Program shall submit an affidavit each year with the Annual Report which verifies that enrolled students received the eligibility information.

§215.9. Program of Study.

(a) The program of study shall be:

(1) at least the equivalent of two academic years and shall not exceed four calendar years;

(2) planned, implemented, and evaluated by the faculty;

(3) based on the mission and goals (philosophy and outcomes);

(4) organized logically, sequenced appropriately;

(5) based on sound educational principles;

(6) designed to prepare graduates to practice according to the Standards of Nursing Professional Practice as set forth in the Board's Rules and Regulations; and

(7) designed and implemented to prepare students to demonstrate the Differentiated Entry Level Competencies of Graduates of Texas Nursing Programs, Vocational (VN), Diploma/Associate Degree (Dip/ADN), Baccalaureate (BSN).

(b) There shall be a reasonable balance between non-nursing courses and nursing courses which are offered in a supportive sequence with rationale and are clearly appropriate for collegiate study.

(c) There shall be a rationale for the ratio of contact hours assigned to classroom and clinical learning experiences. The recommended ratio is three contact hours of clinical learning experiences for each contact hour of classroom instruction.

(d) The program of study should facilitate articulation among programs.

(e) The program of study shall include, but not be limited to the following areas:

(1) non-nursing courses, clearly appropriate for collegiate study, offered in a supportive sequence.

(2) nursing courses which include didactic and clinical learning experiences in the four content areas which includes medical-surgical, maternal child health, pediatrics and mental health nursing that teach students to use a systematic approach to clinical decision making and prepare students to safely practice professional nursing through the promotion, prevention, rehabilitation, maintenance, and restoration of the health of individuals of all ages.

(A) Course content shall be appropriate to the role expectations of the graduate.

(B) Professional values including ethics, safety, diversity, and confidentiality shall be addressed.

(C) The Nursing Practice Act, Standards of Professional Nursing Practice, Unprofessional Conduct Rules, Delegation Rules, and other laws and regulations which pertain to various practice settings shall be addressed.

(3) Nursing courses shall prepare students to recognize and analyze health care needs, select and apply relevant knowledge and appropriate methods for meeting the health care needs of individuals and families, and evaluate the effectiveness of the nursing care.

(4) Baccalaureate and entry-level master's degree programs in nursing shall include learning activities in basic research and management/leadership, and didactic and clinical learning experiences in community health nursing.

(f) The learning experiences shall provide for progressive development of values, knowledge, judgment, and skills.

(1) Didactic learning experiences shall be provided either prior to or concurrent with the related clinical learning experiences.

(2) Clinical learning experiences shall be sufficient in quantity and quality to provide opportunities for students to achieve the stated outcomes.

(3) Students shall have sufficient opportunities in simulated or clinical settings to develop manual technical skills, using contemporary technologies, essential for safe, effective nursing practice.

(4) Learning opportunities shall assist students to develop communication and interpersonal relationship skills.

(g) Faculty shall develop and implement evaluation methods and tools to measure progression of students' cognitive, affective and psychomotor achievement in course/clinical objectives according to Board guidelines.

(h) Staff approval is required prior to implementation of major curriculum changes by a professional nursing program. Proposed changes shall include information outlined in Board guidelines and shall be reviewed using Board standards.

(1) Changes that require approval include:

(A) changes in program mission and goals (philosophy and outcomes) which result in a reorganization or re-conceptualization of the entire curriculum, including but not limited to changing from a block to an integrated curriculum.

(B) the addition of transition course(s), tracks/alternative programs of study that provide educational mobility.

(C) all programs implementing a major curriculum change shall provide an evaluation of the outcomes of these changes and submit with the Annual Report through the first graduating class.

(2) All other revisions such as editorial updates of mission and goals or redistribution of course content or course hours shall be reported to the Board in the Annual Report.

(3) Documentation of Governing Institution approval or Texas Higher Education Coordinating Board approval must be provided to the Board prior to implementation of changes, as appropriate.

(i) Nursing programs that have full accreditation and are undergoing major curriculum changes shall submit an abbreviated proposal to the office for approval at least 4 months prior to implementation. The abbreviated proposal shall contain the following:

(1) the new philosophy, major concepts;

(2) program and course outcomes; and

(3) clinical evaluation tools for each clinical course.

(j) Nursing programs not having full accreditation and are undergoing a major curriculum change shall submit a full curriculum proposal and meet the requirements as outlined in subsection (h) of this section.

§215.10. Management of Clinical Learning Experiences and Resources.

(a) In all cases faculty shall be responsible and accountable for managing clinical learning experiences and observational experiences of students.

(b) Faculty shall develop criteria for the selection of affiliate agencies or clinical practice settings which address safety and the need for students to achieve the program outcomes (goals) through the practice of nursing care or observational experiences.

(c) Faculty shall select and evaluate affiliate agencies or clinical practice settings which provide students with opportunities to achieve the goals of the program.

(1) Written agreements between the program and the affiliate agencies shall specify the responsibilities of the program to the agency and the responsibilities of the agency to the program.

(2) Agreements shall be reviewed periodically and include provisions for adequate notice of termination.

(d) The faculty member shall be responsible for the supervision of students in clinical learning experiences.

(1) When a faculty member is the only person officially responsible for a clinical group, then the group may total no more than ten (10) students. Patient safety shall be a priority and may mandate ratios as low as one faculty member to six students. The faculty member must supervise that group in only one facility at a time, unless some

portion or all of the clinical group are assigned to observational experiences in additional settings.

(2) Direct faculty supervision is not required for an observational experience.

(A) Observational experiences may be used to supplement, but not replace patient care experiences, and must serve the purpose of student attainment of clinical objectives.

(B) Observational experiences should comprise no more than 20% of the clinical contact hours for a course and no more than 10% of the clinical contact hours for the program-of-study.

(e) Faculty may use clinical preceptors or clinical teaching assistants to enhance clinical learning experiences and to assist faculty in the clinical supervision of students.

(1) Faculty shall develop written criteria for the selection of clinical preceptors and clinical teaching assistants.

(2) When clinical preceptors or clinical teaching assistants are used, written agreements between the professional nursing program, clinical preceptor or clinical teaching assistant, and the affiliating agency, when applicable, shall delineate the functions and responsibilities of the parties involved.

(3) Faculty shall be readily available to students and clinical preceptors or clinical teaching assistants during clinical learning experiences.

(4) The designated faculty member shall meet periodically with the clinical preceptors or clinical teaching assistants and student(s) for the purpose of monitoring and evaluating learning experiences.

(5) Written clinical objectives shall be shared with the clinical preceptors or clinical teaching assistants prior to or concurrent with the experience.

(f) Clinical preceptors may be used to enhance clinical learning experiences after a student has received clinical and didactic instruction in all basic areas of nursing or within a course after a student has received clinical and didactic instruction in the basic areas of nursing for that course or specific learning experience.

(1) In courses which use clinical preceptors for a portion of clinical learning experiences, faculty shall have no more than 12 students in a clinical group.

(2) In a course which uses clinical preceptors as the sole method of student instruction and supervision in clinical settings, faculty shall coordinate the preceptorships for no more than 24 students.

(3) The preceptor may supervise student clinical learning experiences without the physical presence of the faculty member in the affiliate agency or clinical practice setting.

(4) The preceptor shall be responsible for the clinical learning experiences of no more than two students per clinical day.

(5) Clinical preceptors shall have the following qualifications:

(A) competence in designated area of practice;

(B) philosophy of health care congruent with that of the nursing program; and

(C) current licensure or privilege as a registered nurse; or

(D) if not a registered nurse, a current license in Texas as a health care professional with a minimum of a bachelor's degree in that field.

(g) Clinical teaching assistants may assist qualified and experienced faculty clinical learning experiences.

(1) In clinical learning experiences where a faculty member is supported by a clinical teaching assistant, the ratio of faculty to students shall not exceed 2:15 (faculty plus clinical teaching assistant: student).

(2) Clinical teaching assistants shall supervise student clinical learning experiences only when the qualified and experienced faculty member is physically present in the affiliate agency or alternative practice setting.

(3) When acting as a clinical teaching assistant, the RN shall not be responsible for other staff duties, such as supervising other personnel and/or patient care.

(4) Clinical teaching assistants shall meet the following criteria:

(A) hold a current license or privilege to practice as a registered nurse in the State of Texas;

(B) hold a bachelor's degree in nursing from an accredited baccalaureate program in nursing; and

(C) have the clinical expertise to function effectively and safely in the designated area of teaching.

§215.11. Facilities, Resources, and Services.

(a) The governing institution shall be responsible for providing:

(1) educational facilities,

(2) resources, and

(3) services which support the effective development and implementation of the nursing education program.

(b) The director and faculty shall have adequate secretarial and clerical assistance to meet the needs of the program.

(c) The physical facilities shall be adequate to meet the needs of the program in relation to the size of the faculty and the student body.

(1) The director shall have a private office.

(2) Faculty offices shall be conveniently located and adequate in number and size to provide faculty with privacy for conferences with students and uninterrupted work.

(3) Space for clerical staff, records, files, and equipment shall be adequate.

(4) There shall be mechanisms which provide for the security of sensitive materials, such as examinations and health records.

(5) Classrooms, laboratories, and conference rooms shall be conducive to learning and adequate in number, size, and type for the number of students and the educational purposes for which the rooms are used.

(d) The learning resources, library, and departmental holdings shall be current, use contemporary technology appropriate for the level of the curriculum, and be sufficient for the size of the student body and the needs of the faculty.

(1) Provisions shall be made for accessibility, availability, and timely delivery of information resources.

(2) Facilities and policies shall promote effective use, i.e. environment, accessibility, and hours of operation.

§215.12. Records and Reports.

(a) Accurate and current records shall be maintained in a confidential manner and be accessible to appropriate parties. These records shall include, but are not limited to:

(1) records of current students;

(2) transcripts/permanent record cards of graduates;

(3) faculty records;

(4) administrative records, which include minutes of faculty meetings for the past three years, annual reports, and school catalogs;

(5) the current program of study and curriculum including mission and goals (philosophy and outcomes), and course outlines;

(6) agreements with affiliate agencies; and

(7) the master plan of evaluation with most recent data collection.

(b) Records shall be safely stored to prevent loss, destruction, or unauthorized use.

(c) The director shall submit an Annual Report each year.

§215.13. Total Program Evaluation.

(a) There shall be a written plan for the systematic evaluation of the total program. The plan shall include methodology, frequency of evaluation, assignment of responsibility, evaluative criteria, and indicators of program and instructional effectiveness. The following broad areas shall be periodically evaluated:

(1) organization and administration of the program;

(2) mission and goals (philosophy and outcomes);

(3) program of study, curriculum, and instructional techniques;

(4) education facilities, resources, and services;

(5) affiliate agencies and clinical learning activities;

(6) students' achievement;

(7) graduates' performance on the licensing examination;

(8) graduates' nursing competence;

(9) faculty members' performance; and

(10) advisory committees.

(b) All evaluation methods and instruments shall be periodically reviewed for appropriateness.

(c) Implementation of the plan for total program evaluation shall be documented in the minutes.

(d) Major changes in the nursing program shall be evidence-based and supported by rationale.

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

Filed with the Office of the Secretary of State on May 2, 2003.

TRD-200302768
Katherine Thomas
Executive Director
Board of Nurse Examiners
Earliest possible date of adoption: June 15, 2003
For further information, please call: (512) 305-6823

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CHAPTER 217. LICENSURE, PEER ASSISTANCE AND PRACTICE

22 TAC §217.2, §217.4

The Board of Nurse Examiners proposes amendments to 22 TAC §217.2 and §217.4, concerning Licensure, Peer Assistance, and Practice. The proposed amendments would specifically address Licensure by Examination for Graduates of Basic Nursing Education Programs Within the United States', its Territories or Possessions, and Requirements for Initial Licensure by Examination for Nurses Who Graduate from Professional Nursing Programs Outside of the United States' Jurisdiction, respectively.

The Texas Government Code requires that each rule adopted by an agency after September 1, 1997 be reviewed to determine if the reason for adopting the rule continues to exist. Chapter 217 was last reviewed in 1999. Staff of the board took the opportunity to compare the rules with the National Council of State Boards of Nursing (NCSBN) Uniform Licensure Requirements which were published in July of 1999. The comparison assisted board staff in identifying differences between the Texas requirements and those published by the NCSBN and has resulted in the proposed amendments to §217.2 and §217.4. Amending the rules will increase compatibility between the Texas requirements and NCSBN's uniform licensure requirements. Additionally, the office received a letter from the Texas Nurses Association in March 2003 requesting a review of §217.4 in order to determine whether or not "differing criteria have been imposed" on foreign graduates with a particular focus on the Mexico-educated nurse.

National Council's Nursing Practice and Education Committee developed the core licensure requirements over a two-year period and defined these requirements as "those minimum requirements that are essential to promote public protection." Factors such as nurse mobility, maintenance of licensure standards designed to ensure the public protection, and regulatory barriers were also considered. The committee believed that increasing consistency in the licensure requirements among the various jurisdictions was an appropriate regulatory approach. The committee developed uniform core requirements for initial licensure for nurses graduating in the United States as well as for those completing programs outside of the United States.

The Texas rules differed in the number of attempts that applicants were permitted to take the NCLEX-RN® licensing examination. Texas rules currently specify that a candidate has three attempts within four years of the date of completion of requirements for graduation or three attempts within four years of the date of eligibility to pass the exam before additional education is required, i.e. repeat a nursing curriculum or the entire program of study.

The NCSBN core requirements permit unlimited attempts on the exam both for U.S. graduates and for graduates of programs outside of U.S. jurisdiction. According to NCSBN, repeat candidates would not be exposed to the same test items due to the large pool of test questions, and NCSBN has a policy that candidates must wait 91 days between each test attempt. (The pool of test questions is rotated at that time.)

The board concurs that there is no justification to continue to limit the number of attempts on the examination due to the availability of a large test pool of questions. The board's staff had

been reviewing the issues relating to unlimited attempts on the examination over the course of the last several years and this particular recommendation was not related to any specific feedback but rather an increasing awareness that nurses who were unsuccessful after three attempts could test in other states and then endorse into Texas.

If the rules are amended as proposed, candidates could test every 101 days (three attempts/year) for four years after completion of the requirements for graduation or for four years after the date of eligibility. Candidates would have a total of 14 attempts to be successful on the exam prior to being required to re-educate. Currently, the board endorses registered nurses from other states who have taken the NCLEX-RN® more than three times before passing the examination.

The board also proposes that the requirement for the CGFNS certificate be amended to offer the foreign educated applicant a choice. The CGFNS certificate has three components, i.e. a Credential Evaluation Service Full Education Course-by-Course Report, a Qualifying examination, and an English proficiency test. The board proposes that the applicant can choose whether or not to submit a certificate or to submit the Credential Evaluation Service and an English test. The Qualifying exam is currently offered three times per year and completion of the initial application process is hampered by the test availability. Although the Qualifying examination offers an opportunity for the nurse to become more aware of what the NCLEX-RN® is like; staff does not consider it to be an essential requirement for licensure. The Education report and English proficiency test are essential.

It should be noted, however, that both U.S. and foreign-educated graduates have historically been required to re-educate if they were not successful in three attempts within four years of graduation or within four years of the date of eligibility. The board does not believe that the four-year time limit should be changed and that candidates who are unsuccessful after the four-year time frame should continue to be required to complete another program of study.

RNs who are placed on inactive status (at their request) cannot be considered analogous to the foreign graduate who has no recent professional practice experience. The U.S. graduate has already been licensed as a RN in this country, has taken and passed the NCLEX® examination, is proficient in the English language, and has experience in the U.S. health care system. Additionally, a RN who requests to reactivate an inactive license after four years (or RNs who have been delinquent for four or more years) are required to complete a nurse refresher course/extensive orientation to the practice of professional nursing before they are eligible for licensure. They are required to obtain a temporary permit because there is a clinical component to the course. Only after completion of the course, along with supporting documentation, may the nurse be considered for licensure under current requirements.

Foreign graduates who have no recent practice experience in their country of licensure, who have not taken and passed the NCLEX® exam and who have no experience in the U.S. health care system raise concerns about how well they will function in the U.S. health care system from the public safety perspective. The board originally believed that those candidates that did not have current work experience within two of the last fours years immediately preceding the filing of an application for initial licensure should continue to be required to complete another nursing education program as the rule currently specifies.

TNA has requested consideration of an alternate mechanism, i.e. to require foreign-educated nurses to complete a nurse refresher course after they have taken and passed the NCLEX® exam. While the board believes that the initial licensure requirements should be consistent for all applicants who have completed nursing programs outside of U.S. jurisdiction, discussions have focused on what is required to ensure entry-level competence in the interest of client safety but would not be considered a regulatory barrier to obtaining a license in a time of a nursing shortage or be considered unfair to the foreign-educated nurse.

Proposed amendment language addresses a requirement for completion of a Nurse Refresher course under specific circumstances. The board has amended §217.4 to allow a foreign nurse who has practiced in the role of a first level general nurse for two years to take a refresher course approved by the board if they have not practiced four years prior to seeking a Texas license rather than re-educating.

Kathy Thomas, Executive Director, has determined that for the first five-year period the proposed amendments are effective there will be no fiscal implications for state or local government.

Ms. Thomas has determined that the public benefit for the first five-year period of amending the rules is a more consistent criteria being applied to foreign graduates as to U.S. graduates. This consistency would ease the transition for foreign nurses to practice in Texas and help address the continuing shortage of nurses in this state. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed amendments.

Comments on the proposed amendments may be submitted in writing to Kathy Thomas, Executive Director, Board of Nurse Examiners for the State of Texas, 333 Guadalupe, Suite 3-460, Austin, Texas 78701. Comments will be accepted and considered for 30 days following the publication of this proposal in the *Texas Register*.

The amendments are proposed under the authority of Texas Occupations Code §301.151 and §301.255 that authorizes the Board of Nurse Examiners to adopt and enforce rules consistent with its legislative authority under the Nursing Practice Act.

The proposed amendments will affect Texas Occupations Code §301.255 and §301.259.

§217.2 Licensure by Examination for Graduates of Basic Nursing Education Programs Within the United States, its Territories, or Possessions.

(a) An applicant for initial licensure by examination shall:

(1) file a complete application containing data required by the board; notarized affidavit; and the required application processing fee which is not refundable;

(2) submit verification of completion of all requirements for graduation from an accredited nursing program or certification from the nursing program director of completion of all baccalaureate degree requirements which are prerequisites of an accredited masters degree program leading to a first degree in professional nursing; and

(3) pass the NCLEX-RN®.

(b) Should it be ascertained from the application filed, or from other sources, that the applicant should have had an eligibility issue determined by way of a Petition for Declaratory Order, (*see* §213.30 of this title (relating to Declaratory Order of Eligibility for Licensure) and Texas Occupations Code §301.257 relating to Declaratory Order of License Eligibility [~~Texas Civil Statutes, Article 4519a~~]) then the

application will be treated and processed as a Petition for Declaratory Order and the applicant will be required to pay the appropriate non-refundable fees for determination of eligibility. Should the Board in its final determination find that the individual is not eligible for licensure, then that individual is precluded from again petitioning, or applying to the Board for admission to the examination except when the impediment to eligibility [~~for licensure~~] has been removed. In no event, may an applicant repetition for a declaratory order before the first anniversary of the date of the Board's determination to deny eligibility. Any subsequent petition must be made in the manner and form the Board requires. [~~, such as when an applicant receives a full and unconditional pardon for prior criminal convictions.~~]

(c) An applicant for initial licensure by examination shall pass the NCLEX-RN® [~~within three attempts and~~] within four years of completion of requirements for graduation.

[~~(1) An applicant who fails the NCLEX-RN® may retake the examination no more than two times without additional education.~~]

[~~(2) An applicant who is unsuccessful after three attempts within four years of completion of the requirements for graduation, must complete a professional nursing curriculum in order to be eligible to retake the examination.~~]

(d) [~~(3)~~] An applicant who has not passed the NCLEX-RN® within four years from the date of completion of requirements for graduation must complete a professional nursing program in order to take or retake the examination.

(e) [~~(d)~~] Upon initial licensure by examination, the license is issued for a period ranging from six months to 29 months depending on the birth date. Licensees born in even numbered years shall renew their license in even numbered years; licensees born in odd numbered years shall renew their licenses in odd numbered years.

§217.4. Requirements for Initial Licensure by Examination for Nurses Who Graduate from Professional Nursing Programs Outside of United States' Jurisdictions.

(a) An applicant for initial licensure applying under this section must:

(1) provide a Commission on Graduates of Foreign Nursing Schools (CGFNS) certificate, or a CGFNS Credential Evaluation Service Full Education Course-by-Course Report and an English proficiency test acceptable to the Board, or the equivalent which verifies that the applicant:

(A) has the educational credentials equivalent to graduation from a governmentally accredited/approved, post-secondary general nursing program of at least two academic years in length;

(B) received both theory and clinical education in each of the following: nursing care of the adult which includes both medical and surgical nursing, maternal/infant nursing, nursing care of children, and psychiatric/mental health nursing;

(C) received initial registration/license as a first-level, general nurse in the country where the applicant completed general nursing education;

(D) is currently registered/licensed as a first-level general nurse;

(E) demonstrated proficiency in the English language; and

(F) passed the CGFNS Qualifying Exam, if submitting a CGFNS certificate;

(2) file a complete, notarized application for registration containing data required by the board and the required application processing fee which is not refundable; and

(3) pass the NCLEX-RN® as a Texas applicant;

(A) within four years of completion of the requirements for graduation from the nursing program if the applicant has not practiced as a first level general nurse [~~professional registered nurse at least two of the four years~~] since completing the requirements for graduation; or

(B) within four years of the date of eligibility for the NCLEX-RN® if the applicant has practiced as a first level general nurse [~~professional registered nurse~~] at least two [~~of the past four~~] years since completing the requirements for graduation.

(b) An applicant who has completed the requirements for graduation and has practiced as a first level general nurse for at least two years but has not practiced as a first level general nurse within the four years immediately preceding the filing of an application for initial licensure will be issued a six month temporary permit upon passing the NCLEX-RN® examination and must complete a nurse refresher course that meets the criteria defined by the Board in order to be eligible for licensure under this section. [~~An applicant who fails the NCLEX-RN® may retake the examination no more than two times without additional education.~~]

(c) [~~(1)~~] An applicant who has not passed the NCLEX-RN® [~~is unsuccessful after three attempts and~~] within four years of completion of the requirements for graduation or within four years of the date of eligibility must complete a professional nursing program [~~curriculum~~] in order to be eligible to take or retake the examination.

[~~(2) An applicant who has not passed the NCLEX-RN® within four years of completion of the requirements for graduation or within four years of the date of eligibility must complete a professional nursing program in order to be eligible to take the examination.~~]

[~~(c) An applicant who graduated more than four years prior to the date of filing an application and who has not practiced as a professional registered nurse two of the past four years must complete a professional nursing program in order to be eligible for licensure under this section.~~]

(d) Should it be ascertained from the application filed, or from other sources, that the applicant should have had an eligibility issue settled by way of a Petition for Declaratory Order, (*see* §213.30 of this title (relating to Declaratory Order of Eligibility for Licensure) and Texas Occupations Code §301.257 relating to Declaratory Order of License Eligibility [~~Texas Civil Statutes, Article 4519a~~]) then the application will be treated and processed as a Petition for Declaratory Order and the applicant will be required to pay the appropriate non-refundable processing fees. Should the Board finally determine that the individual is not eligible to be admitted to the examination, then that individual is precluded from again petitioning, or applying to the Board for admission to the examination except when the impediment to eligibility for licensure has been removed. In no event, may an applicant re-petition for a declaratory order before the first anniversary of the date of the Board's determination to deny eligibility. Any subsequent petition must be made in the manner and form the Board requires. [~~, such as when an applicant receives a full and unconditional pardon for prior criminal convictions.~~]

(e) Upon initial licensure by examination, the license is issued for a period ranging from six months to 29 months depending on the birth date. Licensees born in even numbered years shall renew their licenses in even-numbered years; licensees born in odd-numbered years shall renew their licenses in odd-numbered years.

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

Filed with the Office of the Secretary of State on May 2, 2003.

TRD-200302769
Katherine Thomas
Executive Director
Board of Nurse Examiners
Earliest possible date of adoption: June 15, 2003
For further information, please call: (512) 305-6823

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 30. OCCUPATIONAL LICENSES AND REGISTRATIONS

SUBCHAPTER G. ON-SITE SEWAGE FACILITIES INSTALLERS, APPRENTICES, DESIGNATED REPRESENTATIVES, AND SITE EVALUATORS

30 TAC §§30.237, 30.240, 30.242, 30.244, 30.246

The Texas Commission on Environmental Quality (commission) proposes amendments to §§30.237, 30.240, 30.242, 30.244, and 30.246.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

Senate Bill (SB) 405, 77th Legislature, 2001, established the Texas Board of Professional Geoscientists and the regulation of professional geoscientists. The commission has determined that individuals licensed as professional geoscientists in the soil science discipline are appropriate to perform site evaluations due to their educational and experience background in classifying soils. Therefore, the commission is proposing amendments to add individuals licensed as professional geoscientists in the soil science discipline to the list of individuals who can obtain a site evaluator license, if all of the other requirements for the site evaluator license are met.

The commission is proposing amendments to delete all of the definitions in §30.237 since the definitions are provided in 30 TAC Chapter 285, On-Site Sewage Facilities, and are duplications. Additionally, the proposed rules delete experience requirements for obtaining Installer II and site evaluator licenses. The commission has determined that otherwise qualified individuals have not been able to obtain an Installer II or site evaluator license because they have been unable to obtain the experience currently required. The proposed rules also provide consistency with language in other agency rules. Further, the current rules provide for staggered licensing dates. Since currently licensed individuals are now on a staggered renewal system and all new licensees will be on the staggered system, the proposed rules delete licensing requirements that are no longer applicable. Finally, the proposed rules make minor corrections in the language.

SECTION BY SECTION DISCUSSION

Throughout the sections, administrative changes are proposed in accordance with *Texas Register* requirements and to be consistent with other agency rules.

Proposed §30.237, Definitions, would delete all definitions in this section because they are duplicative of definitions in Chapter 285. To provide a reference to the definitions, language has been added that indicates that all words and terms used in the subchapter have the same meanings in the definitions given in Chapter 285.

Proposed §30.240(b)(2) and (5) would delete all requirements for experience to obtain an Installer II license. In many areas of the state, an individual seeking to obtain experience cannot get jobs to install systems allowed under the Installer I license since standard on-site sewage facilities (OSSF) are not installed due to soil and site conditions. In addition, many individuals have reported that no one will hire them to be an apprentice due to possible competition in the future. Finally, the process of verifying experience has become a resource and administrative issue. It has taken a considerable amount of time for agency staff to verify experience. To ensure that Installer IIs who do not have the experience currently required are adequately trained, the commission proposes to change the Installer II basic training course and examination. The training will be revised as necessary to meet the job task's requirements for Installer II. The examination will be changed as necessary to test the individual in the knowledge of that training. The commission has determined that the emphasis on training and testing of that training along with the training provided by the manufacturers of proprietary systems and designers of nonstandard systems will provide individuals with a greater ability to meet the job tasks required for individuals with an Installer II license than experience on only one type of system. Existing paragraphs (3) and (4) are proposed to be renumbered as new paragraphs (2) and (3). New proposed paragraph (2) adds the word "and" at the end of the phrase.

Proposed §30.240(d)(2)(C) adds a professional geoscientist license to the list of licenses, any of which would allow an individual to obtain a site evaluator license. The language is proposed to include individuals who are licensed by the Texas Board of Professional Geoscientists to practice geoscience in the soil science discipline. The commission has determined that individuals who will be licensed as professional geoscientists in the soil science discipline have the educational background and the practical experience to perform site evaluations. Therefore, the commission is proposing to add these licenses to the list of licenses in this subparagraph. The subparagraph is also proposed to be amended by deleting the certified professional soil scientist certificate from the list of licenses that an individual can have to obtain a site evaluator license. Additionally, it is no longer appropriate to include the professional soil scientist certificate as one of the prerequisites that an individual needs to obtain a site evaluator license, since any individual holding such a certificate is no longer eligible to practice soil science in Texas unless the individual holds a professional geoscientist license.

Existing §30.240(d)(2)(D) is proposed to be deleted. The requirement in the existing rule for two years of experience under another license is keeping individuals from being able to obtain the license even though the individuals have the sufficient experience. In addition, the process of verifying experience has become a resource and administrative issue. It has taken a considerable amount of time for agency staff to verify experience. To ensure that site evaluators who do not have the experience

currently required are adequately trained, the commission proposes to change the site evaluator basic training course and examination. The training is currently being revised as necessary to meet the job tasks requirements for site evaluations. The examination will be changed as necessary to test the individual in the knowledge of that training. The commission has determined that the emphasis on training and testing of that training along with the training necessary to obtain another license will provide individuals with a greater ability to meet the job tasks required for individuals with a site evaluator license than will experience.

Proposed §30.242(a) adds the "site evaluator license" to the list of licenses that are required to be renewed. This will include all of the OSSF licenses. The date of "January 1, 2002," has been deleted. Proposed §30.242(a)(1) changes "Chapter" to "chapter" for consistency. Proposed §30.242(a)(2) adds, "For an individual with a current site evaluator license that expires before August 1, 2004, the individual must have completed a minimum of eight hours of approved continuing education." This language is necessary to address individuals who have been issued an initial site evaluator license for one year or more but less than two years. All of these licenses will expire before August 1, 2004. Proposed §30.242(b) corrects an incorrect citation because the currently referenced citation does not exist.

Proposed §30.244(c) changes the language from "An individual holding a current professional engineer license is not required to possess a site evaluator license" to "A professional engineer may perform site evaluations without obtaining a site evaluator license." The change is necessary for the language in this subsection to be consistent with the definition of site evaluator in §285.2(67).

Existing §30.246(a) is proposed to be deleted since the requirements expired on September 1, 2002, thus they are no longer applicable.

Existing §30.246(b) is relettered to proposed new §30.246(a). Some language from existing §30.246(c), has been combined with the language of this subsection. Individuals who either previously had a site evaluator license, or who had taken the site evaluator training class and passed the examination are required to submit the same materials. Currently, the two types of individuals are addressed in separate subsections. Therefore, combining the two subsections will avoid duplication. The word "the" has been proposed to be changed to "an" before the word "application" to agree with the context of the sentence. Language is proposed to be added after the first sentence which states, "before September 1, 2003" to set a specific date for the submission of the required materials. A new sentence is proposed to be added to provide the requirements for obtaining a site evaluator license if the individual fails to submit the required materials before September 1, 2003. A specific end date is necessary to ensure that individuals obtaining the license are current on the site evaluator training and the OSSF rules since the site evaluation is one of the most important parts of the process of ensuring that the proper system is installed.

Existing §30.246(b)(1), (2), and (c) are proposed to be deleted since the requirements are no longer applicable.

Existing §30.246(d) is relettered to proposed new §30.246(b).

Existing §30.246(e) is relettered as proposed new §30.246(c) and changes the language in the first sentence from "An individual holding a current professional engineer license is not required to possess a site evaluator license" to "A professional engineer may perform site evaluations without obtaining a site evaluator license." The change is necessary for the language in this subsection to be consistent with the definition of site evaluator in §285.2(67) and language in other subsections of the subchapter. The language in the second sentence of this subsection is proposed to be changed from "However, an individual who holds a current professional engineer license may obtain a site evaluator license by complying with the requirements in this subchapter" to "However, a professional engineer may obtain a site evaluator license by complying with the requirements in this subchapter." This change is necessary to provide consistency in the subsection.

FISCAL NOTE

Doretta Conrad, Analyst in the Budget and Planning Division, has determined that, for the first five-year period the proposed rules are in effect, there will be no significant fiscal implications for the agency or any other unit of state government as a result of administration or enforcement of the proposed rules. There will be no fiscal impact to the agency because agency staff are not issued site evaluator licenses.

Ms. Conrad also determined that, for each of the first five years the proposed rules are in effect, the public benefit anticipated from the enforcement of and compliance with the proposed rules will be potentially improved environmental performance by persons regulated by the agency. It is anticipated the public benefit from site evaluations and installations of OSSFs will be enhanced as individuals licensed under these rules would potentially receive their licenses sooner and, as such, enter into a business for performing site evaluations and installations offering the public more choices at potentially lower costs. The proposed rules might impact other state agencies or local governments with staff geoscientists who need to become licensed under these rules. The fees associated with obtaining the professional geoscientist license is $200 to cover the application and first-year license, and $150 per year after the first year. No significant fiscal implications are anticipated for any individual or business due to implementation of the proposed rules. Additionally, no significant fiscal implications are anticipated for any small or micro-business due to implementation of the proposed rules. The commission has determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory 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 criteria for a "major environmental rule" as defined in that statute.

A "major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The specific intent of the proposed rules is to establish regulations allowing for the public practice of geoscience in agency

procedures in conformance with the Act. The Act requires that a person may not take responsible charge of a geoscientific report or a geoscientific portion of a report required by a state agency rule unless the person is licensed through the Texas Board of Professional Geoscientists. Additionally, the proposed rules would delete experience requirements for obtaining Installer II and site evaluator licenses and delete requirements that have expired and are no longer applicable. The proposed rules are not specifically intended to protect the environment or reduce risks to human health. The proposed rules are intended to allow licensed professional geoscientists who have obtained their licenses through the Texas Board of Professional Geoscientists to obtain a site evaluator license, provided they meet the other requirements for a site evaluator. Additionally, the proposed rules will delete experience requirements for obtaining Installer II and site evaluator licenses. Therefore, it is not anticipated that the proposed rules will adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The commission concludes that these proposed rules do not meet the definition of major environmental rule.

Furthermore, even if the proposed rulemaking did meet the definition of a major environmental rule, the amendments are not subject to Texas Government Code, §2001.0225, because they do not accomplish any of the four results specified in §2001.0225(a). Section 2001.0225(a) applies to a rule adopted by an agency, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

In this case, the proposed amendments to Chapter 30 do not meet any of these requirements. First, there are no federal standards that these proposed rules would exceed. Second, the proposed rules do not exceed an express requirement of state law. Third, there is no delegation agreement that would be exceeded by these proposed rules. Fourth, the commission proposes these rules to allow for the public practice of geoscience in agency procedures in conformance with the Act. Therefore, the commission does not propose the adoption of the rules solely under the commission's general powers.

The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these proposed rules and performed a preliminary assessment of whether these proposed rules constitute a takings under Texas Government Code, Chapter 2007. The specific intent of the proposed rules is to allow individuals licensed as professional geoscientists by the State of Texas, to become site evaluators, provided the individuals meet the other requirements for a site evaluator. Additionally, the proposed rulemaking would delete experience requirements for obtaining Installer II and site evaluator licenses and delete requirements that are no longer applicable.

Promulgation and enforcement of these proposed rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the proposed rules do not affect a landowner's rights in private real property by burdening private real property, nor restricting or limiting a landowner's right to property, or reducing the value of property by 25% or more beyond that which would otherwise exist in the absence of the proposed rulemaking. These rules simply would allow individuals licensed as professional geoscientists by the State of Texas, to become site evaluators, provided the individuals meet the other requirements for a site evaluator; delete experience requirements for obtaining Installer II and site evaluator licenses; and delete requirements that are no longer applicable. These proposed rules do not affect any private real property.

There are no burdens imposed on private real property, and the benefits to society are better applications for environmental permits based upon reliable reports and data submitted by qualified licensed professional geoscientists.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission has reviewed the proposed rulemaking and found that the proposal is a rulemaking identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Texas Coastal Management Program (CMP), or will affect an action and/or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6), and will therefore require that applicable goals and policies of the CMP be considered during the rulemaking process. The commission has prepared a consistency determination for the proposed rules under 31 TAC §505.22 and found that the proposed rulemaking is consistent with the applicable CMP goals and policies. The following is a summary of that determination. The CMP goal applicable to the proposed rulemaking is the goal to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas. CMP policies applicable to the proposed rule include the construction and operation of solid waste treatment, storage, and disposal facilities and the discharge of municipal and industrial wastewater to coastal waters. Promulgation and enforcement of these rules will not violate (exceed) any standards identified in the applicable CMP goals and policies do not govern or authorize any actions subject to the CMP. The proposed rulemaking would allow individuals licensed as professional geoscientists by the State of Texas, to become site evaluators, provided the individuals meet the requirements for a site evaluator. The proposed rulemaking would also delete experience requirements for obtaining Installer II and site evaluator licenses and delete requirements that have expired and are no longer applicable. The commission invites public comment on the consistency determination of the proposed rules.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on June 3, 2003 at 10:00 a.m. in Building F, Room 2210, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes before the hearing and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the Office of Environmental Policy, Analysis, and Assessment at (512) 239-4900. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Lola Brown, MC 205, Office of Environmental Policy, Analysis, and Assessment, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Log Number 2003-009-030-WT. Comments must be received by 5:00 p.m., June 16, 2003. For further information, please contact Michael Bame, Regulation Development Section, at (512) 239-5658.

STATUTORY AUTHORITY

The amendments are proposed under the authority granted to the commission by the Texas Legislature in Texas Water Code (TWC), Chapter 37 and THSC, Chapter 366. The amendments are also proposed under the general authority granted in TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under TWC and other laws of the state; §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013(14)(b); TWC, §7.002, which authorizes the commission to enforce provisions of TWC and THSC; and Texas Civil Statutes, Article 3271b, the Texas Geoscience Practice Act (the Act), which authorizes the public practice of geoscience in the State of Texas.

The proposed amendments implement TWC, §5.103 and §5.105, and Texas Civil Statutes, Article 3271b, the Act.

§30.237. Definitions.

The words and terms used in this subchapter shall have the same meanings as the definitions in Chapter 285 of this title (relating to On-Site Sewage Facilities). [~~The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.~~]

[~~(1) Alter--To change an on-site sewage facility (OSSF) resulting in:~~]

[~~(A) an increase in the volume of permitted flow;~~]

[~~(B) a change in the nature of permitted influent;~~]

[~~(C) a change from the planning materials approved by the permitting authority;~~]

[~~(D) a change in construction; or~~]

[~~(E) an increase, lengthening, or expansion of the treatment or disposal system.~~]

[~~(2) Apprentice--An individual who has been properly registered with the executive director according to this chapter, and is undertaking a training program under the direct supervision of a licensed installer.~~]

[~~(3) Authorized agent--A local governmental entity that has been delegated the authority by the executive director to implement and enforce the rules adopted under Texas Health and Safety Code, Chapter 366.~~]

[~~(4) Construct--To engage in any activity related to the installation, alteration, extension, or repair of an OSSF, including all activities from disturbing the soils through connecting the system to the building or property served by the OSSF. Activities relating to a site evaluation are not considered construction.~~]

[~~(5) Designated representative--An individual who holds a valid license issued by the executive director according to this chapter, and who is designated by the authorized agent to review permit applications, site evaluations, or planning materials, or conduct inspections on OSSFs.~~]

[~~(6) Extend--To alter an OSSF resulting in an increase in capacity, lengthening, or expansion of the existing treatment or disposal system.~~]

[~~(7) Install--To put in place or construct any portion of an OSSF.~~]

[~~(8) Installer--An individual who is compensated by another to construct an OSSF.~~]

[~~(9) Repair--To replace any components of an OSSF in situations not included under emergency repairs according to §285.35 of this title (relating to Emergency Repairs), excluding maintenance. The replacement of tanks or drainfields is considered a repair and requires a permit for the entire OSSF system.~~]

[~~(10) Site evaluator--An individual who holds a valid license issued by the executive director according to this chapter and who conducts preconstruction site evaluations, including visiting a site and performing soil analysis, a site survey, or other activities necessary to determine the suitability of a site for an OSSF. A professional engineer may perform site evaluations without obtaining a site evaluator license.~~]

§30.240. Qualifications for Initial License.

(a) (No change.)

(b) To obtain an Installer II license, an individual must have:

(1) (No change.)

[~~(2) met one of the following requirements:~~]

[~~(A) held an Installer I license for at least one year;~~]

[~~(B) held an Installer I license for six months and possessed an apprentice registration for at least one year before June 13, 2001;~~]

[~~(C) held an apprentice registration for at least two years; or~~]

[~~(D) previously possessed an Installer II license;~~]

(2) [~~(3)~~] completed the Installer II basic training course; and

(3) [~~(4)~~] passed the Installer II examination. [~~; and~~]

[~~(5) met the experience requirements. Applicants for an Installer II license must submit statements attesting to the individual's work experience. Such statements shall include a description of the type of on-site sewage facility (OSSF) work that was performed by the individual and the physical addresses where the activity occurred. The experience shall be actual work accomplished under the license or registration. The number of systems will not substitute for the time required. Experience requirements are:~~]

[~~(A) verified experience as an Installer I. The individual shall submit either:~~]

[~~(i) sworn statements from at least three individuals for whom the applicant performed construction services, statements cannot be provided by individuals related to the applicant or applicant's~~

~~spouse, such as a child, grandchild, parent, sister, brother, or grandparent;]~~

~~[(ii) a sworn statement from a designated representative who has approved a minimum of three installations performed by the individual; or]~~

~~[(iii) other documentation of the individual's work experience, approved by the executive director;]~~

~~[(B) verified experience as an apprentice. An individual shall submit either:]~~

~~[(i) a sworn statement from the installer for whom the individual performed construction services;]~~

~~[(ii) a sworn statement from a designated representative who witnessed the individual working on at least six OSSF installations; or]~~

~~[(iii) other documentation of the applicant's work experience, approved by the executive director.]~~

(c) (No change.)

(d) To obtain a site evaluator license, an individual must have:

(1) (No change.)

(2) met the following requirements:

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

(C) possess a current Installer II license, designated representative license, professional engineer license, professional sanitarian license, or professional geoscientist license in the soil science discipline (an individual who maintains a current license through the Texas Board of Professional Geoscientists according to the requirements for professional practice). [~~or a certified professional soil scientist certificate; and~~]

~~[(D) have at least two years of verified experience as an Installer II, designated representative, professional engineer, certified professional soil scientist, or professional sanitarian. Applicants for a site evaluator license must submit statements attesting to the individual's OSSF work experience. The statements shall include a description of the type of OSSF work that was performed by the individual and the physical addresses where the activity occurred or for where the activity was proposed. The experience shall be actual work accomplished under the license specified in subparagraph (C) of this paragraph during the time frames required. The number of systems will not substitute for the time required. The statements must be:]~~

~~[(i) sworn statements from at least six individuals for whom the applicant performed OSSF services. Statements cannot be provided by individuals related to the applicant or applicant's spouse, such as a child, grandchild, parent, sister, brother, or grandparent;]~~

~~[(ii) a sworn statement from a designated representative who has approved a minimum of six installations performed by the individual, reviewed six site evaluations performed by the individual before September 1, 2002, or approved six sets of planning materials submitted by the individual; or]~~

~~[(iii) other documentation of the individual's work experience, approved by the executive director.]~~

§30.242. Qualifications for License Renewal.

(a) To renew an Installer I, Installer II, [~~or~~] designated representative, or site evaluator license[~~, issued after January 1, 2002~~], an individual must have:

(1) met the requirements in Subchapter A of this chapter [~~Chapter~~] (relating to Administration of Occupational Licenses and Registrations); and

(2) completed a minimum of 16 hours of approved continuing education. For an individual with a current site evaluator license that expires before August 1, 2004, the individual must have completed a minimum of eight hours of approved continuing education.

(b) In addition to the requirements in subsection (a) of this section, an individual renewing a license for site evaluator shall demonstrate possession of a [~~the~~] current license specified in §30.240(d)(2)(C) [~~§30.240(d)(4)(C)~~] of this title (relating to Qualifications for Initial License).

§30.244. Exemptions.

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

(c) A [~~An individual holding a current~~] professional engineer may perform site evaluations without obtaining [~~license is not required to possess~~] a site evaluator license.

§30.246. Application for Site Evaluator.

~~[(a) The executive director shall mail an application to the most recent address provided to the executive director at least 60 days before September 1, 2002, to:]~~

~~[(1) all individuals who have previously held a site evaluator license; and]~~

~~[(2) all individuals who have previously taken the site evaluator basic training course and passed the site evaluator examination, but did not hold a site evaluator license.]~~

(a) [~~(b)~~] An individual who previously held a site evaluator license, or has previously taken the site evaluator basic training course and passed the site evaluator examination, but did not hold a site evaluator license, shall submit an [~~the~~] application, application fee, and documentation of a current license specified in §30.240(d)(2)(C) of this title (relating to Qualifications for Initial License) before September 1, 2003. After that date the individual must submit a new application with the appropriate fee and pass the examination. [~~The application shall be processed as follows.~~]

~~[(1) Licenses with odd license numbers shall be for a term of one year or less and shall have an expiration date of the last day of the month the license was first issued. The application fee shall be prorated if the term is less than one year.]~~

~~[(A) To renew at the time of the first renewal, the individual must have:]~~

~~[(i) met the requirements of Subchapter A of this chapter (relating to Administration of Occupational Licenses and Registrations);]~~

~~[(ii) demonstrated completion of at least eight hours of approved continuing education training; and]~~

~~[(iii) demonstrated possession of a current license as required in §30.240(d)(4)(C) of this title.]~~

~~[(B) If the individual meets the requirements in subparagraph (A) of this paragraph, the license will be renewed for two years according to the requirements of §30.242 of this title (relating to Qualifications for License Renewal).]~~

~~[(2) Licenses with even license numbers shall be for a term of up to two years, but more than one year, and shall have an expiration date of the last day of the month of the first issue date. The application~~

~~fee shall be prorated if the term is less than two years. At each subsequent renewal, the individual must meet the requirements in §30.242 of this title.]~~

~~[(c) An individual who has previously taken the site evaluator basic training course and passed the site evaluator examination, but did not hold a site evaluator license, shall submit the application, the required statements for experience, the application fee, and must hold the current license specified in §30.240(d)(2)(C) of this title.]~~

~~[(1) If the individual meets the qualifications of §30.240(d)(4) of this title, the license will be issued for a term of up to two years, but more than one year, and shall have an expiration date of the last day of the month of the date the site evaluator examination was passed.]~~

~~[(2) The application fee shall be prorated if the term is less than two years.]~~

~~[(3) The license shall be renewed for two years according to the requirements in §30.242 of this title.]~~

(b) [~~(d)~~] An individual who begins the process to become eligible for a site evaluator license after September 1, 2003 [~~2002~~], shall meet the requirements of §30.240(d)(2) of this title.

(c) [~~(e)~~] A [~~An individual holding a current~~] professional engineer may perform site evaluations without obtaining [~~license is not required to possess~~] a site evaluator license [~~to perform site evaluations~~]. However, a [~~an individual who holds a current~~] professional engineer [~~license~~] may obtain a site evaluator license by complying with the requirements in this subchapter.

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

Filed with the Office of the Secretary of State on May 2, 2003.

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Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-0348

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CHAPTER 115. CONTROL OF AIR POLLUTION FROM VOLATILE ORGANIC COMPOUNDS

The Texas Commission on Environmental Quality (commission) proposes amendments to Subchapter A, Definitions, §115.10; Subchapter C, Volatile Organic Compound Transfer Operations, §115.216 and §115.217; Subchapter D, Petroleum Refining, Natural Gas Processing, and Petrochemical Processes, §§115.352, 115.354, 115.357, and 115.359; and Subchapter H, Highly-Reactive Volatile Organic Compounds, §§115.722, 115.725 - 115.727, 115.729, 115.764, 115.767, 115.781, 115.783, 115.785, 115.787, and 115.789. These amended sections and corresponding revisions to the state implementation plan (SIP) will be submitted to the United States Environmental Protection Agency (EPA).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The commission proposes these amendments to Chapter 115, Control of Air Pollution from Volatile Organic Compounds, and revisions to the SIP in order to make a variety of changes which correct typographical errors, update cross-references, add flexibility, and amend requirements to achieve the intended volatile organic compound (VOC) emission reductions of the program.

SECTION BY SECTION DISCUSSION

Subchapter A, Definitions

The proposed amendments to §115.10, Definitions, revise the definition of "Highly-reactive volatile organic compound (HRVOC)" to specify that isobutene (2-methylpropene or isobutylene) is one of the isomers of butene. This revision is necessary to eliminate the possibility of confusion about which compounds are included as isomers of butene and because owners and operators might otherwise design their monitoring and testing plans to exclude isobutene, thereby increasing costs due to the additional speciation which would be necessary to exclude isobutene. The proposed revision is consistent with the intended scope of the definition of HRVOC, the modeling which was the basis for this definition, and the associated Chapter 115, Subchapter H, HRVOC rules which were adopted on December 13, 2002 and published in the January 3, 2003 issue of the *Texas Register* (28 TexReg 113).

Subchapter C, Volatile Organic Compound Transfer Operations

Division 1, Loading and Unloading of Volatile Organic Compounds

The proposed amendments to §115.216, Monitoring and Recordkeeping Requirements, revise §115.216(3)(B) to specify that vapor pressure records are not required if the total volume of VOC loaded into transport vessels is less than 20,000 gallons per day (averaged over each consecutive 30-day period). This revision is proposed because vapor pressure records are not necessary to establish compliance with the 20,000 gallon per day exemption threshold at loading operations for which the total volume of VOC loaded into transport vessels is less than 20,000 gallons per day. In addition, the proposed amendments spell out and acronym "pounds per square inch, absolute (psia)" in §115.216(3)(C).

The proposed amendments to §115.217, Exemptions, revise §115.217(a)(1) and (b)(1) by adding "to or from transport vessels" to indicate that VOC transfer includes both loading and unloading operations to or from transport vessels. The proposed amendments to §115.217 also revise §115.217(a)(2)(A) and (b)(3)(A) by replacing "any plant" with "loading operations at any plant" because these exemptions are more appropriately associated with loading operations at the plant, rather than the plant itself. In addition, the proposed amendments to §115.217 revise §115.217(a)(2)(A) and (B), (3), (4), and (5)(A); and (b)(1), (2), (3)(A) and (B), and (4) - (6), by deleting unnecessary division title references.

Subchapter D, Petroleum Refining, Natural Gas Processing, and Petrochemical Processes

Division 3, Fugitive Emission Control in Petroleum Refining, Natural Gas/Gasoline Processing, and Petrochemical Processes in Ozone Nonattainment Areas

The proposed amendments to §115.352, Control Requirements, revise §115.352(2) by replacing the word "monitored" with "inspected." This revision is necessary to ensure that §115.352(2) is not incorrectly interpreted to require the use of monitoring (with

a hydrocarbon gas analyzer) to determine whether a successful repair was made to a component in heavy liquid service. Section 115.357(1) allows owners and operators to implement audio/visual/olfactory inspections on components in heavy liquid service in lieu of monitoring (with a hydrocarbon gas analyzer). Logically, the same methodology should be used after a component repair attempt as during the routinely scheduled monitoring or inspection on that component.

The proposed amendments to §115.352(2)(A)(ii) correct cross-references to subclause (IV).

The proposed amendments to §115.352 also revise §115.352(2)(D) by adding the phrase "without use of extraordinary efforts." This revision is necessary to ensure that §115.352(2)(D) is not incorrectly interpreted to require the use of extraordinary efforts, such as sealant injection, before placing a valve on the shutdown list under Subchapter D, Division 3.

In addition, the proposed amendments to §115.352 revise §115.352(2)(E) by adding language to correct an existing requirement which inadvertently requires monitoring (with a hydrocarbon gas analyzer) of components in heavy liquid service for which a repair attempt was made during a shutdown. This revision is necessary because §115.357(1) allows owners and operators to implement audio/visual/olfactory inspections on components in heavy liquid service in lieu of monitoring (with a hydrocarbon gas analyzer).

Finally, the proposed amendments to §115.352 revise §115.352(2)(E) to specify that components for which a repair attempt was made during a shutdown must be monitored (with a hydrocarbon gas analyzer) and inspected for leaks within 30 days after startup is completed following the shutdown. Currently, such monitoring and inspection is required within 30 days or at the next monitoring period, whichever occurs first, after startup is completed following the shutdown. The proposed revision will address the scenario in which a unit has a start-up with only a few days left in the monitoring period, but will continue to ensure that components for which a repair attempt was made during a shutdown are monitored shortly after startup.

The proposed amendments to §115.354, Inspection Requirements, revise §115.354(10)(A) by replacing "the time of monitoring (beginning and end)" with "the time of monitoring (i.e., the time that the organic vapor analyzer trigger is pulled to record the concentration of each component)." This revision is necessary because recording of a single time for each component, rather than the start and stop times, is available with current software. The intent of the proposed language is to require a recording of the time that the organic vapor analyzer trigger is pulled to record the concentration of each component, thereby allowing auditors to determine pace anomalies.

The proposed amendments to §115.354 also revise §115.354(10)(C) by adding language which specifies that notations of database changes include changes to the monitored concentration, addition or deletion of components, or monitoring schedule. This revision is necessary because the current §115.354(10)(C) could be interpreted to require a notation of changes which are not needed to demonstrate compliance (for example, a more accurate description of a component's location).

The proposed amendment to §115.357, Exemptions, revises §115.357(7) by replacing the incorrect term "facilities" with "plant sites covered by a single account number." This is consistent with the intended scope of this exemption as previously identified in the January 3, 2003 issue of the *Texas Register* (28 TexReg 153) and documentation for the 1993 rulemaking in which this exemption was added. The acronym "HRVOC" in §114.357(10) is also spelled out as highly-reactive volatile organic compound because it is only used once in the section.

The proposed amendments to §115.359, Counties and Compliance Schedules, revise the compliance date in §115.359(2) and (3) from December 31, 2003 to March 31, 2004 in order to provide more time for the regulated community to comply and also revise a reference in §115.359(3) from "appropriate regional office" to "executive director."

Subchapter H, Highly-Reactive Volatile Organic Compounds

Division 1, Vent Gas Control

The proposed amendments to §115.722, Site-wide Cap and Control Requirements, revise §115.722(b) by replacing the phrase "comply with" with the phrase "meet the requirements of" because the current language may be interpreted as requiring direct compliance with selected provisions of 40 Code of Federal Regulations (CFR) §60.18. This amendment is intended to update the language that incorporates the requirements of that section without implying that the rule establishes an independent requirement to comply with that federal rule. The acronyms "VOC" and "DERC" are deleted because the terms volatile organic compound and discrete emission reduction credit are used only once in the section.

The proposed amendments to §115.725, Monitoring and Testing Requirements, revise §115.725(a) by replacing the term "actual and expected" with the term "maximum potential." This correction is also made in §115.725(c). Additionally, new language is added to the end of §115.725(a) to allow the use of facility process knowledge to supplement actual testing when necessary.

The proposed amendments to §115.725(c) expand the acceptable period to develop test data by referencing testing which was conducted before "approval of the test plan" and removing the existing language that specifies a deadline of "December 31, 2002." Supplemental language is added to further define the acceptability and validity of the test data by requiring that the owner or operator notify the appropriate regional office at least 45 days prior to testing to provide the appropriate regional office with an opportunity to observe the testing. In addition, a reference to submit the data to the "Engineering Services Team" has been changed to "executive director."

The term "pre-approved" is replaced with the term "approved" in §115.725(d)(8) to provide the executive director with more latitude in accepting modified monitoring methods. In addition, the commission solicits comments on what degree of flexibility may be needed in §115.725(d). Specifically, the commission solicits comments on the testing necessary for vent gas streams controlled by flares, the specific constituents other than HRVOC for which monitoring is required, direct measurement of British thermal units (Btu) in lieu of Btu calculations from component properties, and adjustments to the accuracy requirements for meters.

The rule language in §115.725(e)(2)(C) is corrected to better define that the material loaded immediately previous to the current loading operation refers to the material in the transport vessel by adding the phrase "into the vessel."

The proposed amendments to §115.726, Recordkeeping and Reporting Requirements, revise §115.726(a) by specifying where test plans and quality assurance plans must be submitted. In addition, new §115.726(a)(1)(C) and (2)(C) define the turnaround time for quality assurance plans and test plans submitted to the commission. This language is aimed at encouraging the timely submittal of quality assurance plans and test plans. Specifically, the new §115.726(a)(1)(C) is being proposed at industry's request so that the affected owners and operators will have the assurance that they can send in their quality assurance plans early (allowing time for the agency to review the plans) and have sufficient time to purchase and begin monitoring by December 31, 2004 after the agency's review. However, if an owner or operator elects to wait to submit a plan until April 30, 2004 and is issued a deficiency letter on day 180, there will be no relief for failure to implement the required monitoring by December 31, 2004. In addition, the owner or operator must submit a corrected quality assurance plan within 60 days of the date of any deficiency and/or additional requirements letter. If an approval or detailed deficiency and/or directed additional requirements letter is not issued within 180 days of receipt by the executive director, then the quality assurance plan is approved by default.

Similarly, the new §115.726(a)(2)(C) is being proposed so that the affected owners and operators will have the assurance that they can send in their test plans early (allowing time for the agency to review the plans) and have sufficient time to conduct testing by December 31, 2004 after the agency's review. However, if an owner or operator elects to wait to submit a plan until April 30, 2004 and is issued a deficiency letter on day 45, there will be no relief for failure to implement the required testing by December 31, 2004. In addition, the owner or operator must submit a corrected test plan within 15 days of the date of any deficiency and/or additional requirements letter. If an approved or detailed deficiency and/or additional requirements letter is not issued within 45 days of receipt by the executive director, then the test plan is approved by default, provided the testing is to be conducted in accordance with the appropriate reference methods and procedures specified in §115.125 (Testing Requirements) without deviation.

Also, §115.726(c) is amended to specify that an owner or operator does not necessarily need to be subject to both §115.722 and §115.725(d) or (e) in order to comply with the recordkeeping requirements of this section. Therefore, the word "and" is being replaced by "or."

The recordkeeping requirements in §115.726(c)(5) are already addressed in §115.726(f), so this duplicative language is proposed for deletion. In addition, §115.726(f) is being revised with a phrase added to specify that the owner or operator is to maintain not only records required in this section, but also other records as necessary to demonstrate continuous compliance.

Finally, the proposed amendments to §115.726 add a new §115.726(d)(3), which requires the owners or operators of vent gas streams and flares that have no potential to emit HRVOC to maintain records demonstrating that they have no potential to emit HRVOC.

The proposed amendments to §115.727, Exemptions, revise §115.727(a) by acronyming the term parts per million by volume as "ppmv" and deleting inadvertent references to §115.726(d) and (f). The recordkeeping specified in §115.726(d) and (f) is necessary in order to demonstrate compliance with §115.727(a).

The proposed amendments to §115.727 also revise §115.727(b) by adding a section title which is necessary due to the proposed revisions to §115.727(a) described in the previous paragraph.

In addition, the proposed amendments to §115.727 add new §115.727(e)(1) and (f) for vent gas streams and flares, respectively, that have no potential to emit HRVOC. The proposed amendments to §115.727 also add new §115.727(e)(2) for a vent gas stream that has an HRVOC concentration less than 100 parts per million by volume at all times, provided that the total maximum potential HRVOC emissions for all vent gas streams exempted under §115.727(e)(2) is less than 5.0% of the HRVOC cap for the account specified in §115.722(a). In addition, the proposed amendments to §115.727 add new §115.727(3), which exempts pressure tanks, laboratory vent hoods, instrumentation air systems, and a variety of combustion sources. The proposed new exemptions are appropriate in order to exclude sources for which monitoring and testing for HRVOC would be impractical due to the owner's or operator's certainty that HRVOCs would be present in low concentrations or would not be present at any time. Vent gas streams and the streams to flares must have no detectable amount of any HRVOCs by any currently available methods of detection for the HRVOCs to be considered exempt under §115.727(e)(1) or (f). Extremely low concentrations of HRVOCs can be detected, so the commission is specifically seeking detailed comments on setting an appropriate level for allowing exemption from testing or monitoring.

The proposed amendments to §115.729, Counties and Compliance Schedules, revise the compliance date in §115.729(1)(A) from June 30, 2004 to December 31, 2004 in order to provide more time for the regulated community to comply with the testing requirements of §115.725. In addition, the proposed amendments to §115.729(1)(A) revise "executive director" to "appropriate regional office and any local air pollution control agency with jurisdiction" to specify where within the agency the testing results are to be submitted.

Subchapter H, Highly-Reactive Volatile Organic Compounds

Division 2, Cooling Tower Heat Exchange Systems

The proposed amendments to §115.764, Monitoring Requirements, revise §115.764(a)(5) and (b)(5) to specify where to sample for total strippable VOC by adding the phrase, "in the cooling tower water." In addition, the commission solicits comments on what degree of flexibility may be needed in §115.764(a) - (c). Specifically, the commission solicits comments on the specific constituents that must be determined from samples, the appropriate time allowed to determine sample content, the frequency of alternate sampling when continuous monitors are out of operation, and the executive director's approval of modifications to the monitoring requirements on a case-by-case basis.

In addition, a new §115.764(d)(3) defines the turnaround time for quality assurance plans submitted to the commission. This language is aimed at encouraging the timely submittal of quality assurance plans. Specifically, the new §115.764(d)(3) is being proposed at industry's request so that affected owners and operators will have the assurance that they can send in their plans early (allowing time for the agency to review the plans) and have sufficient time to purchase and begin monitoring by December 31, 2004 after the agency's review. However, if an owner or operator elects to wait to submit a plan until April 30, 2004 and is issued a deficiency letter on day 180, there will be no relief for failure to implement the required monitoring by December 31, 2004.

In addition, the owner or operator must submit a corrected quality assurance plan within 60 days of the date of any deficiency and/or additional requirements letter. If an approval or detailed deficiency and/or directed additional requirements letter is not issued within 180 days of receipt by the executive director, then the quality assurance plan is approved by default.

The proposed amendments to §115.764 also add new §115.764(e) which establishes an alternative to the monitoring requirements of §115.764(a)(2) - (5) and (b)(2) - (5). Specifically, in lieu of §115.764(a)(2) - (5) and (b)(2) - (5), the owner or operator of cooling tower heat exchange systems in which no individual heat exchanger has 5.0% or greater HRVOC in the process-side fluid shall determine total strippable VOC and the HRVOC concentration in the cooling tower water at least once per month, with an interval of not less than 20 days between samples, using the appropriate methods in §115.766. If the total HRVOC concentration in the cooling tower water is ten parts per billion by weight or greater, the owner or operator shall determine total strippable VOC at least daily.

Finally, the proposed amendments to §115.764 add new §115.764(f) which establishes an alternative to the continuous flow monitor requirements of §115.764(a)(1) and (b)(1). Specifically, in lieu of §115.764(a)(1) and (b)(1), the owner or operator of cooling tower heat exchange systems may use the maximum potential flow rate based on manufacturer's pump performance data, assuming no back pressure.

The proposed amendments to §115.767, Recordkeeping Requirements, add a new §115.767(d) and (e), which establish recordkeeping requirements necessary to document compliance with new §115.764(e) and (f), respectively, described in the preceding two paragraphs.

Subchapter H, Highly-Reactive Volatile Organic Compounds

Division 3, Fugitive Emissions

The proposed amendments to §115.781, General Monitoring and Inspection Requirements, revise §115.781(a) to specify that individual identification of components is not required. The acceptable methods for identifying the components of each process unit in HRVOC service are given in the existing §115.781(a)(1) - (6). The proposed revision to §115.781(a) is necessary due to the inherent difficulties associated with individually tagging all components.

The proposed amendments to §115.781 also revise §115.781(b)(4) to specify that components for which a repair attempt was made during a shutdown must be monitored (with a hydrocarbon gas analyzer) and inspected for leaks within 30 days after startup is completed following the shutdown. Currently, such monitoring and inspection is required within 30 days or at the next monitoring period, whichever occurs first, after startup is completed following the shutdown. The proposed revision will address the scenario in which a unit has a start-up with only a few days left in the monitoring period, but will continue to ensure that components for which a repair attempt was made during a shutdown are monitored shortly after startup.

In addition, the proposed amendments to §115.781 revise §115.781(b)(7) to specify that if an unsafe-to-monitor valve is not considered safe to monitor within a calendar year, it must be monitored as soon as possible during safe-to-monitor times. This revision is necessary to ensure that monitoring personnel are not unnecessarily exposed to unsafe conditions.

Finally, the proposed amendments to §115.781 revise the leak-skip option available under §115.781(f) by adding blind flanges, caps, or plugs at the end of a pipe or line containing HRVOC to the list of components eligible for the leak-skip option because these components are functionally similar to the components (i.e., connectors, bolted manways, heat exchanger heads, hatches, and sump covers), which are currently allowed to use this leak-skip option.

The proposed amendment to §115.783, Equipment Standards, revises §115.783 by adding a new §115.783(6), which specifies that except for pressure relief valves, no valves shall be installed or operated at the end of a pipe or line containing HRVOC unless the pipe or line is sealed with a second valve, a blind flange, or a tightly-fitting plug or cap. The sealing device may be removed only while a sample is being taken or during maintenance operations, and when closing the line, the upstream valve shall be closed first. This new paragraph is consistent with the existing §115.352(4) and is necessary to prevent excess fugitive emissions resulting from the opening of an open-ended valve. In addition, the proposed amendments spell out and acronym "highly-reactive volatile organic compound (HRVOC)" in §115.783(3).

The proposed amendments to §115.785, Testing Requirements, revise §115.785(3) by replacing a reference to the Engineering Services Team and the regional office with a reference to the executive director. The proposed amendments to §115.785 also revise §115.785(5) for consistency with the revisions to §115.725(c) described earlier in this preamble.

The proposed amendments to §115.787, Exemptions, revise §115.787(c)(6) to include a reference to the definition of sampling connection system in 40 CFR §63.161, and add the *Federal Register* publication date of federal regulations.

The proposed amendments to §115.789, Counties and Compliance Schedules, revise §115.789(1) to specify that the schedule in the leak-skip option of §115.781(f) applies to connectors, blind flanges, caps, or plugs at the end of a pipe or line containing HRVOC, bolted manways, heat exchanger heads, hatches, and sump covers for which the owner or operator has notified the appropriate regional office and local air pollution control program that §115.781(f) will be used to establish the monitoring schedule for these components. This revision is necessary because the monitoring schedule under the leak-skip option of §115.781(f) extends beyond the compliance schedule in §115.789(1).

In addition, the proposed amendments to §115.789 revise the compliance dates in §115.789(1), (2), (5), and (6) from December 31, 2003 to March 31, 2004 in order to provide more time for the regulated community to comply. Finally, the proposed amendments to §115.789 revise the compliance date in §115.789(4) from December 31, 2003 to December 31, 2004 in order to provide more time for the regulated community to conduct testing and for consistency with the revisions to §115.729(1) described earlier in this preamble.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Analyst with Strategic Planning and Appropriations, determined that for each year of the first five-year period the proposed rules are in effect, there will be no fiscal implications to the agency or any other unit of state or local government due to administration or enforcement of the proposed rules. The commission anticipates no fiscal implications for any other unit of state or local government to comply with the proposed rules because

none of the sources required to comply with the proposed Chapter 115 requirements are owned or operated by units of state or local government.

PUBLIC BENEFITS AND COSTS

Mr. Davis also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from enforcement of and compliance with the proposed rules would be increased compliance with air emission standards due to rules that are more understandable.

The commission estimates that approximately 140 privately-owned and operated facilities in Brazoria, Chambers, Collin, El Paso, Dallas, Denton, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, Tarrant, and Waller Counties would be subject to the proposed rules.

The proposed amendments are intended to make a variety of changes which correct typographical errors, update cross-references, add flexibility, and amend requirements to achieve the intended emission reductions of the program. No fiscal implications resulting from the implementation of the proposed rules are expected.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

The commission has been unable to identify any small or micro-businesses which would be affected by the proposed rules. The majority of sites affected by the proposed rules are large petrochemical and industrial businesses. If there are affected small or micro-businesses, however, no adverse fiscal implications are anticipated for small or micro-businesses as a result of implementation of the proposed rules.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that this proposal is not subject to §2001.0025 because it does not meet the definition of a "major environmental rule" as defined in that statute. "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

This proposal is not a major environmental rule because its primary purpose is to make a variety of changes which correct typographical errors, update cross-references, add flexibility, and amend requirements to achieve the intended emission reductions of the program.

In addition, a draft regulatory impact analysis is not required because the rules do not meet any of the four applicability criteria for requiring a regulatory analysis of a "major environmental rule" as defined in the Texas Government Code. Section 2001.0225 applies only to a major environmental rule the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This proposal does not exceed a standard set by federal law, and the proposed technical requirements are consistent with applicable federal standards. In addition, this proposal does not exceed an express requirement of state law and is not proposed solely under the general powers of the agency, but is specifically authorized by the provisions cited in the STATUTORY AUTHORITY section of this preamble. Finally, this proposal does not exceed a requirement of a delegation agreement or contract to implement a state and federal program. The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated this rulemaking action and performed an analysis of whether the proposed rules are subject to Texas Government Code, Chapter 2007. The primary purpose of the rulemaking is to make a variety of changes which correct typographical errors, update cross-references, add flexibility, and amend requirements to achieve the intended emission reductions of the program. Promulgation and enforcement of these proposed rules would be neither a statutory nor a constitutional taking because they do not affect private real property. Specifically, the proposed rules do not affect a landowner's rights in private real property because this proposal 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 otherwise exist in the absence of the rules. Therefore, these rules will not constitute a takings under the Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found that the proposal is a rulemaking identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, or will affect an action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, and therefore, will require that applicable goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission determined that the proposed rulemaking action is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking action is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(1)). No new sources of air contaminants will be authorized. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with regulations in 40 CFR, to protect and enhance air quality in the coastal area (31 TAC §501.14(q)). This rulemaking action complies with 40 CFR. Therefore, in compliance with 31 TAC §505.22(e), this rulemaking action is consistent with CMP goals and policies. Interested persons may submit comments on the consistency of the proposed rules with the CMP during the public comment period.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMIT PROGRAM

Chapter 115 is an applicable requirement under 30 TAC Chapter 122; therefore, owners or operators subject to the federal operating permit program must, consistent with the revision process in Chapter 122, revise their operating permit to include the revised

Chapter 115 requirements for each emission unit at their sites affected by the revisions to Chapter 115.

ANNOUNCEMENT OF HEARING

Public hearings on this proposal will be held in Houston on June 2, 2003, at 2:00 p.m. at the City of Houston, City Hall Annex Public Level Conference Room, located at the City Hall Annex Building, 900 Bagby, Street Level, and at 7:00 p.m. at the City of Houston, City Council Chambers, located at 901 Bagby; and in Arlington on June 4, 2003, at 2:00 p.m. at North Central Texas Council of Governments, Third Floor, Transportation Board Room, located at 616 Six Flags Drive, Suite 200. The hearings will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearings; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearings and will answer questions before and after the hearings.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearings should contact the Office of Environmental Policy, Analysis, and Assessment at (512) 239-4900. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Angela Slupe, MC 205, Office of Environmental Policy, Analysis, and Assessment, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Log Number 2003-027-115-AI. Comments must be received by 5:00 p.m., June 4, 2003. For further information, please contact Ashley Forbes of the Strategic Assessment Division at (512) 239-0493 or Eddie Mack, also of the Strategic Assessment Division, at (512) 239-1488.

SUBCHAPTER A. DEFINITIONS

30 TAC §115.10

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under TWC; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act (TCAA). The amendment is also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; and §382.016, concerning Monitoring Requirements: Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants.

The proposed amendment implements THSC, §§382.002, 382.011, 382.012, 382.016, and 382.017.

§115.10. Definitions.

Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the commission, the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the TCAA, the following terms, when used in this chapter (relating to Control of Air Pollution from Volatile Organic Compounds), shall have the following meanings, unless the context clearly indicates otherwise. Additional definitions for terms used in this chapter are found in §3.2 and §101.1 of this title (relating to Definitions).

(1) - (16) (No change.)

(17) Highly-reactive volatile organic compound (HRVOC)--As follows.

(A) In Harris County, one or more of the following VOCs: 1,3-butadiene; all isomers of butene (e.g., isobutene (2-methylpropene or isobutylene), [~~i.e.,~~] alpha-butylene (ethylethylene), and beta-butylene (dimethylethylene, including both cis- and trans-isomers)); ethylene; and propylene.

(B) (No change.)

(18) - (46) (No change.)

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

Filed with the Office of the Secretary of State on May 2, 2003.

TRD-200302727
Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: June 15, 2003
For further information, please call: (512) 239-4712

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SUBCHAPTER C. VOLATILE ORGANIC COMPOUND TRANSFER OPERATIONS

DIVISION 1. LOADING AND UNLOADING OF VOLATILE ORGANIC COMPOUNDS

30 TAC §115.216, §115.217

STATUTORY AUTHORITY

The amendments are proposed under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The amendments are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; and §382.016, concerning Monitoring Requirements: Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants.

The proposed amendments implement THSC, §§382.002, 382.011, 382.012, 382.016, and 382.017.

§115.216. Monitoring and Recordkeeping Requirements.

The owner or operator of each volatile organic compound (VOC) loading or unloading operation in the covered attainment counties or in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas shall maintain the following information for at least two years at the plant, as defined by its air quality account number. The owner or operator shall make the information available upon request to representatives of the executive director, EPA, or any local air pollution control agency having jurisdiction in the area.

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

(3) Land-based VOC transfer to or from transport vessels.

(A) (No change.)

(B) A record of the type and vapor pressure of each VOC transferred (excluding gasoline). Vapor pressure records are not required if the total volume of VOC loaded into transport vessels is less than 20,000 gallons per day (averaged over each consecutive 30-day period).

(C) The owner or operator of any plant, as defined by its air quality account number, at which all VOC transferred has a true vapor pressure at actual storage conditions less than 0.5 pounds per square inch, absolute (psia) [~~psia~~] as specified in §115.217(a)(1) of this title (relating to Exemptions) or 1.5 psia as specified in §115.217(b)(1) of this title, is not required to keep the records specified in subparagraph (A) of this paragraph.

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

(4) (No change.)

§115.217. Exemptions.

(a) The following exemptions apply in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas.

(1) Vapor pressure (at land-based operations). All land-based loading and unloading (to or from transport vessels) of volatile organic compounds (VOC) with a true vapor pressure less than 0.5 pounds per square inch, absolute (psia) under actual storage conditions is exempt from the requirements of this division (relating to Loading and Unloading of Volatile Organic Compounds), except for:

(A) - (D) (No change.)

(2) Throughput.

(A) Loading operations at any [~~Any~~] plant, as defined by its air quality account number, excluding gasoline bulk plants, which loads less than 20,000 gallons of VOC into transport vessels per day (averaged over each consecutive 30-day period) with a true vapor pressure greater than or equal to 0.5 psia under actual storage conditions are [~~is~~] exempt from the requirements of this division [~~(relating to Loading and Unloading of Volatile Organic Compounds)~~], except for:

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

(B) Gasoline bulk plants which load less than 4,000 gallons of gasoline into transport vessels per day (averaged over each consecutive 30-day period) are exempt from the requirements of this division [~~(relating to Loading and Unloading of Volatile Organic Compounds)~~], except for:

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

(3) Liquefied petroleum gas. All loading and unloading of liquefied petroleum gas is exempt from the requirements of this division [~~(relating to Loading and Unloading of Volatile Organic Compounds)~~], except for:

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

(4) Motor vehicle fuel dispensing facilities. Motor vehicle fuel dispensing facilities, as defined in §101.1 of this title (relating to Definitions), are exempt from the requirements of this division [~~(relating to Loading and Unloading of Volatile Organic Compounds)~~].

(5) Marine vessels. The following marine vessel transfer exemptions apply.

(A) The following marine vessel transfer operations are exempt from this division [~~(relating to Loading and Unloading of Volatile Organic Compounds)~~]:

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

(B) The following marine vessel transfer operations are exempt from the requirements of §§115.212(a), 115.214(a), and 115.216 of this title, except as noted:

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

(b) The following exemptions apply in the covered attainment counties.

(1) General VOCs (non-gasoline). Except in Aransas, Bexar, Calhoun, Gregg, Matagorda, Nueces, San Patricio, Travis, and Victoria Counties, all loading and unloading of VOC other than gasoline (to or from transport vessels) is exempt from the requirements of this division [~~(relating to Loading and Unloading of Volatile Organic Compounds)~~].

(2) Vapor pressure (at land-based operations). All land-based loading and unloading of VOC with a true vapor pressure less than 1.5 psia under actual storage conditions is exempt from the requirements of this division [~~(relating to Loading and Unloading of Volatile Organic Compounds)~~], except for:

(A) - (D) (No change.)

(3) Throughput.

(A) Loading operations at any [~~Any~~] plant, as defined by its air quality account number, excluding gasoline bulk plants, which loads less than 20,000 gallons of VOC into transport vessels per day (averaged over each consecutive 30-day period) with a true vapor pressure greater than or equal to 1.5 psia under actual storage conditions are [~~is~~] exempt from the requirements of this division [~~(relating to Loading and Unloading of Volatile Organic Compounds)~~], except for:

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

(B) Gasoline bulk plants which load less than 4,000 gallons of gasoline into transport vessels per day (averaged over each consecutive 30-day period) are exempt from the requirements of this division [~~(relating to Loading and Unloading of Volatile Organic Compounds)~~], except for:

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

(4) Crude oil, condensate, and liquefied petroleum gas. All loading and unloading of crude oil, condensate, and liquefied petroleum gas is exempt from the requirements of this division [~~(relating to Loading and Unloading of Volatile Organic Compounds)~~], except for:

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

(5) Motor vehicle fuel dispensing facilities. Motor vehicle fuel dispensing facilities, as defined in §101.1 of this title, are exempt

from the requirements of this division [~~(relating to Loading and Unloading of Volatile Organic Compounds)~~].

(6) Marine vessels. All loading and unloading of marine vessels is exempt from this division [~~(relating to Loading and Unloading of Volatile Organic Compounds)~~].

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

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Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-4712

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SUBCHAPTER D. PETROLEUM REFINING, NATURAL GAS PROCESSING, AND PETROCHEMICAL PROCESSES

DIVISION 3. FUGITIVE EMISSION CONTROL IN PETROLEUM REFINING, NATURAL GAS/GASOLINE PROCESSING, AND PETROCHEMICAL PROCESSES IN OZONE NONATTAINMENT AREAS

30 TAC §§115.352, 115.354, 115.357, 115.359

STATUTORY AUTHORITY

The amendments are proposed under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of TCAA. The amendments are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; and §382.016, concerning Monitoring Requirements: Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants.

The proposed amendments implement THSC, §§382.002, 382.011, 382.012, 382.016, and 382.017.

§115.352. Control Requirements.

For the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas as defined in §115.10 of this title (relating to Definitions), no person shall operate a petroleum refinery; a synthetic organic chemical, polymer, resin, or methyl tert-butyl ether manufacturing process; or a natural gas/gasoline processing operation, as defined in §115.10 of this title, without complying with the following requirements.

(1) (No change.)

(2) A first attempt at repair shall be made no later than five calendar days after the leak is found and the component shall be repaired no later than 15 calendar days after the leak is found, except as provided in subparagraphs (A) - (C) of this paragraph. A component in gas/vapor or light liquid service is considered to be repaired when it is monitored with an instrument using Test Method 21 and shown to no longer have a leak after adjustments or alterations to the component. A component in heavy liquid service is considered to be repaired when it is inspected [~~monitored~~] by audio, visual, and olfactory means and shown to no longer have a leak after adjustments or alterations to the component.

(A) If the repair of a component would require a process unit shutdown, the repair may be delayed until the next scheduled process unit shutdown, provided that:

(i) (No change.)

(ii) the total cumulative mass emissions from leaking components in the process unit for which delay of repair is sought as determined in clause (i)(III) [~~subclause (IV)~~] of this subparagraph [~~clause~~] are less than the mass emissions resulting from shutdown of the unit as determined in clause (i)(IV) [~~subclause (IV)~~] of this subparagraph [~~clause~~]; and

(iii) (No change.)

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

(D) Valves which can be safely repaired without a process unit shutdown, but without use of "extraordinary efforts" as described in subparagraph (A)(iii) of this paragraph, may not be placed on the shutdown list.

(E) All components in gas/vapor or light liquid service for which a repair attempt was made during a shutdown shall be monitored (with a hydrocarbon gas analyzer) and inspected for leaks within 30 days [~~or at the next monitoring period, whichever occurs first,~~] after startup is completed following the process unit shutdown. All components in heavy liquid service for which a repair attempt was made during a shutdown shall be inspected for leaks within 30 days after startup is completed following the process unit shutdown.

(3) - (10) (No change.)

§115.354. Inspection Requirements.

All affected persons in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas shall conduct a monitoring program consistent with the following provisions.

(1) - (9) (No change.)

(10) Except as provided in subparagraph (B) of this paragraph, the owner or operator shall use dataloggers and/or electronic data collection devices during all monitoring required by this section. The owner or operator shall use best efforts to transfer, on a daily basis, electronic data from electronic datalogging devices to the electronic database required by §115.356(2) of this title (relating to Monitoring and Recordkeeping Requirements).

(A) For all monitoring events in which an electronic data collection device is used, the collected monitoring data shall include the identification of each component and each calibration run, the maximum screening concentration detected, the time of monitoring (i.e., the time that the organic vapor analyzer trigger is pulled to record the concentration of each component [~~beginning and end~~]), a date stamp, an operator identification, an instrument identification, and calibration gas concentrations and certification dates. The acceptable rate for recording data shall be determined individually by each owner

or operator considering such factors including, but not limited to, the size of the equipment, the equipment type, the accessibility of the equipment, the number of leakers being found, and the skill of the monitoring technicians. Each owner or operator shall have a documented auditing process in place to assure proper calibration, identify response time failures, and assess pace anomalies.

(B) (No change.)

(C) Each change to the database regarding the monitored concentration, addition or deletion of components, or monitoring schedule shall be detailed in a log or inserted as a notation in the database. All such changes shall include the name of the person who made the change, the date of the change, and an explanation to support the change.

(11) - (12) (No change.)

§115.357. Exemptions.

For all affected persons in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, the following exemptions shall apply.

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

(7) Plant sites covered by a single account number [~~Facilities~~] with less than 250 components in VOC service are exempt from the requirements of this division.

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

(10) In the Houston/Galveston area, the requirements of Subchapter H of this chapter (relating to Highly-Reactive Volatile Organic Compounds) apply to components which qualify for one or more of the exemptions in paragraphs (1) - (9) of this section at any petroleum refinery; synthetic organic chemical, polymer, resin, or methyl tert-butyl ether manufacturing process; or natural gas/gasoline processing operation in which a highly-reactive volatile organic compound [~~HRVOC~~], as defined in §115.10 of this title (relating to Definitions), is a raw material, intermediate, final product, or in a waste stream.

§115.359. Counties and Compliance Schedules.

The owner or operator of each affected source in Brazoria, Chambers, Collin, El Paso, Dallas, Denton, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, Tarrant, and Waller Counties shall:

(1) continue to comply with this division (relating to Fugitive Emission Control in Petroleum Refining, Natural Gas/Gasoline Processing, and Petrochemical Processes in Ozone Nonattainment Areas) as required by §115.930 of this title (relating to Compliance Dates); [~~and~~]

(2) comply with §115.356(2)(C) and (D) of this title (relating to Monitoring and Recordkeeping Requirements) as soon as practicable, but no later than March 31, 2004 [~~December 31, 2003~~]; and

(3) develop and make available upon request to the executive director [~~appropriate regional office~~], EPA, and any local air pollution control agency having jurisdiction the recordkeeping required by §115.356(1), (3), and (4) of this title as soon as practicable, but no later than March 31, 2004 [~~December 31, 2003~~].

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

Filed with the Office of the Secretary of State, on May 2, 2003.

TRD-200302729

Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: June 15, 2003
For further information, please call: (512) 239-4712

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SUBCHAPTER H. HIGHLY-REACTIVE VOLATILE ORGANIC COMPOUNDS
DIVISION 1. VENT GAS CONTROL

30 TAC §§115.722, 115.725 - 115.727, 115.729

STATUTORY AUTHORITY

The amendments are proposed under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of TCAA. The amendments are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; and §382.016, concerning Monitoring Requirements: Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants.

The proposed amendments implement THSC, §§382.002, 382.011, 382.012, 382.016, and 382.017.

§115.722. Site-wide Cap and Control Requirements.

(a) (No change.)

(b) All flares shall continuously meet the requirements of [~~comply with~~] 40 Code of Federal Regulations §60.18(c) - (f) as amended through October 17, 2000 (65 FR 61744) when vent gas containing volatile organic compounds [~~(VOC)~~] is being routed to the flare.

(c) An owner or operator may not use emission reduction credits or discrete emission reduction credits [~~DERC~~] in order to demonstrate compliance with this division.

§115.725. Monitoring and Testing Requirements.

(a) Each vent gas stream at an account must be tested by applying the appropriate reference method tests and procedures specified in §115.125 of this title (relating to Testing Requirements) to establish maximum potential [~~actual and expected~~] highly-reactive volatile organic compound (HRVOC) emission data in accordance with the test plan required under §115.726 of this title (relating to Recordkeeping and Reporting Requirements) to demonstrate compliance with the control requirement of §115.722(a) of this title (relating to Site-wide Cap and Control Requirements). Process knowledge can be used to estimate emissions from pressure relief valves.

(b) (No change.)

(c) Testing using the appropriate reference method tests and procedures specified in §115.125 of this title which was conducted

before approval of the test plan [~~December 31, 2002~~] and which establishes maximum potential [~~actual and expected~~] HRVOC emissions data may be used in lieu of conducting the testing specified in subsection (a) of this section, provided that the owner or operator of the affected source obtains approval for the testing report and data from the executive director, and provided that the appropriate regional office was notified at least 45 days prior to testing and given an opportunity to observe the testing [~~Engineering Services Team~~].

(d) Except as specified in subsection (e) of this section, the owner or operator of an affected flare shall conduct continuous monitoring, as follows:

(1) - (7) (No change.)

(8) submit for approval by the executive director [~~Engineering Services Team~~] any minor modifications to these monitoring methods. Monitoring methods other than those specified in paragraphs (1) and (2) of this subsection may be used if approved [~~pre-approved~~] by the executive director [~~Engineering Services Team~~] and validated by 40 CFR Part 63, Appendix A, Test Method 301 (December 29, 1992).

(e) Flares used solely for abatement of emissions from loading operations for transport vessels are not required to comply with the monitoring requirements of subsection (a) of this section, provided the following requirements are satisfied.

(1) (No change.)

(2) Records of each loading activity are maintained, including, but not limited to:

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

(C) the compounds loaded, in addition to the compounds loaded into the vessel immediately previous to the current loading operation, if the vessel being loaded is not clean;

(D) - (G) (No change.)

(3) - (4) (No change.)

§115.726. Recordkeeping and Reporting Requirements.

(a) The owner or operator of each affected flare or vent gas stream shall submit to the executive director for review and approval [~~by the Engineering Services Team~~] a test plan and a quality assurance plan (QAP) for the testing requirements and for the monitoring requirements (including installation, calibration, operation, and maintenance of continuous emissions monitoring systems) of this division (relating to Vent Gas Control) as follows:

(1) for monitoring:

(A) [~~(1)~~] for flares and vent gas streams existing on or before June 30, 2004, no later than April 30, 2004; [~~or~~]

(B) [~~(2)~~] for flares/vent gas streams that become subject to the requirements of this division after June 30, 2004, at least 60 days prior to being placed in highly-reactive volatile organic compound (HRVOC) service; and [~~.~~]

(C) the executive director shall issue written approval of, or detail deficiencies and/or direct additional requirements to be added to, each QAP within 180 days of receipt of a complete QAP that details the owner or operator's plans for installation, calibration, operation, and maintenance of the flare/vent gas stream monitoring. The owner or operator shall submit a corrected QAP within 60 days of the date of the deficiency and/or additional requirements letter. If an approval or detailed deficiency and/or directed additional requirements letter is not issued within 180 days of receipt by the executive director, then the QAP is approved by default;

(2) for testing:

(A) for flares and vent gas streams existing on or before June 30, 2004, no later than April 30, 2004;

(B) for flares/vent gas streams that become subject to the requirements of this division after June 30, 2004, at least 60 days prior to being placed in HRVOC service; and

(C) the executive director shall issue written approval of, or detail deficiencies and/or direct additional requirements to be added to, each test plan within 45 days of receipt of a complete test plan for a vent gas stream to be tested as required by §115.725(a) of this title (relating to Monitoring and Testing Requirements). The owner or operator shall submit a corrected test plan within 15 days of the date of the deficiency and/or additional requirements letter. If an approval or detailed deficiency and/or directed additional requirements letter is not issued within 45 days of receipt by the executive director, then the test plan is approved by default provided the testing is to be conducted in accordance with the appropriate reference methods and procedures specified in §115.125 of this title (relating to Testing Requirements) without deviation.

(b) (No change.)

(c) The owner or operator of a flare at an account that is subject to §115.722 of this title (relating to Site-wide Cap and Control Requirements) or [~~and~~] the continuous monitoring requirements of §115.725(d) or (e) of this title shall comply with the following recordkeeping requirements:

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

(3) maintain records on a weekly basis that detail all corrective actions, and any delay in corrective action, taken by documenting the dates, reasons, and durations of such occurrences and the estimated quantity of all HRVOC emissions during such activities; and

(4) maintain records of each calculated net heating value of the gas stream routed to the flare and each calculated exit velocity at the flare tip, determined in accordance with the provisions of §115.725 of this title. [~~; and~~]

[~~(5) maintain all records required in this subsection for five years and make available for review upon request by authorized representatives of the executive director, EPA, or any local air pollution control agency with jurisdiction.~~]

(d) Records for exemptions shall include the following.

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

(3) The owner or operator of any vent gas stream or flare claiming exemption under §115.727 of this title shall comply with the following recordkeeping requirements:

(A) for vent gas streams, maintain records which demonstrate continuous compliance with the exemption criteria of §115.727(e) of this title; or

(B) for flares, maintain records which demonstrate continuous compliance with the exemption criteria of §115.727(f) of this title.

(e) (No change.)

(f) [~~Retention and availability of records.~~] The owner or operator shall maintain all records required in this division and other records as necessary to demonstrate continuous compliance and records of periodic measurements for at least five years and make them available for review upon request by authorized representatives of the executive director, EPA, or any local air pollution control agency with jurisdiction.

§115.727. Exemptions.

(a) Any account for which no gas stream that is routed to a flare contains 5.0% or greater by weight of highly-reactive volatile organic compounds (HRVOC) at any time and no vent gas stream that is not routed to a flare contains more than 100 parts per million by volume (ppmv) HRVOC at any time is exempt from the requirements of §115.722 of this title (relating to Site-wide Cap and Control Requirements)[~~, with the exception of the recordkeeping requirements of §115.726(d) and (f) of this title (relating to Recordkeeping and Reporting Requirements)~~].

(b) Flares that at no time receive a gas stream containing 5.0% or greater HRVOC are exempt from the continuous monitoring requirements of §115.725(d) and (e) of this title (relating to Monitoring and Testing Requirements) and §115.726(c) of this title (relating to Recordkeeping and Reporting Requirements). The gas stream directed to the flare shall be treated as a vent gas stream for purposes of determining compliance with the site-wide cap of §115.722(a) of this title.

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

(e) The following vent gas streams are exempt.

(1) A vent gas stream that has no potential to emit HRVOC is exempt from the requirements of this division, with the exception of the recordkeeping requirements of §115.726(d)(3) of this title.

(2) A vent gas stream that has the potential to emit HRVOC, but that has an HRVOC concentration less than 100 ppmv at all times, is exempt from §115.725 of this title and §115.726(a) of this title provided that the maximum potential HRVOC emissions for the sum of all vent gas streams claiming this exemption is less than 5.0% of the HRVOC cap for the account specified in §115.722(a) of this title.

(3) Vent gas streams from the following sources are exempt from the requirements of this division with the exception of the recordkeeping requirements of §115.726(d)(3) of this title:

(A) boilers, furnaces, engines, turbines, and heaters fired with fuel containing less than 5% HRVOC;

(B) pressure tanks which maintain working pressure sufficient at all times to prevent any vapor or gas loss to the atmosphere;

(C) laboratory vent hoods; and

(D) instrumentation air systems.

(f) Any flare that has no potential to emit HRVOC is exempt from the requirements of this division, with the exception of the recordkeeping requirements of §115.726(d)(3) of this title.

§115.729. Counties and Compliance Schedules.

Each owner or operator in Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties shall demonstrate compliance with the requirements of this division (relating to Vent Gas Control) in accordance with the following schedule.

(1) Vent gas.

(A) The testing required by §115.725 of this title (relating to Monitoring and Testing Requirements) shall be completed and the results submitted to the appropriate regional office and any local air pollution control agency with jurisdiction [~~executive director~~] as soon as practicable, but no later than December 31, 2004 [~~June 30, 2004~~].

(B) (No change.)

(2) (No change.)

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

Filed with the Office of the Secretary of State, on May 2, 2003.

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Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-4712

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DIVISION 2. COOLING TOWER HEAT EXCHANGE SYSTEMS

30 TAC §115.764, §115.767

STATUTORY AUTHORITY

The amendments are proposed under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of TCAA. The amendments are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; and §382.016, concerning Monitoring Requirements: Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants.

The proposed amendments implement THSC, §§382.002, 382.011, 382.012, 382.016, and 382.017.

§115.764. Monitoring Requirements.

(a) The owner or operator of a cooling tower heat exchange system with a design capacity to circulate 8,000 gallons per minute (gpm) or greater of cooling water shall:

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

(5) if the concentration of total strippable VOC is equal to or greater than 50 parts per billion by weight (ppbw) in the cooling tower water, collect an additional sample for strippable VOC speciation in accordance with §115.766 of this title from each inlet of the affected cooling tower at least once daily. The additional sampling for speciated strippable VOC shall continue on a daily basis until the concentration of total strippable VOC drops below 50 ppbw.

(b) The owner or operator of a cooling tower heat exchange system with a design capacity to circulate less than 8,000 gpm of cooling water shall:

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

(5) if the calculated total strippable VOC concentration is equal to or greater than 50 ppbw in the cooling tower water, collect additional samples for strippable VOC analysis, in accordance with §115.766 of this title from each inlet of the affected cooling tower at

least once daily. The additional speciated strippable VOC sampling shall continue until the concentration of total strippable VOC drops below 50 ppbw.

(c) (No change.)

(d) The owner or operator of an affected cooling tower heat exchange system shall submit for review and approval by the executive director [~~Engineering Services Team~~] a quality assurance plan (QAP) for the installation, calibration, operation, and maintenance for the monitoring requirements of this division as follows:

(1) for cooling towers existing on or before June 30, 2004, no later than April 30, 2004; [~~or~~]

(2) for cooling tower heat exchange systems that become subject to the requirements of this division after June 30, 2004, at least 60 days prior to being placed in HRVOC service. This plan shall be submitted prior to initiating a monitoring program to comply with the requirements of subsections (a) and (b) of this section. Additionally, the plan must define each compound which could potentially leak through the heat exchanger and therefore directly impact the emissions of the cooling water system; and [~~.~~]

(3) the executive director shall issue written approval of, or detail deficiencies and/or direct additional requirements to be added to, each QAP within 180 days of receipt of a complete QAP that details the owner or operator's plans for installation, calibration, operation, and maintenance of the cooling tower heat exchange system monitoring. The owner or operator shall submit a corrected QAP within 60 days of the date of the deficiency and/or additional requirements letter. If an approval or detailed deficiency and/or directed additional requirements letter is not issued within 180 days of receipt by the executive director, then the QAP is approved by default.

(e) In lieu of subsections (a)(2) - (5) and (b)(2) - (5) of this section, the owner or operator of cooling tower heat exchange systems in which no individual heat exchanger has 5.0% or greater HRVOC in the process-side fluid, shall determine total strippable VOC and the HRVOC concentration in the cooling tower water at least once per month, with an interval of not less than 20 days between samples, in accordance with appropriate methods in §115.766 of this title. If the total HRVOC concentration in the cooling tower water is ten ppbw or greater, the owner or operator shall determine total strippable VOC at least daily.

(f) In lieu of using a continuous flow monitor as described in subsections (a)(1) and (b)(1) of this section, the owner or operator of cooling tower heat exchange systems may use the maximum potential flow rate based on manufacturer's pump performance data, assuming no back pressure.

§115.767. Recordkeeping Requirements.

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

(d) The owner or operator of any cooling tower heat exchange system using the alternate periodic monitoring available under §115.764(e) of this title shall comply with the following recordkeeping requirements:

(1) maintain records sufficient to demonstrate that no individual heat exchanger has 5.0% or greater HRVOC in the process-side fluid; and

(2) maintain records of the sampling and calculations used to determine the total strippable VOC and the HRVOC concentration in the cooling tower water;

(e) The owner or operator of any cooling tower heat exchange system using manufacturer's pump performance data to determine the maximum potential flow rate, as specified in §115.764(f) of this title, shall comply with the following recordkeeping requirements:

(1) maintain records of all changes to any pump or pumping system; and

(2) maintain records of the effect those changes have on the maximum potential flow rate.

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

Filed with the Office of the Secretary of State, on May 2, 2003.

TRD-200302731
Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: June 15, 2003
For further information, please call: (512) 239-4712

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DIVISION 3. FUGITIVE EMISSIONS

30 TAC §§115.781, 115.783, 115.785, 115.787, 115.789

STATUTORY AUTHORITY

The amendments are proposed under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of TCAA. The amendments are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; and §382.016, concerning Monitoring Requirements: Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants.

The proposed amendments implement THSC, §§382.002, 382.011, 382.012, 382.016, and 382.017.

§115.781. General Monitoring and Inspection Requirements.

(a) The owner or operator shall identify the components of each process unit in highly-reactive volatile organic compound (HRVOC) service which is subject to this division (relating to Fugitive Emissions). Such identification must allow for ready identification of the components, and distinction from any components which are not subject to this division. [~~Except for connectors, each component shall be labeled with a unique component identification code. Connectors are not required to be individually labeled if they are clearly identified individually in the master components log.~~] The components [~~also~~] must be identified by one or more of the following methods:

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

(b) Each component in the process unit must be monitored according to the requirements of Subchapter D, Division 3 of this chapter (relating to Fugitive Emission Control in Petroleum Refining, Natural Gas/Gasoline Processing, and Petrochemical Processes in Ozone

Nonattainment Areas), except that the following additional requirements apply.

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

(4) All components for which a repair attempt was made during a shutdown shall be monitored (with a hydrocarbon gas analyzer) and inspected for leaks within 30 days [~~or at the next monitoring period, whichever occurs first,~~] after startup is completed following the shutdown.

(5) - (6) (No change.)

(7) An unsafe-to-monitor or difficult-to-monitor component for which quarterly monitoring is specified may instead be monitored as follows [~~annually~~].

(A) An unsafe-to-monitor component is a component that the owner or operator determines is unsafe to monitor because monitoring personnel would be exposed to an immediate danger as a consequence of conducting quarterly monitoring. Components which are unsafe to monitor shall be identified in a list made available upon request. If an unsafe-to-monitor valve is not considered safe to monitor within a calendar year, then it shall be monitored as soon as possible during safe-to-monitor times. For components in light liquid or heavy liquid service, inert gas or hydraulic testing shall be conducted at normal operating temperature and pressure to assure in-place leak-free performance before each startup of the process unit where the unsafe-to-monitor component is located. Inert gas or hydraulic testing is not required more than four times per year or more than once a month if the unsafe-to-monitor component has not been found to leak in the 12 consecutive months preceding startup. Leak-free performance shall be evaluated by audio and visual inspections in concert with ability to hold operating pressure for hydraulic testing and soap bubble screening for gas testing.

(B) A difficult-to-monitor component is a component that cannot be inspected without elevating the monitoring personnel more than two meters above a permanent support surface. A difficult-to-monitor component for which quarterly monitoring is specified may instead be monitored annually.

(8) - (10) (No change.)

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

(f) As an alternative to the requirements of subsection (b)(3) of this section for blind flanges, caps, or plugs at the end of a pipe or line containing HRVOC, connectors, bolted manways, heat exchanger heads, hatches, and sump covers, the owner or operator may elect to monitor all of these components in a process unit by April 1, 2006 and then conduct subsequent monitoring at the following frequencies:

(1) once per year (i.e., 12-month period), if the percent leaking blind flanges, caps, or plugs at the end of a pipe or line containing HRVOC, connectors, bolted manways, heat exchanger heads, hatches, and sump covers in the process unit was 0.5% or greater during the last required annual or biennial monitoring period;

(2) once every two years, if the percent leaking blind flanges, caps, or plugs at the end of a pipe or line containing HRVOC, connectors, bolted manways, heat exchanger heads, hatches, and sump covers was less than 0.5% during the last required monitoring period. An owner or operator may comply with this paragraph by monitoring at least 40% of the components in the first year and the remainder of the components in the second year. The percent leaking connectors, bolted manways, heat exchanger heads, hatches, and sump covers will be calculated for the total of all monitoring performed during the two-year period;

(3) if the owner or operator of a process unit in a biennial leak detection and repair program calculates less than 0.5% leaking blind flanges, caps, or plugs at the end of a pipe or line containing HRVOC, connectors, bolted manways, heat exchanger heads, hatches, and sump covers from the two-year monitoring period, the owner or operator may monitor the components one time every four years. An owner or operator may comply with the requirements of this paragraph by monitoring at least 20% of the components each year until all connectors, bolted manways, heat exchanger heads, hatches, and sump covers have been monitored within four years;

(4) if a process unit complying with the requirements of paragraph (3) of this subsection using a four-year monitoring interval program has greater than or equal to 0.5% but less than 1.0% leaking blind flanges, caps, or plugs at the end of a pipe or line containing HRVOC, connectors, bolted manways, heat exchanger heads, hatches, and sump covers, the owner or operator shall increase the monitoring frequency to one time every two years. An owner or operator may comply with the requirements of this paragraph by monitoring at least 40% of the components in the first year and the remainder of the components in the second year. The owner or operator may again elect to use the provisions of paragraph (3) of this subsection when the percent leaking components decreases to less than 0.5%;

(5) if a process unit complying with requirements of paragraph (3) of this subsection using a four-year monitoring interval program has greater than or equal to 1.0% but less than 2.0% leaking blind flanges, caps, or plugs at the end of a pipe or line containing HRVOC, connectors, bolted manways, heat exchanger heads, hatches, and sump covers, the owner or operator shall increase the monitoring frequency to one time per year. The owner or operator may again elect to use the provisions of paragraph (3) of this subsection when the percent leaking components decreases to less than 0.5%; and

(6) if a process unit complying with requirements of paragraph (3) of this subsection using a four-year monitoring interval program has 2.0% or greater leaking blind flanges, caps, or plugs at the end of a pipe or line containing HRVOC, connectors, bolted manways, heat exchanger heads, hatches, and sump covers, the owner or operator shall increase the monitoring frequency to quarterly. The owner or operator may again elect to use the provisions of paragraph (3) of this subsection when the percent leaking components decreases to less than 0.5%.

§115.783. Equipment Standards.

The following equipment standards shall apply.

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

(3) Each pressure relief valve in gaseous highly-reactive volatile organic compound (HRVOC) [~~HRVOC~~] service that vents to atmosphere which is installed in series with a rupture disk, pin, second relief valve, or other similar leak-tight pressure relief component, shall be equipped with a pressure sensing device or an equivalent device or system between the pressure relief valve and the other pressure relief component to monitor for leakage past the first component. When leakage is detected past the first component, that component shall be repaired or replaced as soon as practicable, but no later than 30 calendar days after the failure is detected.

(4) Pumps, compressors, and agitators installed on or after July 1, 2003 shall be equipped with a shaft sealing system that prevents or detects emissions of VOC from the seal.

(A) (No change.)

(B) The executive director may approve shaft sealing systems different from those specified in subparagraph (A) of this paragraph. The executive director:

(i) shall consider on a case-by-case basis the technological circumstances of the individual pump, compressor, or agitator; and

(ii) must determine that the alternative shaft sealing system will result in the lowest emissions level that the pump, compressor, or agitator is capable of meeting after the application of best available control technology before approving the alternative shaft sealing system. [; and]

[*(iii)* is the Engineering Services Team, Office of Compliance and Enforcement, for purposes of this section.]

(C) (No change.)

(5) (No change.)

(6) Except for pressure relief valves, no valves shall be installed or operated at the end of a pipe or line containing HRVOC unless the pipe or line is sealed with a second valve, a blind flange, or a tightly-fitting plug or cap. The sealing device may be removed only while a sample is being taken or during maintenance operations, and when closing the line, the upstream valve shall be closed first.

§115.785. Testing Requirements.

The owner or operator shall perform testing to demonstrate compliance with §115.783(2) of this title (relating to Equipment Standards) using the test methods specified in §115.125 of this title (relating to Testing Requirements). The owner or operator is responsible for providing testing facilities and conducting the sampling and testing operations at its expense.

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

(3) A written proposed description of any minor test method modifications allowed under §115.125(4) of this title shall be made available to the regional office before the pretest meeting. The executive director [regional director or the manager of the Engineering Services Team, Office of Compliance and Enforcement,] will approve or disapprove of any deviation from specified sampling procedures.

(4) (No change.)

(5) Testing using the appropriate reference test methods and procedures specified in §115.125 of this title which was [Early testing] conducted before approval of the test plan required under §115.726 of this title (relating to Recordkeeping and Reporting Requirements) and which establishes maximum potential highly-reactive volatile organic compound emissions data [December 31, 2002] may be used to demonstrate compliance with the standards specified in this division (relating to Fugitive Emissions), provided that the owner or operator of the affected source obtains approval for the testing report and data from the executive director, and provided that the appropriate regional office was notified at least 45 days prior to testing and given an opportunity to observe the testing [if the owner or operator of an affected source demonstrates to the satisfaction of the executive director that the prior compliance testing meets the requirements of paragraphs (1) - (4) of this section]. For [early] testing conducted before approval of the test plan, the compliance stack test report required by paragraph (6) of this section shall be as complete as necessary to demonstrate to the executive director that the stack test was valid and the source has complied with the rule. The executive director reserves the right to request compliance testing or monitoring system performance evaluation at any time.

(6) (No change.)

§115.787. Exemptions.

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

(c) The following components are exempt from the requirements of this division:

(1) conservation vents or other devices on atmospheric storage tanks that are actuated either by a vacuum or a pressure of no more than 2.5 pounds per square inch, gauge (psig);

(2) - (5) (No change.)

(6) sampling connection systems, as defined in 40 Code of Federal Regulations (CFR) §63.161 (January 17, 1997), which are in compliance with 40 CFR [Code of Federal Regulations] §63.166(a) and (b) (June 20, 1996).

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

§115.789. Counties and Compliance Schedules.

The owner or operator of each petroleum refinery; synthetic organic chemical, polymer, resin, or methyl tert-butyl ether manufacturing process; or natural gas/gasoline processing operation in Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties shall demonstrate compliance with the requirements of this division (relating to Fugitive Emissions) in accordance with the following schedule.

(1) The initial monitoring of all components for which monitoring is required under this division, but which are not required to be monitored under Subchapter D, Division 3 of this chapter (relating to Fugitive Emission Control in Petroleum Refining, Natural Gas/Gasoline Processing, and Petrochemical Processes in Ozone Nonattainment Areas), shall occur as soon as practicable, but no later than March 31, 2004. However, the schedule in §115.781(f) of this title (relating to General Monitoring and Inspection Requirements) shall apply to blind flanges, caps, or plugs at the end of a pipe or line containing highly-reactive volatile organic compounds, connectors, bolted manways, heat exchanger heads, hatches, and sump covers for which the owner or operator has notified the appropriate regional office and any local air pollution control program with jurisdiction that §115.781(f) of this title will be used to establish the monitoring schedule for these components [December 31, 2003].

(2) All equipment upgrades required by §115.783 of this title (relating to Equipment Standards) must be made as soon as practicable, but no later than March 31, 2004 [December 31, 2003].

(3) (No change.)

(4) The testing required by §115.785 of this title (relating to Testing Requirements) shall be conducted as soon as practicable, but no later than December 31, 2004 [December 31, 2003].

(5) Compliance with the recordkeeping required by §115.786 of this title (relating to Recordkeeping Requirements) shall be implemented and made available upon request to authorized representatives of the executive director, EPA, or any local air pollution control agency having jurisdiction as soon as practicable, but no later than March 31, 2004 [December 31, 2003].

(6) The initial monitoring of pump seals and compressor seals using a leak definition of 500 parts per million by volume, as required by §115.781(b)(9) of this title [(relating to General Monitoring and Inspection Requirements)], shall begin as soon as practicable, but no later than March 31, 2004 [December 31, 2003].

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

Filed with the Office of the Secretary of State, on May 2, 2003.

TRD-200302732

Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: June 15, 2003
For further information, please call: (512) 239-4712

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CHAPTER 312. SLUDGE USE, DISPOSAL, AND TRANSPORTATION

The Texas Commission on Environmental Quality (commission) proposes amendments to §§312.8, 312.50, and 312.64.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

Senate Bill (SB) 405, 77th Legislature, established the Texas Board of Professional Geoscientists and the regulation of professional geoscientists. The Geoscience Practice Act (the Act) requires that a person may not take responsible charge of a geoscientific report or a geoscientific portion of a report required by state agency rule unless the person is licensed through the Texas Board of Professional Geoscientists. The primary purpose of the proposed amendments is to establish regulations for the public practice of geoscience in conformance with the Act by requiring a person who prepares and submits geoscientific information to the commission to be a licensed professional geoscientist. The Act also allows certain specified engineers to publicly practice geoscience in conformance with the Act. According to the bill analysis prepared at the time of passage, the ultimate purpose of the Act was public safety through the public registration of the practice of geoscience.

SECTION BY SECTION DISCUSSION

Throughout the sections, administrative changes are proposed in accordance with *Texas Register* requirements and to be consistent with other agency rules.

Proposed §312.8, General Definitions, amends the introductory paragraph by deleting the word "shall" and the phrase "unless the context clearly indicates otherwise." The definition of licensed professional geoscientist is proposed to be added as new paragraph (46) and the definition of qualified groundwater scientist is proposed to be deleted. The definitions for Clean Water Act (CWA), commission, United States Environmental Protection Agency (EPA), executive director, and person are also proposed to be deleted because these definitions are located in 30 TAC §3.2. All existing paragraphs are proposed to be renumbered accordingly.

Proposed §312.50(a), Storage and Staging of Sludge at Beneficial Use Sites, substitutes "must" for "shall." In proposed subsection (a)(4), the use of "groundwater" as a single word is proposed to reflect current agency usage and a minor punctuation error is corrected. Proposed subsection (a)(4) would require that certification of the completed storage area lining be made by a licensed professional engineer or licensed professional geoscientist prior to using the facilities and that the certification be signed, sealed, and dated by a licensed professional engineer or licensed professional geoscientist.

Proposed §312.64, Management Practices, amends subsection (n) by substituting "must" for "shall" in the first sentence and replacing licensed professional geoscientist or licensed professional engineer for qualified groundwater scientist as the person who shall develop the groundwater monitoring program or certify that sewage sludge will not contaminate an aquifer. The licensed professional geoscientist shall also sign, seal, and date the certification or the results of the program.

FISCAL NOTE

Doretta Conrad, Analyst in the Budget and Planning Division, has determined that, for the first five-year period the proposed rules are in effect, there will be no significant fiscal implications for the agency or any other unit of state government as a result of administration or enforcement of the proposed rules. There will be no fiscal impact to the agency; however, there may be fiscal implications to the agency if the agency elects to reimburse staff for the annual renewal fees. The fees associated with obtaining the professional geoscientist license is $200 to cover the application and first- year license, and $150 per year after the first year.

Ms. Conrad also determined that for each of the first five years the proposed rules are in effect, the public benefit anticipated from the enforcement of and compliance with the proposed rules will be potentially improved environmental performance by persons regulated by the commission. The proposed rules might impact other state agencies or local governments with staff geologists who need to become licensed under these rules. No significant fiscal implications are anticipated for any individual or business due to implementation of the proposed rules. Additionally, no significant fiscal implications are anticipated for any small or micro-business due to implementation of the proposed rules. The commission has determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory 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 criteria for a "major environmental rule" as defined in that statute.

A "major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The specific intent of the proposed rules is to establish regulations allowing for the public practice of geoscience in agency procedures in conformance with the Act. The Act requires that a person may not take responsible charge of a geoscientific report or a geoscientific portion of a report required by a state agency rule unless the person is licensed through the Texas Board of Professional Geoscientists. The proposed rules are not specifically intended to protect the environment or reduce risks to human health. The proposed rules are intended to establish procedures to require that specific reports and necessary data submitted to the commission be produced, signed, sealed, and dated by licensed professional geoscientists who have obtained their licenses through the Texas Board of Professional Geoscientists. Therefore, it is not anticipated that the proposed rules will adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The commission concludes that these proposed rules do not meet the definition of major environmental rule.

Furthermore, even if the proposed rulemaking did meet the definition of a major environmental rule, the amendments are not subject to Texas Government Code, §2001.0225, because they do not accomplish any of the four results specified in §2001.0225(a). Section 2001.0225(a) applies to a rule adopted by an agency, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

In this case, the proposed amendments to Chapter 312 do not meet any of these requirements. First, there are no federal standards that these rules would exceed. Second, the proposed rules do not exceed an express requirement of state law. Third, there is no delegation agreement that would be exceeded by these proposed rules. Fourth, the commission proposes these rules to allow for the public practice of geoscience in agency procedures in conformance with the Act. Therefore, the commission does not propose the adoption of the rules solely under the commission's general powers.

The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these proposed rules and performed a preliminary assessment of whether these proposed rules constitute a takings under Texas Government Code, Chapter 2007. The specific intent of the proposed rules is to establish regulations allowing for the public practice of geoscience in agency procedures in conformance with the Act. The proposed rules would substantially advance this stated purpose by requiring that specific reports and necessary data submitted to the commission be produced, signed, sealed, and dated by licensed professional geoscientists who have obtained their licenses through the Texas Board of Professional Geoscientists.

Promulgation and enforcement of these proposed rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the proposed rules do not affect a landowner's rights in private real property by burdening private real property, nor restricting or limiting a landowner's right to property, or reducing the value of property by 25% or more beyond that which would otherwise exist in the absence of the proposed rulemaking. These proposed rules simply require that specific portions of applications or necessary data submitted to the commission be produced, signed, sealed, and dated by a qualified professional individual who has demonstrated his or her qualifications by obtaining a license to engage in the public practice of geoscience from the Texas Board of Professional Geoscientists. These proposed rules do not affect any private real property.

There are no burdens imposed on private real property, and the benefits to society are better applications for environmental permits based upon reliable reports and data submitted by qualified licensed professional geoscientists.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission has reviewed the proposed rulemaking and found that the proposal is a rulemaking identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Texas Coastal Management Program (CMP), or will affect an action and/or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6), and will therefore require that applicable goals and policies of the CMP be considered during the rulemaking process. The commission has prepared a consistency determination for the proposed rules under 31 TAC §505.22 and found that the proposed rulemaking is consistent with the applicable CMP goals and policies. The following is a summary of that determination. The CMP goal applicable to the proposed rulemaking is the goal to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas. CMP policies applicable to the proposed rules include the construction and operation of solid waste treatment, storage, and disposal facilities, and the discharge of municipal and industrial wastewater to coastal waters. Promulgation and enforcement of these rules will not violate (exceed) any standards identified in the applicable CMP goals and policies because the proposed rule changes do not modify or alter standards set forth in existing rules, and do not govern or authorize any actions subject to the CMP. The proposed rulemaking would require a person who prepares and submits geoscientific information to the agency to be a licensed professional geoscientist. The commission invites public comment on the consistency determination of the proposed rules.

SUBMITTAL OF COMMENTS

Comments may be submitted to Lola Brown, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Comments must be received by 5:00 p.m., June 16, 2003, and should reference Rule Log Number 2001-051C-321-WS. For further information, please contact Michael Bame, Policy and Regulations Division, at (512) 239-5658.

SUBCHAPTER A. GENERAL PROVISIONS

30 TAC §312.8

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.103, which provides the commission with the authority to adopt rules necessary to carry out its power and duties under this code and other laws of this state; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; and Texas Civil Statutes, Article 3271b, the Act, which authorizes the public practice of geoscience in the State of Texas. The proposed amendment implements TWC, §5.103 and §5.105, and Texas Civil Statutes, Article 3271b, the Act.

§312.8. General Definitions.

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

(1) 25-year, 24-hour rainfall event--The rainfall event with a recurrence interval of once in 25 [~~twenty-five~~] years, with a duration of 24 hours as defined by the National Weather Service in Technical Paper Number 40, Rainfall Frequency Atlas of the United States, May 1961, and subsequent amendments, or equivalent regional or state rainfall information developed therefrom.

(2)-(11) (No change.)

(12) Base flood--A flood that has a 1% [one percent] chance of occurring in any given year.

(13) Beneficial Use--Placement of sewage sludge onto land in a manner which complies with the requirements of Subchapter B of this chapter (relating to Land Application for Beneficial Use and Storage at Beneficial Use Sites), and does not exceed the agronomic need or rate for a cover crop, or any metal or toxic constituent limitations which the cover crop may have. Placement of sewage sludge on the land at a rate below the optimal agronomic rate will be considered a beneficial use.

(14)-(15) (No change.)

[(16) CWA--The Clean Water Act (formerly referred to as either the Federal Water Pollution Act or the Federal Water Pollution Control Act Amendments of 1972), Public Law 92-500, as amended by Public Law 95-217, Public Law 96-483, Public Law 97-117, and Public Law 100.4.]

(16) [(17)] Class A sewage [Sewage] sludge--Sewage sludge meeting one of the pathogen reduction requirements [requirement] in §312.82(a) of this title (relating to Pathogen Reduction).

(17) [(18)] Class B sewage [Sewage] sludge--Sewage sludge meeting one of the pathogen reduction requirements in §312.82(b) of this title.

[(19) Commission--The Texas Natural Resource Conservation Commission.]

(18) [(20)] Contaminate an aquifer--To introduce a substance that causes the maximum contaminant level for nitrate in 40 Code of Federal Regulations (CFR) [CFR] §141.11, as amended, to be exceeded in groundwater [ground water] or that causes the existing concentration of nitrate in groundwater [ground water] to increase when the existing concentration of nitrate in the groundwater [ground water] already exceeds the maximum contaminate level for nitrate in 40 CFR §141.11, as amended.

(19) [(21)] Cover--Soil or other material used to cover sewage sludge placed on an active sludge unit.

(20) [(22)] Cover crop--Grasses or small grain crop, such as oats, wheat, or barley, not grown for harvest.

(21) [(23)] Cumulative metal loading rate--The maximum amount of an inorganic pollutant (dry weight basis) that may be applied to a unit area of land.

(22) [(24)] Density of microorganisms--The number of microorganisms per unit mass of total solids (dry weight basis) in the sewage sludge.

(23) [(25)] Displacement--The relative movement of any two sides of a fault measured in any direction.

(24) [(26)] Disposal--The placement of sewage sludge on the land for any purpose other than beneficial use. Disposal shall not include placement onto the land where the activity has been approved by the executive director or commission as storage or temporary storage and it occurs only for the period of time expressly approved.

(25) [(27)] Domestic septage--Either liquid or solid material removed from a septic tank, cesspool, portable toilet, Type III marine sanitation device, or similar treatment works that receives only domestic sewage. Domestic septage does not include liquid or solid material removed from a septic tank, cesspool, or similar treatment works that receives either commercial wastewater or industrial wastewater and does not include grease removed from a grease trap.

(26) [(28)] Domestic sewage--Waste and wastewater from humans or household operations that is discharged to a wastewater collection system or otherwise enters a treatment works.

(27) [(29)] Dry weight basis--Calculated on the basis of having been dried at 105 degrees Celsius until reaching a constant mass (i.e., essentially 100% solids content).

[(30) EPA--The United States Environmental Protection Agency.]

[(31) Executive director--The executive director of the Texas Natural Resource Conservation Commission or his/her designee.]

(28) [(32)] Experimental use [Use] - Non-routine beneficial use land application or reclamation projects where sewage sludge is added to the soil for research purposes, in pilot projects, feasibility studies, or similar projects.

(29) [(33)] Facility--Includes all contiguous land, structures, other appurtenances, and improvements on the land used for the surface disposal, land application for beneficial use, or incineration of sewage sludge.

(30) [(34)] Fault--A fracture or zone of fractures in any materials along which strata, rocks, or soils on one side are displaced with respect to strata, rocks, or soil on the other side.

(31) [(35)] Feed crops--Crops produced primarily for consumption by domestic livestock, such as swine, goats, cattle, or poultry.

(32) [(36)] Fiber crops--Crops such as flax and cotton.

(33) [(37)] Final cover--The last layer of soil or other material placed on a sludge unit at closure.

(34) [(38)] Floodway--A channel of a river or watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the surface elevation more than one foot.

(35) [(39)] Food crops--Crops consumed by humans. These include, but are not limited to, fruits, vegetables, and tobacco.

(36) [(40)] Forest--Land densely vegetated with trees and/or underbrush.

(37) [(41)] Grit trap waste--Includes [Grit trap waste includes] waste from interceptors placed in the drains prior to entering the sewer system at maintenance and repair shops, automobile service stations, car washes, laundries, and other similar establishments.

(38) [(42)] Groundwater[Ground water]--Water below the land surface in the saturated zone.

(39) [(43)] Holocene time--The most recent epoch of the Quaternary period, extending from the end of the Pleistocene Epoch to the present. Holocene time began approximately 10,000 years ago.

(40) [(44)] Industrial wastewater--Wastewater generated in a commercial or industrial process.

(41) [(45)] Institution--An established organization or corporation, especially of a public nature or where the public has access, such as child care facilities, public buildings, or health care facilities.

(42) [(46)] Land application--The spraying or spreading of sewage sludge onto the land surface; the injection of sewage sludge below the land surface; or the incorporation of sewage sludge into the soil so that the sewage sludge can either condition the soil or fertilize crops or vegetation grown in the soil.

(43) [~~(47)~~] Land with a high potential for public exposure--Land that the public uses frequently and/or is not provided with a means of restricting public access.

(44) [~~(48)~~] Land with a low potential for public exposure--Land that the public uses infrequently and/or is provided with a means of restricting public access.

(45) [~~(49)~~] Leachate collection system--A system or device installed immediately above a liner that is designed, constructed, maintained, and operated to collect and remove leachate from a sludge unit.

(46) Licensed professional geoscientist--A geoscientist who maintains a current license through the Texas Board of Professional Geoscientists in accordance with its requirements for professional practice.

(47) [~~(50)~~] Liner--Soil or synthetic material that has a hydraulic conductivity of 1 x 10^{-7} centimeters per second or less. Soil liners shall be of suitable material with more than 30% passing a number 200 sieve, have a liquid limit greater than 30%, a plasticity index greater than 15, compaction of greater than 95% Standard Proctor at optimum moisture content, and will be at least two feet thick placed in six-inch [~~six inch~~] lifts. Synthetic liners shall be a membrane with a minimum thickness of 20 mils and include an underdrain leak detection system.

(48) [~~(51)~~] Lower explosive limit for methane gas--The lowest percentage of methane in air, by volume, that propagates a flame at 25 degrees Celsius and atmospheric pressure.

(49) [~~(52)~~] Metal limit--A numerical value that describes the amount of a metal allowed per unit amount of sewage sludge (e.g., milligrams per kilogram of total solids); the amount of a pollutant that can be applied to a unit area of land (e.g. kilograms per hectare); or the volume of a material that can be applied to a unit area of land (e.g., gallons per acre).

(50) [~~(53)~~] Monofill--A landfill or landfill trench in which sewage sludge is the only type of solid waste placed.

(51) [~~(54)~~] Municipality--A city, town, county, district, association, or other public body (including an intermunicipal agency of two or more of the foregoing entities) created by or under state [~~State~~] law; an Indian tribe or an authorized Indian tribal organization having jurisdiction over sewage sludge management; or a designated and approved management agency[~~Agency~~] under Clean Water Act, §208 [~~of the CWA~~], as amended. The definition includes a special district created under state [~~State~~] law, such as a water district, sewer district, sanitary district, or an integrated waste management facility as defined in Clean Water Act, §201(e) [~~of the CWA~~], as amended, that has as one of its principal responsibilities the treatment, transport, use, or disposal of sewage sludge.

(52) [~~(55)~~] Off-site--Property which cannot be characterized as "on-site."

(53) [~~(56)~~] On-site--The same or contiguous property owned, controlled, or supervised by the same person. If the property is divided by public or private right-of-way, the access shall be by crossing the right-of-way or the right-of-way shall be under the control of the person.

(54) [~~(57)~~] Operator--The person responsible for the overall operation of a facility or beneficial use site.

(55) [~~(58)~~] Other container--Either an open or closed receptacle, including, but not limited to, a bucket, box, or a vehicle or trailer with a load capacity of one metric ton (2,200 [~~2200~~] pounds) or less.

(56) [~~(59)~~] Owner--The person who owns a facility or part of a facility.

(57) [~~(60)~~] Pasture--Land on which animals feed directly on feed crops such as legumes, grasses, grain stubble, forbs, or stover.

(58) [~~(61)~~] Pathogenic organisms--Disease-causing [~~Disease causing~~] organisms including, but not limited to, certain bacteria, protozoa, viruses, and viable helminth ova.

~~[(62) Person--An individual, association, partnership, corporation, municipality, state or federal agency, or an agent or employee thereof.]~~

(59) [~~(63)~~] Person who prepares sewage sludge--Either the person who generates sewage sludge during the treatment of domestic sewage in a treatment works or the person who derives a material from sewage sludge.

(60) [~~(64)~~] Place sewage sludge or sewage sludge placed--Disposal of sewage sludge on a surface disposal site.

(61) [~~(65)~~] Pollutant--An organic or inorganic substance, or a pathogenic organism that, after discharge and upon exposure, ingestion, inhalation, or assimilation into an organism either directly from the environment or indirectly by ingestion through the food chain, could, on the basis of information available to the executive director, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunction in reproduction), or physical deformations in either organisms or offspring of the organisms.

(62) [~~(66)~~] Process or processing [~~Processing~~]--For the purposes of this chapter, these terms shall have the same meaning as "treat" or "treatment." [~~"treatment".~~]

(63) [~~(67)~~] Public contact site--Land with a high potential for contact by the public. This includes, but is not limited to, public parks, ball fields, cemeteries, plant nurseries, turf farms, and/or golf courses.

~~[(68) Qualified groundwater scientist--An individual with a baccalaureate or post graduate degree in the natural sciences or engineering who has sufficient training and experience in groundwater hydrology and related fields as may be demonstrated by State registration, professional certification, or completion of accredited university programs that enable the individual to make sound professional judgments regarding groundwater monitoring, pollutant fate and transport, and corrective action.]~~

(64) [~~(69)~~] Range land--Open land with indigenous vegetation.

(65) [~~(70)~~] Reclamation site--Drastically disturbed land that is reclaimed using sewage sludge. This includes, but is not limited to, strip mines and/or construction sites.

(66) [~~(71)~~] Runoff--Rainwater, leachate, or other liquid that drains overland on any part of a land surface and runs off the land surface.

(67) [~~(72)~~] Seismic impact zone--An area that has a 10% or greater probability that the horizontal ground level acceleration of the rock in the area exceeds 0.10 gravity once in 250 years.

(68) [~~(73)~~] Sewage sludge [~~Sludge~~]--Solid, semi-solid, or liquid residue generated during the treatment of domestic sewage in treatment works. Sewage sludge includes, but is not limited to, domestic septage, scum, or solids removed in primary, secondary, or

advanced wastewater treatment processes; and material derived from sewage sludge. Sewage sludge does not include ash generated during preliminary treatment of domestic sewage in a treatment works.

(69) [~~(74)~~] Sewage sludge debris [~~Sludge Debris~~]--Solid material such as rubber, plastic, glass, or other trash which may pass through a wastewater treatment process or sludge process or may be collected with septage. This solid material is visibly distinguishable from sewage sludge. This material does not include grit or screenings removed during the preliminary treatment of domestic sewage at a treatment works, nor does it include grit trap waste.

(70) [~~(75)~~] Sludge lagoon--An existing surface impoundment located on-site at a wastewater treatment plant for the storage of sewage sludge. Any other type impoundment shall be considered an active sludge unit, as defined in this section.

(71) [~~(76)~~] Sludge unit--Land on which only sewage sludge is placed for disposal. A sludge unit shall be used for sewage sludge. This does not include land on which sewage sludge is either stored or treated.

(72) [~~(77)~~] Sludge unit boundary--The outermost perimeter of a surface disposal site.

(73) [~~(78)~~] Source separated yard waste [~~Separated Yard Waste~~]--For purposes of this chapter, shall have the same definition as found in Chapter 332 of this title (relating to Composting).

(74) [~~(79)~~] Specific oxygen uptake rate (SOUR)--The mass of oxygen consumed per unit time per unit mass of total solids (dry weight basis) in the sewage sludge.

(75) [~~(80)~~] Staging--Temporary holding of sewage sludge at a beneficial use site, for up to a maximum of seven calendar days, prior to the land application of the sewage sludge.

(76) [~~(81)~~] Store or storage--The placement of sewage sludge on land for longer than seven days.

(77) [~~(82)~~] Temporary storage [~~Storage~~]--Storage of waste regulated under this chapter by a transporter, which has been approved in writing by the executive director, in accordance with §312.147 of this title[~~,~~] (relating to Temporary Storage).

(78) [~~(83)~~] Three hundred sixty-five [~~Three hundred sixty-five (365)~~] day period--A running total which covers the period between sludge application to a site and the nutrient uptake of the cover crop.

(79) [~~(84)~~] Total solids--The materials in sewage sludge that remain as residue if the sewage sludge is dried at 103 degrees Celsius to 105 degrees Celsius.

(80) [~~(85)~~] Transporter--Any person who collects, conveys, or transports sewage sludge, water treatment plant sludges, grit trap waste, grease trap waste, chemical toilet waste, and/or septage by roadway, ship, rail, or other means.

(81) [~~(86)~~] Treat or treatment of sewage sludge--The preparation of sewage sludge for final use or disposal. This includes, but is not limited to, thickening, stabilization, and dewatering of sewage sludge. This does not include storage of sewage sludge.

(82) [~~(87)~~] Treatment works--Either a federally [~~Federally~~] owned, publicly owned, or privately owned device or system used to treat (including recycle and reclaim) either domestic sewage or a combination of domestic sewage and industrial waste of a liquid nature.

(83) [~~(88)~~] Unstablized solids--Organic materials in sewage sludge that have not been treated in either an aerobic or anaerobic treatment process.

(84) [~~(89)~~] Unstable area--Land subject to natural or human induced forces that may damage the structural components of an active sewage sludge unit. This includes, but is not limited to, land on which the soils are subject to mass movement.

(85) [~~(90)~~] Vector attraction--The characteristic of sewage sludge that attracts rodents, flies, mosquitoes, or other organisms capable of transporting infectious agents.

(86) [~~(91)~~] Volatile solids--The amount of the total solids in sewage sludge lost when the sewage sludge is combusted at 550 degrees Celsius in the presence of excess oxygen.

(87) [~~(92)~~] Water treatment sludge [~~Treatment Sludge~~]--Sludge generated during the treatment of either surface water or groundwater [~~ground water~~] for potable use, which is not an industrial solid waste as defined in §335.1 of this title (relating to Definitions).

(88) [~~(93)~~] Wetlands--Those areas that are inundated or saturated by surface water or groundwater [~~ground water~~] at a frequency and duration to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

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

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Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-0348

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SUBCHAPTER B. LAND APPLICATION FOR BENEFICIAL USE AND STORAGE AT BENEFICIAL USE SITES

30 TAC §312.50

STATUTORY AUTHORITY

The amendment is proposed under TWC, §5.103, which provides the commission with the authority to adopt rules necessary to carry out its power and duties under this code and other laws of this state; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; and Texas Civil Statutes, Article 3271b, the Act, which authorizes the public practice of geoscience in the State of Texas.

The proposed amendment implements TWC, §5.103 and §5.105, and Texas Civil Statutes, Article 3271b, the Act.

§312.50. Storage and Staging of Sludge at Beneficial Use Sites.

(a) Except as provided in subsection (b) of this section, storage of sludge at a beneficial land application site must [~~shall~~] not exceed 90 days. Storage is allowed only when the following requirements are carried out. [~~:~~]

(1) (No change.)

(2) The storage area must be operated and maintained to prevent surface water runoff and to prevent a release to groundwater [~~ground water~~]. Discharge of storm water or wastewater which has come into contact with sewage sludge is prohibited. The storage area shall be designed to collect such runoff. Any runoff collected during the storage of sewage sludge shall be disposed in a manner to prevent a release to groundwater [~~ground water~~].

(3) (No change.)

(4) The storage area must be lined to prevent a release to groundwater [~~ground water~~]. Natural or artificial liners are required for leachate control. A natural liner or equivalent barrier of one foot of compacted clay with a permeability coefficient of 1×10^{-7} cm/sec or less must [~~, shall~~] be provided. Various flexible synthetic membrane lining materials may be used in lieu of soil liners if prior written approval has been obtained from the executive director. The registrant shall furnish certification by a licensed professional engineer or licensed professional geoscientist that the completed storage area lining meets the appropriate criteria described in this section prior to using the facilities. The certification shall be signed, sealed, and dated by a licensed professional engineer or licensed professional geoscientist.

(5)-(9) (No change.)

(b) Up to an additional 90 days of storage will be allowed with the prior approval of the appropriate Texas Commission on Environmental Quality [~~TNRCC~~] regional office, for reasons associated with application area flooding, saturated soils, or frozen soils.

(c) (No change.)

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

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SUBCHAPTER C. SURFACE DISPOSAL

30 TAC §312.64

STATUTORY AUTHORITY

The amendment is proposed under TWC, §5.103, which provides the commission with the authority to adopt rules necessary to carry out its power and duties under this code and other laws of this state; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; and Texas Civil Statutes, Article 3271b, the Act, which authorizes the public practice of geoscience in the State of Texas.

The proposed amendment implements TWC, §5.103 and §5.105, and Texas Civil Statutes, Article 3271b, the Act.

§312.64. Management Practices.

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

(f) An active sludge unit shall not be located in a wetland except as provided in permit issued under [~~pursuant to~~] the Clean Water Act, §402 or §404.

(g)-(m) (No change.)

(n) Sewage sludge placed on an active sludge unit must [~~shall~~] not contaminate an aquifer. Results of a groundwater monitoring program developed by a licensed professional geoscientist or licensed professional engineer [~~qualified groundwater scientist~~] or a certification by a licensed professional geoscientist or licensed professional engineer shall [~~qualified groundwater scientist shall~~] be used to demonstrate that sewage sludge placed on an active sludge unit does not contaminate an aquifer. The results or certification shall be signed, sealed, and dated by the licensed professional geoscientist or licensed professional engineer preparing the results or certification.

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

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CHAPTER 321. CONTROL OF CERTAIN ACTIVITIES BY RULE

The Texas Commission on Environmental Quality (commission) proposes amendments to §§321.32, 321.35, 321.39, 321.55, 321.252, 321.255, 321.271, and 321.274.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

Senate Bill (SB) 405, 77th Legislature, established the Texas Board of Professional Geoscientists and the regulation of professional geoscientists. The Geoscience Practice Act (the Act) requires that a person may not take responsible charge of a geoscientific report or a geoscientific portion of a report required by state agency rule unless the person is licensed through the Texas Board of Professional Geoscientists. The primary purpose of the proposed amendments is to establish regulations for the public practice of geoscience in conformance with the Act by requiring a person who prepares and submits geoscientific information to the commission to be a licensed professional geoscientist. The Act also allows certain specified engineers to publicly practice geoscience in conformance with the Act. According to the bill analysis prepared at the time of passage, the ultimate purpose of the Act was public safety through the public registration of the practice of geoscience.

SECTION BY SECTION DISCUSSION

Throughout the sections, administrative changes are proposed in accordance with *Texas Register* requirements and to be consistent with other agency rules.

Proposed §321.32, Definitions, amends the introductory paragraph by deleting the word "shall" and the phrase "unless the context clearly indicates otherwise." The definition of licensed

professional geoscientist is proposed to be added and the definition of qualified groundwater scientist is proposed to be deleted, and existing paragraphs (20) - (33) are proposed to be renumbered accordingly.

Proposed §321.35(c), Procedures for Making Application for Registration, makes minor grammatical corrections, substituting "that" for "which" and removing "such." In proposed subsection (c)(8), substitutes "shall" for "must" and requires that documentation of liner certifications be prepared, signed, sealed, and dated either by a licensed professional engineer or a licensed professional geoscientist. In subsection (c)(10), the commission proposes that a recharge feature certification may be made by a Natural Resources Conservation Service (NRCS) engineer, a licensed professional engineer, or a licensed professional geoscientist (rather than a qualified groundwater scientist). In subsection (c)(10)(G), licensed professional geoscientist is proposed to be substituted for qualified groundwater scientist, and a minor grammatical error is proposed to be corrected. In subsection (c)(11), the commission proposes to replace qualified groundwater scientist with licensed professional geoscientist; to correct two minor grammatical errors; and to break the final sentence into two sentences for readability. In subsection (c)(11)(B), the commission proposes to require that the groundwater monitoring plan be prepared, certified, signed, sealed, and dated by a licensed professional geoscientist and to substitute "must" for "shall." Cross-references in §321.35(b), (d), (e), and (h) are proposed to be updated.

Proposed §321.39(f), Pollution Prevention Plans, substitutes "must" for "shall." The commission proposes to amend subsection (f)(16) by making an antecedent noun agree in number with its precedent nouns; and substituting "that" for "which." In subsection (f)(16)(A), a minor grammatical correction in the choice of indefinite article is proposed; and licensed professional geoscientist is proposed to replace qualified groundwater scientist as one of the three people who may document no significant leakage from a retention structure. In subsection (f)(16)(B), the commission proposes to specify what the documentation must include or show; to correct a minor grammatical error; and to replace licensed professional geoscientist for qualified groundwater scientist as one of the three people who may make the written determination. In subsection (f)(17), the commission proposes to substitute "must" for "shall"; substitute "that" for "which"; correct a minor grammatical error; replace licensed professional geoscientist for qualified groundwater scientist as one of the three people who can make a site-specific assessment; make an antecedent noun agree in number with its precedent noun; and use the correct noun "equivalent" meaning "equal" rather than "equivalency," which means "a condition of equality." In subsection (f)(18), the commission proposes to make a precedent noun agree in number with its antecedent noun; correct a minor grammatical error; and replace licensed professional geoscientist for qualified groundwater scientist as one of the three people who can do a site evaluation every five years.

Proposed §321.55, Protection of Groundwater, substitutes "must" for "shall"; correctly specifies the requirements of paragraphs (1) and (2); and deletes the word "such." In paragraph (2), the commission proposes to substitute "must" for "shall"; delete an unnecessary period; spell out centimeters per second; provide the correct and proper name of the laboratory test to be conducted; and require certification of the pond liner by a licensed professional engineer or a licensed professional geoscientist and that the certification be signed, sealed, and dated by a licensed professional engineer or a licensed professional geoscientist.

Proposed §321.252, Definitions, amends the introduction of the section by adding the word "when"; deleting the word "shall"; and deleting the phrase "unless the context clearly indicates otherwise." The definition of licensed professional geoscientist is proposed to be added as new paragraph (6) and the remaining paragraphs are proposed to be renumbered accordingly. A corrected reference to Chapter 213 instead of Chapter 313 is proposed in renumbered paragraph (10). Formatting changes are proposed throughout this section to be consistent with other agency rules.

Proposed §321.255(c), Requirements for Containment of Wastes and Pond(s), substitutes "licensed" for "registered" professional engineer; includes a licensed professional geoscientist among the persons who can certify a pond lining; and substitutes "using" for "utilization of." Proposed subsection (c) also requires that the certification be signed, sealed, and dated by a licensed professional engineer or licensed professional geoscientist. Formatting changes are proposed throughout this section to be consistent with other agency rules. A cross-reference is proposed to be corrected in subsection (e).

Proposed §321.271, Definitions, amends the introduction of the section by deleting the word "shall" and the phrase "unless the context clearly indicates otherwise." The definition of licensed professional geoscientist is proposed to be added as new paragraph (14) and the remaining paragraphs are proposed to be renumbered accordingly. Administrative changes, which include formatting, grammatical, and cross-reference corrections, are proposed throughout the section to conform with *Texas Register* and agency requirements.

Proposed §321.274, Ground-water Protection, amends the title to Groundwater Protection, to reflect the accepted usage of "groundwater" as a single, unhyphenated word. Subsection (a) is proposed to be amended to substitute "that" for "which"; substitute "must" for "shall"; and spell out milligrams per liter. The commission proposes to amend subsection (a)(1) to substitute "must" for "shall"; eliminate a superfluous grammatical construction; and reflect the accepted usage of "groundwater" as a single, unhyphenated word. Subsection (a)(1)(E) is proposed to be amended to require that the certification be signed, sealed, and dated by a licensed professional engineer or licensed professional geoscientist; substitute "licensed" for "registered" professional engineer; include a licensed professional geoscientist among the persons who can certify a pond lining; and substitute "using" for "utilization of." The commission proposes to amend §321.274(b) by substituting "using" for "utilizing"; substituting "that" for "which"; specifying the noun antecedent of the demonstrative pronoun; and substituting "must" for "shall." Subsection (b)(1) is proposed to be amended to substitute "must" for "shall"; eliminate a superfluous grammatical construction; and reflect the accepted usage of "groundwater" as a single, unhyphenated word. The commission proposes to amend subsection (b)(1)(D) to require that the certification be signed, sealed, and dated by a licensed professional engineer or licensed professional geoscientist; substitue "licensed" for "registered" professional engineer; include licensed professional geoscientist among the persons who can certify a pond lining; and substitute "using" for "utilization of." Formatting changes are proposed throughout this section to be consistent with other agency rules.

FISCAL NOTE

Doretta Conrad, Analyst in the Budget and Planning Division, has determined that, for the first five-year period the proposed rules are in effect, there will be no significant fiscal implications for the agency or any other unit of state government as a result of administration or enforcement of the proposed rules. There will be no fiscal impact to the agency; however, there may be fiscal implications to the agency if the agency elects to reimburse staff for the annual renewal fees. The fees associated with obtaining the professional geoscientist license is $200 to cover the application and first-year license, and $150 per year after the first year.

Ms. Conrad also determined that for each of the first five years the proposed rules are in effect, the public benefit anticipated from the enforcement of and compliance with the proposed rules will be potentially improved environmental performance by persons regulated by the commission. The proposed rules might impact other state agencies or local governments with staff geologists who need to become licensed under these rules. No significant fiscal implications are anticipated for any individual or business due to implementation of the proposed rules. Additionally, no significant fiscal implications are anticipated for any small or micro-business due to implementation of the proposed rules. The commission has determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory 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 criteria for a "major environmental rule" as defined in that statute.

A "major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The specific intent of the proposed rules is to establish regulations allowing for the public practice of geoscience in agency procedures in conformance with the Act. The Act requires that a person may not take responsible charge of a geoscientific report or a geoscientific portion of a report required by a state agency rule unless the person is licensed through the Texas Board of Professional Geoscientists. The proposed rules are not specifically intended to protect the environment or reduce risks to human health. The proposed rules are intended to establish procedures to require that specific reports and necessary data submitted to the commission be produced, signed, sealed, and dated by licensed professional geoscientists who have obtained their licenses through the Texas Board of Professional Geoscientists. Therefore, it is not anticipated that the proposed rules will adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The commission concludes that these proposed rules do not meet the definition of major environmental rule.

Furthermore, even if the proposed rulemaking did meet the definition of a major environmental rule, the amendments are not subject to Texas Government Code, §2001.0225, because they do not accomplish any of the four results specified in §2001.0225(a). Section 2001.0225(a) applies to a rule adopted by an agency, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

In this case, the proposed amendments to Chapter 321 do not meet any of these requirements. First, there are no federal standards that these rules would exceed. Second, the proposed rules do not exceed an express requirement of state law. Third, there is no delegation agreement that would be exceeded by these proposed rules. Fourth, the commission proposes these rules to allow for the public practice of geoscience in agency procedures in conformance with the Act. Therefore, the commission does not propose the adoption of the rules solely under the commission's general powers.

The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these proposed rules and performed a preliminary assessment of whether these proposed rules constitute a takings under Texas Government Code, Chapter 2007. The specific intent of the proposed rules is to establish regulations allowing for the public practice of geoscience in agency procedures in conformance with the Act. The proposed rules would substantially advance this stated purpose by requiring that specific reports and necessary data submitted to the commission be produced, signed, sealed, and dated by licensed professional geoscientists who have obtained their licenses through the Texas Board of Professional Geoscientists.

Promulgation and enforcement of these proposed rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the proposed rules do not affect a landowner's rights in private real property by burdening private real property, nor restricting or limiting a landowner's right to property, or reducing the value of property by 25% or more beyond that which would otherwise exist in the absence of the proposed rulemaking. These rules simply require that specific portions of applications or necessary data submitted to the commission be produced, signed, sealed, and dated by a qualified professional individual who has demonstrated his or her qualifications by obtaining a license to engage in the public practice of geoscience from the Texas Board of Professional Geoscientists. These proposed rules do not affect any private real property.

There are no burdens imposed on private real property, and the benefits to society are better applications for environmental permits based upon reliable reports and data submitted by qualified licensed professional geoscientists.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission has reviewed the proposed rulemaking and found that the proposal is a rulemaking identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Texas Coastal Management Program (CMP), or will affect an action and/or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6), and will therefore require

that applicable goals and policies of the CMP be considered during the rulemaking process. The commission has prepared a consistency determination for the proposed rules under 31 TAC §505.22 and found that the proposed rulemaking is consistent with the applicable CMP goals and policies. The following is a summary of that determination. The CMP goal applicable to the proposed rulemaking is the goal to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas. CMP policies applicable to the proposed rules include the construction and operation of solid waste treatment, storage, and disposal facilities, and the discharge of municipal and industrial wastewater to coastal waters. Promulgation and enforcement of these rules will not violate (exceed) any standards identified in the applicable CMP goals and policies because the proposed rule changes do not modify or alter standards set forth in existing rules, and do not govern or authorize any actions subject to the CMP. The proposed rulemaking would require a person who prepares and submits geoscientific information to the agency to be a licensed professional geoscientist. The commission invites public comment on the consistency determination of the proposed rules.

SUBMITTAL OF COMMENTS

Comments may be submitted to Lola Brown, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Comments must be received by 5:00 p.m., June 16, 2003, and should reference Rule Log Number 2001-051C-312-WS. For further information, please contact Michael Bame, Policy and Regulations Division, at (512) 239-5658.

SUBCHAPTER B. CONCENTRATED ANIMAL FEEDING OPERATIONS

30 TAC §§321.32, 321.35, 321.39

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code (TWC), §5.103, which provides the commission with the authority to adopt rules necessary to carry out its power and duties under this code and other laws of this state; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; and Texas Civil Statutes, Article 3271b, the Act, which authorizes the public practice of geoscience in the State of Texas.

The proposed amendments implement TWC, §5.103 and §5.105, and Texas Civil Statutes, Article 3271b, the Act.

§321.32. Definitions.

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

(1)-(13) (No change.)

(14) Flushwater waste handling system--A system in which fresh water [~~freshwater~~] or wastewater is recycled or used in transporting waste.

(15)-(19) (No change.)

(20) Licensed professional geoscientist--A geoscientist who maintains a current license through the Texas Board of Professional Geoscientists in accordance with its requirements for professional practice.

(21) [~~(20)~~] Liner--Any barrier in the form of a layer, membrane, or blanket, naturally existing, constructed, or installed to prevent a significant hydrologic connection between liquids contained in retention structures and waters in the state.

(22) [~~(21)~~] Major sole-source impairment zone--A watershed that contains a reservoir:

(A) that is used by a municipality as a sole source of drinking water supply for a population, inside and outside of its municipal boundaries, of more than 140,000; and

(B) at least half of the water flowing into which is from a source that, on September 1, 2001, is on the list of impaired state waters adopted by the commission as required by 33 United States Code, §1313(d), as amended:

(i) at least in part because of concerns regarding pathogens and phosphorus; and

(ii) for which the commission, at some time, has prepared and submitted a total maximum daily load standard.

(23) [~~(22)~~] Natural Resources Conservation Service (NRCS)--An agency of the United States Department of Agriculture which includes the agency formerly known as the Soil Conservation Service (SCS).

(24) [~~(23)~~] New concentrated animal feeding operation (CAFO) [~~CAFO~~]--A CAFO which was not authorized under a rule, order, or permit of the commission in effect on August 19, 1998. For the purposes of §321.48 of this title (relating to Regulation of Certain Dairy Concentrated Animal Feeding Operations (CAFOs)), new CAFO means a proposed CAFO, any part of which is located on property not previously authorized by the state to be operated as a CAFO.

(25) [~~(24)~~] No discharge--The absence of flow of waste, process generated wastewater, contaminated rainfall runoff, or other wastewater from the premises of the animal feeding operation, except for overflows which result from chronic or catastrophic rainfall events.

(26) [~~(25)~~] Nuisance--Any discharge of air contaminant(s) including, but not limited to, odors of sufficient concentration and duration that are or may tend to be injurious to or which adversely affects human health or welfare, animal life, vegetation, or property, or which interferes with the normal use and enjoyment of animal life, vegetation, or property.

(27) [~~(26)~~] Open lot--Pens or similar confinement areas with dirt, concrete, or other paved or hard surfaces wherein animals or poultry are substantially or entirely exposed to the outside environment except for small portions of the total confinement area affording protection by windbreaks or small shed-type shade areas. For the purposes of this subchapter, the term open lot is synonymous with the terms dirt lot, or dry lot, for livestock or poultry, as these terms are commonly used in the agricultural industry.

(28) [~~(27)~~] Operator--The owner or one who is responsible for the management of a concentrated animal feeding operation [~~CAFO~~] or an animal feeding operation subject to the provisions of this subchapter.

(29) [~~(28)~~] Permanent odor sources--Those odor sources which may emit odors 24 hours per day. For the purposes of this subchapter, permanent odor sources include, but are not limited to, pens, confinement buildings, lagoons, retention facilities, manure stockpile areas, and solid separators. For the purposes of this subchapter, permanent odor sources shall not include any feed handling facilities, land application equipment, or land application areas.

(30) [~~(29)~~] Permittee--Any person issued or covered by an individual permit or order, permit-by-rule, or granted authorization under the requirements of this subchapter.

(31) [~~(30)~~] Pesticide--A substance or mixture of substances intended to prevent, destroy, repel, or mitigate any pest, or any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.

(32) [~~(31)~~] Process wastewater--Any process generated wastewater directly or indirectly used in the operation of a concentrated animal feeding operation [~~CAFO~~] (such as spillage or overflow from animal or poultry watering systems which comes in contact with waste; washing, cleaning, or flushing pens, barns, manure pits; direct contact swimming, washing, or spray cooling of animals; and dust control), and precipitation which comes into contact with any manure or litter, bedding, or any other raw material or intermediate or final material or product used in or resulting from the production of animals or poultry or direct products (e.g., milk, meat, or eggs).

(33) [~~(32)~~] Process generated wastewater--Any water directly or indirectly used in the operation of a concentrated animal feeding operation [~~CAFO~~] (such as spillage or overflow from animal or poultry watering systems which comes in contact with waste; washing, cleaning, or flushing pens, barns, manure pits; direct contact swimming, washing, or spray cooling of animals; and dust control) which is produced as wastewater.

(34) [~~(33)~~] Protection zone--The area within the watershed of a sole-source surface drinking water supply that is:

(A) within two miles of the normal pool elevation, as shown on a United States Geological Survey (USGS) 7 1/2-minute quadrangle topographic map, of a sole-source drinking water supply reservoir;

(B) within two miles of that part of a perennial stream that is:

(i) a tributary of a sole-source drinking water supply; and

(ii) within three linear miles upstream of the normal pool elevation, as shown on a USGS 7 1/2-minute quadrangle topographic map, of a sole-source drinking water supply reservoir; or

(C) within two miles of a sole-source surface drinking water supply river, extending three linear miles upstream from the sole-source water supply intake point.

~~[(34) Qualified groundwater scientist--A scientist or engineer who has received a baccalaureate or post-graduate degree in natural sciences or engineering and has sufficient training and experience in groundwater hydrology and related fields as may be demonstrated by state registration, professional certification, or completion of accredited university programs that enable that individual to make sound professional judgements regarding groundwater monitoring, contamination fate and transport, and corrective action.]~~

(35)-(42) (No change.)

§321.35. Procedures for Making Application for Registration.

(a) (No change.)

(b) Applicants shall comply with the applicable provisions of §§305.43, 305.44, [~~305.46,~~] and 305.47 of this title (relating to Who Applies; Signatories to Applications; [~~Designation of Material as Confidential;~~] and Retention of Application Data).

(c) Application for registration under this section shall be made on forms prescribed by the executive director. Except as provided in §321.33(r) of this title and §321.48 of this title (relating to Regulation of Certain Dairy Concentrated Animal Feeding Operations (CAFOs)), a facility that [~~which~~] is not required under federal law to obtain National Pollutant Discharge Elimination System authorization may apply for a state-only registration, which authorizes the discharge or disposal of waste or wastewater into or adjacent to water in the state only in the event of a 25-year, 24-hour rainfall event, or may transfer from an individual permit to [~~such~~] a registration in accordance with §321.33(l) of this title. The applicant shall submit an original completed application with attachments and one copy of the application with attachments to the executive director at the headquarters in Austin, Texas, and one additional copy of the application with attachments to the appropriate commission regional office. The completed application must [~~shall~~] be submitted to the executive director signed and notarized and with the following information:

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

(6) a county general highway map (with graphic scale clearly shown) to identify the relative location of the CAFO and at least a one-mile [~~one mile~~] area surrounding the facility;

(7) (No change.)

(8) sections of the pollution prevention plan to be designated by the executive director. Prior to using [~~utilization of~~] wastewater retention facilities, documentation of liner certifications, signed, sealed, and dated by a licensed professional engineer or licensed professional geoscientist, shall [~~must~~] be submitted (if applicable);

(9) (No change.)

(10) a certification by a Natural Resources Conservation Service (NRCS) engineer, licensed professional engineer, or licensed professional geoscientist [~~qualified groundwater scientist~~] documenting the absence or presence of any recharge features identified on any tracts of land owned, operated, or controlled by the applicant and to be used as a part of a CAFO. Documentation[~~,~~] by the certifying party must [~~shall~~] identify the sources and/or methods used to identify the presence or absence of recharge features. The documentation must [~~shall~~] include the method or approach to be used to identify previously unidentified and/or undocumented recharge features that may be discovered during the time of construction. At a minimum, the records and/or maps of the following entities/agencies must [~~shall~~] be reviewed to locate any artificial recharge features:

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

(D) Texas Commission on Environmental Quality [~~TNRCC~~];

(E) (No change.)

(F) previous owner of site, if available; [~~,~~] and

(G) on-site inspection of site with an [~~a~~] NRCS engineer, licensed professional engineer, or licensed professional geoscientist [~~qualified groundwater scientist~~];

(11) where the applicant cannot document the absence of recharge features on the tracts for which an application is being filed, the proposed site plan must [~~shall~~] also indicate the specific location of any and all recharge features found on any property owned, operated, or controlled by the applicant under the application as certified by an [~~a~~] NRCS engineer, licensed professional engineer, or licensed professional geoscientist [~~qualified groundwater scientist~~]. The applicant shall also submit a plan, developed by an [~~a~~] NRCS engineer or licensed professional engineer, to prevent impacts on any located recharge feature and associated groundwater formation. The plan [~~which~~] may include the following:

(A) (No change.)

(B) submission of a detailed groundwater monitoring plan prepared, certified, signed, sealed, and dated by a licensed professional geoscientist or licensed professional engineer covering all affected facilities and land application areas. At a minimum, the groundwater monitoring plan must [~~shall~~] specify procedures to annually collect a groundwater sample from representative wells, have each sample analyzed for chlorides, nitrates, and total dissolved solids, and compare those values with background values for each well; or

(C) (No change.)

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

(d) Each applicant shall pay an application fee as required by §305.53 of this title (relating to Application Fee [~~Fees~~]). An annual waste treatment inspection fee is also required of each registrant as required by §305.43 and §305.44 [~~§305.503 and §305.504~~] of this title [~~(relating to Fee Assessment and Fee Payment)~~]. An annual Clean Rivers Program fee is also required as required under §21.3 [~~§220.21(d)~~] of this title (relating to Fee Assessment [~~Water Quality Assessment Fees~~]). No fees under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) shall be required of an applicant for an authorization issued under this section.

(e) Each registrant shall comply with and is subject to the provisions of §§305.61, 305.64, and 305.33 - 305.68 of this title (relating to Applicability; Transfer of Permits; Permit Denial, Suspension, and Revocation; Revocation and Suspension upon [~~Upon~~] Request or Consent; Action and Notice on Petition for Revocation or Suspension).

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

(h) Registrations issued under §321.37 or §321.47 of this title (relating to Actions [~~Action~~] on Applications for Registration or Initial Texas Pollutant Discharge Elimination System (TPDES) Authorization) shall expire five years after the effective date of these amendments (1999), and no new registrations shall be issued after that date. However, if the commission proposes to amend or readopt these rules prior to such expiration date, all registrations shall remain in effect until final commission action on the proposed amendment or readoption. An application for renewal of a registration under this section must be administratively and technically complete, meet all applicable technical requirements of this subchapter, and, except as otherwise provided in paragraphs (1) - (5) of this subsection, be processed according to §321.36 [~~and §321.37~~] of this title (relating to Notice of Application for Registration [~~and Action on Application for Registration~~]) and §321.37 of this title. A registration for a facility described in §321.33(a)(2) of this title may be renewed, according to the following procedures.

(1) Except as provided by §305.63(a)(3) of this title (relating to Renewals), an administratively and technically complete application may be granted by the executive director without public notice if it does not propose any other change to the registration as approved. Renewal under this paragraph shall be allowed only if there has been no related formal enforcement action against the facility during the last 36 months of the term of the registration in which the commission has determined that:

(A) a violation occurred that contributed to pollution of surface or groundwater [~~ground water~~], or an unauthorized discharge has occurred, or a violation of §101.4 of this title (relating to Nuisance) has occurred, or any violation of an applicable state or federal air quality control requirement has occurred; and

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

(2)-(5) (No change.)

§321.39. Pollution Prevention Plans.

(a) (No change.)

(b) Where a Natural Resources Conservation Service (NRCS) plan has been prepared for the facility, the pollution prevention plan may refer to the NRCS plan when the NRCS plan documentation contains equivalent requirements for the facility. When the operator uses an [~~a~~] NRCS plan as partial completion of the pollution plan, the NRCS plan must be kept on site. Design and construction criteria developed by the NRCS can be substituted for the documentation of design capacity and construction requirements (see subsection (f) of this section) of the pollution prevention plan provided the required inspections logs and water level logs in subsection (f)(3) and (11) of this section are kept with the NRCS plan [~~Plan~~]. Waste management plans developed by the NRCS can be substituted for the documentation of application rate calculations in subsection (f)(19) and (24) of this section. NRCS Waste Management Plans which have been prepared since January 1, 1989 are considered by the NRCS to contain adequate management practices. To insure the protection of water quality, the NRCS has determined that NRCS plans prepared prior to 1989 must be submitted for renewal with the NRCS [~~Natural Resources Conservation Service~~] or a waste management professional before December 1995. NRCS has determined that all plans should be reviewed every five years to insure proper management of wastes.

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

(f) The plan must [~~shall~~] include, at a minimum, the following items.

(1)-(15) (No change.)

(16) The operator shall include in the plan, site-specific documentation that no significant hydrologic connection exists between the contained wastewater and waters in the state. Where the operator cannot document that no significant hydrologic connection exists, the ponds, lagoons, and basins of the retention facilities must have liners that [~~a liner which~~] will prevent the potential contamination of surface waters and groundwaters.

(A) The operator can document lack of hydrologic connection by either: documenting that there will be no significant leakage from the retention structure; or documenting that any leakage from the retention structure would not migrate to waters in the state. This documentation shall be certified by an [~~a~~] NRCS engineer, licensed professional engineer, or licensed professional geoscientist [~~qualified groundwater scientist~~] and must include information on the hydraulic conductivity and thickness of the natural materials underlying and forming the walls of the containment structure up to the wetted perimeter.

(B) For documentation of no significant leakage, in-situ materials must, at a minimum, meet the minimum criteria for hydraulic conductivity and thickness as described in this section. Documentation that leakage will not migrate to waters in the state must include maps showing groundwater flow paths, or must show that the leakage enters a confined environment. A written determination by an [~~a~~] NRCS engineer, licensed professional geoscientist, or a licensed professional engineer that a liner is not needed to prevent a significant hydrologic connection between the contained wastewater and waters in the state will be considered documentation that no significant hydrologic connection exists.

(17) Site-specific conditions must [~~shall~~] be considered in the design and construction of liners. NRCS liner requirements or liners constructed and maintained in accordance with NRCS design specifications in Appendix 10d of the Agricultural Waste Management Handbook (or its current equivalent) shall be considered to prevent hydrologic connections that [~~which~~] could result in the contamination

of waters in the state. Liners for retention structures must [~~shall~~] be constructed in accordance with good engineering practices. Where no site-specific assessment has been done by an [~~a~~] NRCS engineer, licensed professional engineer, or licensed professional geoscientist [~~qualified groundwater scientist~~], the liner must [~~shall~~] be constructed to have a hydraulic conductivity [~~conductivities~~] no greater than 1×10^{-7} centimeters per second [~~cm/sec~~], with a thickness of 1.5 feet or greater or its equivalent [~~equivalency~~] in other materials.

(18) Where a liner is installed to prevent hydrologic connection, the operator must maintain the liner to inhibit infiltration of wastewaters. Liners must [~~shall~~] be protected from animals by fences or other protective devices. No tree [~~trees~~] shall be allowed to grow within the potential distance of the tree's root zone. Any mechanical or structural damage to the liner must [~~shall~~] be evaluated by an [~~a~~] NRCS engineer or a licensed professional engineer within 30 days of the damage. Documentation of liner maintenance must [~~shall~~] be kept with the pollution prevention plan. The operator shall have an [~~a~~] NRCS engineer, licensed professional engineer, or licensed professional geoscientist [~~qualified groundwater scientist~~] review the documentation and do a site evaluation every five years. If notified by the executive director that significant potential exists for the contamination of waters in the state or drinking water, the operator shall install a leak detection system or monitoring well(s) in accordance with that notice. Documentation of compliance with the notification must be kept with the pollution prevention plan, as well as all sampling data. In the event monitoring well(s) are required, the operator must sample each monitor well annually for nitrate as nitrogen, chloride, and total dissolved solids using the methods outlined in the pollution prevention plan, and compare the analytical results to the baseline data. If a 10% deviation in concentration of any of the sampled constituents is found, the operator must notify the executive director within 30 days of receiving the analytical results. Data from any monitoring wells must be kept on site for three years with the pollution prevention plan. The first year's sampling shall be considered the baseline data and must be retained on site for the life of the facility unless otherwise provided by the executive director.

(19)-(30) (No change.)

(31) Operators submitting applications for renewal or expansion of existing facilities authorized under this subchapter to utilize a playa lake as a wastewater retention structure shall within 90 [~~ninety (90)~~] days of the effective date of the renewal, submit a groundwater monitoring plan to the Agriculture Section, Water Quality Division of the Texas [~~Natural Resource Conservation~~] Commission on Environmental Quality. At a minimum, the groundwater monitoring plan shall specify procedures to annually collect a groundwater sample from each well providing water for the facility, have each sample analyzed for chlorides and nitrates, and compare those values to background values for each well.

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

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Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-0348

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SUBCHAPTER C. MEAT PROCESSING

30 TAC §321.55

STATUTORY AUTHORITY

The amendment is proposed under TWC, §5.103, which provides the commission with the authority to adopt rules necessary to carry out its power and duties under this code and other laws of this state; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; and Texas Civil Statutes, Article 3271b, the Act, which authorizes the public practice of geoscience in the State of Texas.

The proposed amendment implements TWC, §5.103 and §5.105, and Texas Civil Statutes, Article 3271b, the Act.

§321.55. Protection of Groundwater.

Any wastewater holding facility must [~~shall~~] conform to the requirements for seepage control specified [~~enumerated~~] in paragraphs (1) and (2) of this section. Any [~~such~~] facility in an area underlain by clean sands, fractured limestone, or other strata with exceptionally high permeability may be subjected to additional seepage control requirements.

(1) (No change.)

(2) Permeability data. Permeability tests may be required to show that pond liners are adequately impermeable to prevent excessive seepage. The acceptable seepage rate from ponds must [~~shall~~] be less than 0.1 acre-foot of wastewater per surface acre of pond per year. The acceptable permeability coefficient must [~~shall~~] be equal to or less than 1.0×10^{-7} centimeters per second [~~cm/sec.~~] at one foot of head and with one foot of permeable material or the equivalent or better thereof. The permeability coefficient must [~~shall~~] be determined by constant head laboratory permeability [~~permeameter~~] tests. The registrant shall furnish certification, signed, sealed, and dated by a licensed professional engineer or licensed professional geoscientist, that the completed pond lining meets the appropriate criteria described in this section prior to using the facilities.

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

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SUBCHAPTER N. HANDLING OF WASTES FROM COMMERCIAL FACILITIES ENGAGED IN LIVESTOCK TRAILER CLEANING

30 TAC §321.252, §321.255

STATUTORY AUTHORITY

The amendments are proposed under TWC, §5.103, which provides the commission with the authority to adopt rules necessary to carry out its power and duties under this code and other laws of this state; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; and

Texas Civil Statutes, Article 3271b, the Act, which authorizes the public practice of geoscience in the State of Texas.

The proposed amendments implement TWC, §5.103 and §5.105, and Texas Civil Statutes, Article 3271b, the Act.

§321.252. Definitions.

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

(1) Agronomic rate[~~Rate~~]--The wastewater application rate designed:

(A) (No change.)

(B) to minimize the amount of nitrogen in the wastewater that passes below the root zone of the crop or vegetation grown on the land to the groundwater[~~ground water~~].

(2) Edwards Aquifer--That portion of an arcuate belt of porous, water-bearing limestones composed of the Comanche Peak, Edwards, and Georgetown formations trending from west to east to northeast through Kinney, Uvalde, Medina, Bexar, Comal, Hays, Travis, and Williamson Counties. (See Chapter 213 [~~313~~] of this title (relating to Edwards Aquifer).)

(3) Existing facilities [~~Facilities~~]--Commercial livestock trailer cleaning facilities in active operation prior to January 5, 1996.

(4) Facility wastewater [~~Wastewater~~]--Any livestock trailer cleaning wastewater collected for treatment and disposal at a commercial facility, in accordance with the requirements of this subchapter.

(5) Grab sample [~~Sample~~]--An individual sample collected in less than 15 minutes.

(6) Licensed professional geoscientist--A geoscientist who maintains a current license through the Texas Board of Professional Geoscientists in accordance with its requirements for professional practice.

(7) [~~(6)~~] Livestock trailer cleaning facilities [~~Trailer Cleaning Facilities~~]--Facilities which provide means to remove, contain, treat, and dispose of wastes from livestock trailers.

(8) [~~(7)~~] New facilities [~~Facilities~~]--Commercial livestock trailer cleaning facilities not defined in this section as existing facilities.

(9) [~~(8)~~] Publicly owned treatment works (POTW) [~~Owned Treatment Works or "POTW"~~]--A treatment works owned by a state or municipality, which includes any device or system used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature. This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment. This term also means the municipality which has jurisdiction over indirect discharges to and discharges from such a treatment works.

(10) [~~(9)~~] Recharge zone [~~Zone~~]--Generally, that area where the Edwards and associated limestones crop out in Kinney, Uvalde, Medina, Bexar, Comal, Hays, and Williamson Counties and the outcrops of other formations in proximity to the Edwards limestone, where faulting and fracturing may allow recharge of the surface waters to the Edwards Aquifer, and the area in Uvalde County within 500 feet of the Nueces, Dry Frio, Frio, and Sabinal Rivers downstream from the northern Uvalde County line to the recharge zone as otherwise delineated on official maps located in the offices of the commission and the Edwards Underground Water District. (See Chapter 213 [~~313~~] of this title (relating to Edwards Aquifer).)

(11) [~~(10)~~] Registrant--An individual or entity authorized by the executive director to dispose of wastewater from commercial facilities associated with the handling of waste from livestock trailer cleaning under the terms and requirements of this subchapter.

(12) [~~(11)~~] Storm water--Storm water runoff, snow melt runoff, surface runoff, and drainage.

§321.255. Requirements for Containment of Wastes and Pond(s).

(a) (No change.)

(b) All pond(s) used for the retention of treated or untreated wastewater shall be adequately lined to control seepage. The following methods of pond lining are acceptable.

(1) In-situ clay soils or placed and compacted clay soils meeting the following requirements:

(A) more [~~More~~] than 30% passing a Number [~~No.~~] 200 mesh sieve;

(B) liquid [~~Liquid~~] limit greater than 30%;

(C) plasticity [~~Plasticity~~] index greater than 15;

(D) a [~~A~~] minimum thickness of two feet;

(E) permeability [~~Permeability~~] equal to or less than 1 x 10^{-7} centimeter per second [~~cm/sec~~] (the requirements described in this subparagraph apply only to new ponds constructed or modified after the effective date of these regulations); and

(F) soil [~~Soil~~] compaction will be 95% standard proctor density at optimum moisture content (the requirements described in this subparagraph apply only to new ponds constructed or modified after the effective date of these regulations).

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

(c) The registrant shall furnish certification, signed, sealed, and dated by a Texas licensed professional engineer [~~Registered Professional Engineer~~] or licensed professional geoscientist, that the completed pond lining meets the appropriate criteria described in this section prior to using [~~utilization of~~] the facilities. The certification must [~~shall~~] be sent to the agency's Wastewater Permits Section (MC 148) and a copy to the appropriate agency regional office [~~Regional Office~~].

(d) (No change.)

(e) All waste containment structures or ponds must be constructed to comply with minimum distance requirements specified in §290.41 of this title (relating to Water Sources) and with the minimum distance requirements specified in 16 TAC §76.1000 [~~§338.43 of this title~~] (relating to Technical Requirements - Location and Standards of Completion for Wells [~~Location of Dewatering, Monitoring, Domestic, Industrial, Injection and Irrigation Wells~~]).

(f) (No change.)

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

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Stephanie Bergeron
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SUBCHAPTER O. DISCHARGES FROM AQUACULTURE PRODUCTION FACILITIES

30 TAC §321.271, §321.274

STATUTORY AUTHORITY

The amendments are proposed under TWC, §5.103, which provides the commission with the authority to adopt rules necessary to carry out its power and duties under this code and other laws of this state; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; and Texas Civil Statutes, Article 3271b, the Act, which authorizes the public practice of geoscience in the State of Texas.

The proposed amendments implement TWC, §5.103 and §5.105, and Texas Civil Statutes, Article 3271b, the Act.

§321.271. Definitions.

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

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

(3) Best management practices [~~Management Practices~~] (BMP)--Schedule of activities, maintenance procedures, and other management practices to prevent or reduce the pollution of water in the state. BMPs also include treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, sludge or waste disposal, drainage from raw material storage, or the abatement of nuisance odors and conditions. BMPs are those measures that are reasonable and necessary to achieve a performance standard that protects and maintains air and water quality standards as well as existing and potential uses of groundwater.

(4) Closed ponds--Ponds (or lakes) without a mechanism to manipulate water levels (except for emergency spillways and other similar nonmechanical [~~non-mechanical~~] structures) or those ponds that are operated such that drawdowns are not allowed. If the use of groundwater [~~ground-water~~] wells or the diversion of surface water results in dry-weather discharges, such ponds are not defined as closed ponds.

(5) Coastal zone--That area along the Texas coast of the Gulf of Mexico as depicted in this definition. The boundary includes areas within the following Texas counties: Cameron, Willacy, Kenedy, Kleberg, Nueces, San Patricio, Aransas, Refugio, Calhoun, Victoria, Jackson, Matagorda, Brazoria, Galveston, Harris, Chambers, Liberty, Jefferson, and Orange.
Figure: 30 TAC §321.271(5) (No change.)

(A)-(D) (No change.)

(E) The seaward boundary is delineated as: That line marking the seaward limit of Texas title and ownership under the Submerged Lands Act (43 United States Code (USC), §§1301 *et seq.*[~~§1301 et seq~~]).

(F) The boundary with the Republic of Mexico is delineated as: The boundary begins at a point three marine leagues into the Gulf of Mexico where the line marking the seaward limit of Texas title and ownership under the Submerged Lands Act (43 USC, §§1301 *et seq.* [~~§1301 et seq~~]) intersects the international boundary between the United States and the Republic of Mexico; thence it continues in a westerly direction along the international border with the Republic of Mexico until it meets the International Toll Bridge in Brownsville.

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

(10) Edwards Aquifer--As defined under §213.3 of this title (relating to Definitions [~~the Edwards Aquifer~~]), that portion of an arcuate belt of porous, water-bearing, predominantly carbonate rocks known as the Edwards and Associated Limestones in the Balcones Fault Zone trending from west to east to northeast in Kinney, Uvalde, Medina, Bexar, Comal, Hays, Travis, and Williamson Counties; and composed of the Salmon Peak Limestone, McKnight Formation, West Nueces Formation, Devil's River Limestone, Person Formation, Kainer Formation, Edwards Formation, and Georgetown Formation. The permeable aquifer units generally overlie the less-permeable Glen Rose Formation to the south, overlie the less-permeable Comanche Peak and Walnut Formations north of the Colorado River, and underlie the less-permeable Del Rio Clay regionally.

(11) Edwards Aquifer Recharge Zone--Generally, that area where the stratigraphic units constituting the Edwards Aquifer crop out, including the outcrops of other geologic formations in proximity to the Edwards Aquifer, where caves, sinkholes, faults, fractures, or other permeable features would create a potential for recharge of surface waters into the Edwards Aquifer. The recharge zone is identified as that area designated as such on official maps located in the offices of the Texas [~~Natural Resource Conservation~~] Commission on Environmental Quality and the appropriate underground water conservation district.

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

(14) Licensed professional geoscientist--A geoscientist who maintains a current license through the Texas Board of Professional Geoscientists in accordance with its requirements for professional practice.

(15) [~~(14)~~] mg/L [~~mg/l~~]--Abbreviation for milligrams per liter.

(16) [~~(15)~~] New facilities--Aquaculture production facilities not in active operation and that have not discharged wastewater during the calendar year previous to the effective date of this rule.

(17) [~~(16)~~] Nuisance--Any emission of air contaminant(s), including but not limited to odors, that is of sufficient concentration and duration so as to be injurious or potentially injurious to human health or welfare, animal life, vegetation, or property, or which interferes with the normal use and enjoyment of animal life, vegetation, or property.

(18) [~~(17)~~] Operator--Any person or entity in control of or having responsibility for the daily operation of an aquaculture production facility.

(19) [~~(18)~~] Pond bottom sludges--Accumulations of silt, soils, and other matter in the bottom of ponds.

(20) [~~(19)~~] Process controls--Structures, technologies, and practices used [~~utilized~~] to control the rate, volume, or quality of a discharge.

(21) [~~(20)~~] Production pond--Earthen ponds, raceways, fabricated tanks, or similar structures utilized in conjunction with the propagation or rearing of aquatic species.

(22) [~~(21)~~] Production--Weight of aquatic species as measured following harvest and prior to processing.

(23) [~~(22)~~] Publicly owned treatment works (POTW)--A treatment works owned and operated by a state or municipality which includes any device or systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature. This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment. This term also means the municipality that has jurisdiction over indirect discharges to, and discharges from, such a treatment works.

(24) [~~(23)~~] Registrant--An individual or entity authorized by the executive director to discharge wastewater from aquaculture facilities under the terms and requirements of a registration issued under [~~pursuant to~~] this subchapter.

(25) [~~(24)~~] Shrimp research facilities--Facilities whose primary purpose is the scientific research of shrimp aquaculture methods, disease control, waste control, wastewater treatment technology, and similar subjects.

(26) [~~(25)~~] Tailwater control--Diked or bermed area, pond, or other similar structure placed down-gradient of an irrigation site and designed to prevent off-site runoff or runoff to waters in the state.

(27) [~~(26)~~] Total residual chlorine--Chlorine concentration of the wastewater when discharged.

(28) [~~(27)~~] Warm water aquatic species--All aquatic species except those in the family Salmonidae (trout and salmon).

(29) [~~(28)~~] Wastewater management pond--Any structure used for containment, detainment, or treatment of wastewater, including settling ponds and canals used [~~utilized~~] to transport wastewater from the production pond to a settling pond or discharge point.

(30) [~~(29)~~] Waste management unit--Any structure used for containment, detainment, storage, processing, or treatment of solid wastes.

(31) [~~(30)~~] Wastewater--Water that is a result of the following operations:

(A) propagation, rearing, or transportation of aquatic species;

(B) washdown, cleaning, and flushing of fabricated tanks, raceways, ponds, and other containment structures;

(C) washdown and cleaning of equipment; or

(D) washing, treating, or any other direct contact with aquatic species.

(32) [~~(31)~~] 25-Year, 24-Hour rainfall event--The maximum rainfall event with a probable recurrence interval of once in 25 years (4% [~~four percent~~] probability of occurrence in a given year), with a duration of 24 hours, as defined by the National Weather Service in Technical Paper Number 40, "Rainfall Frequency Atlas of the United States," May 1961, and subsequent amendments, or equivalent information developed therefrom.

§321.274. Groundwater [~~Ground-Water~~] Protection.

(a) Wastewater management ponds and production ponds that contain water with a total dissolved solids content in excess of 2,000 milligrams per liter (mg/L) [~~mg/l~~] and all wastewater management ponds and production ponds that [~~which~~] are located within the Edwards Aquifer Recharge Zone, regardless of total dissolved solids content, must [~~shall~~] conform to the following requirements.

(1) All ponds whether constructed of earthen or other impervious material must [~~shall~~] be designed and constructed [~~so as~~] to prevent groundwater [~~ground-water~~] contamination.

(A) Soils used for pond lining shall be free from foreign material such as paper, brush, trees, and large rocks. All soil liners must be comprised of compacted material, at least 24 inches [~~24 inches~~] thick, compacted in lifts not greater than six inches thick and compacted to 95% of Standard Proctor Density. Soil liners must meet the following particle size gradation and Atterberg limits: 30% or more passing a Number [~~number~~] 200 mesh sieve; a liquid limit of 30% or greater; and a plasticity index of 15 or greater and a permeability less than, or equal to, 1×10^{-7} centimeters per second (cm/sec) [~~cm/sec~~].

(B) (No change.)

(C) In-situ liners at least 24 inches [~~24 inches~~] thick and meeting a permeability less than, or equal to, 1×10^{-7} cm/sec are acceptable alternatives to the requirements of subparagraphs (A) and (B) of this paragraph.

(D) (No change.)

(E) Signed, sealed, and dated certification [~~Certification~~] shall be furnished by a Texas licensed professional engineer or licensed professional geoscientist [~~Registered Professional Engineer~~] that the pond lining meets the appropriate criteria prior to using [~~utilization of~~] the facilities.

(2) (No change.)

(b) Production ponds and wastewater management ponds using [~~utilizing~~] water that [~~which~~] will not exceed a total dissolved solids concentration of 2,000 mg/L and[~~mg/l~~] are not located within the Edwards Aquifer Recharge Zone, and those ponds that [~~which~~] are not constructed in accordance with subsection (a) of this section must [~~shall~~] conform to the following requirements.

(1) All ponds whether constructed of earthen or other impervious materials must [~~shall~~] be designed and constructed [~~so as~~] to prevent groundwater [~~ground-water~~] contamination.

(A) Soils used for pond lining shall be free from foreign material such as paper, brush, trees, and large rocks. All soil liners must be of compacted material, at least 24 inches [~~24 inches~~] thick, compacted in lifts no great than six inches and with material that has a permeability less than, or equal to, 1×10^{-4} cm/sec.

(B) (No change.)

(C) In-situ liners at least 24 inches [~~24 inches~~] thick meeting a permeability less than, or equal to, 1×10^{-4} cm/sec are acceptable alternatives to the requirements of subparagraphs (A) and (B) of this paragraph.

(D) Signed, sealed, and dated certification [~~Certification~~] shall be furnished by a Texas licensed professional engineer or licensed professional geoscientist [~~Registered Professional Engineer~~] that the pond lining meets the appropriate criteria prior to using [~~utilization of~~] the facilities.

(2) (No change.)

(c) An alternative method of pond lining, which will meet the performance standards provided by this section, may be utilized with the prior written approval of the executive director. Suitable materials for alternate pond linings may include impervious materials such as flexible membrane linings, asphalt-sealed fabric liners, and bentonite sealants. Installation of bentonite sealants and flexible membrane linings shall be in accordance with a detailed plan which meets the conservation practice standard and specification code 521, "Pond Sealing or Lining," of the United States Department of Agriculture [~~USDA~~] Natural Resources Conservation Service.

(d) A specific exemption from the groundwater [~~ground-water~~] protection requirements of this section may be obtained from the executive director if, after the review of data submitted by the applicant, the executive director determines containment of the water in a production pond or wastewater management pond is not necessary, considering:

(1) soil and geologic data, and groundwater [~~ground-water~~] data, including its quality, uses, quantity, and yield; and

(2) adequate demonstration that impairment of groundwater [~~ground-water~~] for its actual or potential use will be prevented.

(e) Earthen ponds in existence on the date this subchapter becomes effective shall be exempt from the requirements of subsections (a), (b), or (c) of this section provided that:

(1) (No change.)

(2) operation of such ponds does not cause an adverse impact upon groundwater [~~ground-water~~].

(f) Whenever the discharge of waste or wastewater into groundwater [~~ground-water~~] occurs or is likely to occur which could cause degradation of groundwater [~~ground-water~~] quality, the executive director may require compliance with the provisions of subsections (a), (b), and (c) 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 May 2, 2003.

TRD-200302740
Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: June 15, 2003
For further information, please call: (512) 239-0348

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 3. TEXAS YOUTH COMMISSION

CHAPTER 85. ADMISSION AND PLACEMENT

SUBCHAPTER B. PLACEMENT PLANNING

37 TAC §85.25

The Texas Youth Commission (TYC) proposes an amendment to §85.25, concerning Minimum Length of Stay. The amendment to the section will update a reference due to the repeal of another rule. The requirements relating to length of stay for sentenced offenders will now be found in §85.33.

Don McCullough, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. McCullough also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the use of accurate and current rules among all TYC facilities. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted to DeAnna Lloyd, Policy Coordinator, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765, or e-mail to deanna.lloyd@tyc.state.tx.us.

The amendment is proposed under the Human Resources Code, §61.075, which provides the Texas Youth Commission with the authority to order a youth's confinement under conditions it believes best designed for the youth's welfare and the interests of the public.

The proposed amendment affects the Human Resource Code, §61.034.

§85.25. Minimum Length of Stay.

(a) (No change.)

(b) Applicability.

(1) Except where specifically named, requirements herein do not apply to sentenced offenders. See (GAP) §85.33 of this title (relating to Program Completion and Movement of Sentenced Offenders) [~~(GAP) §85.37 of this title (relating to Sentenced Offender Disposition)~~] for additional information. The Texas Youth Commission (TYC) complies with the orders of the committing court regarding sentences for youth sentenced to commitment to TYC.

(2) (No change.)

(c) - (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 May 2, 2003.

TRD-200302756
Steve Robinson
Executive Director
Texas Youth Commission
Earliest possible date of adoption: June 15, 2003
For further information, please call: (512) 424-6014

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37 TAC §85.29

The Texas Youth Commission (TYC) proposes an amendment to §85.29, concerning Program Completion and Movement of Other Than Sentenced Offenders. The amendment to the section will update a reference due to the repeal of another rule. The amendment will also specify that a youth will not be eligible for transition or release under this policy unless the youth has not committed a category 1 rule violation within 90 days of the transition/release review.

Don McCullough, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. McCullough also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the use of accurate and current rules among all TYC facilities. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted to DeAnna Lloyd, Policy Coordinator, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765, or e-mail to deanna.lloyd@tyc.state.tx.us.

The amendment is proposed under the Human Resources Code, §61.075, which provides the Texas Youth Commission with the authority to order a youth's confinement under conditions it believes best designed for the youth's welfare and the interests of the public.

The proposed amendment affects the Human Resource Code, §61.034.

§85.29. Program Completion and Movement of Other Than Sentenced Offenders.

(a) (No change.)

(b) Applicability.

(1) (No change.)

(2) This rule does not apply to sentenced offenders. See (GAP) §85.33 of this title (relating to Program Completion and Movement of Sentenced Offenders [~~and §85.37 of this title (relating to Sentenced Offender Disposition~~]).

(3) (No change.)

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

(e) Program Completion Criteria and Movement.

(1) Youth Whose Classifying Offense is Type A Violent Offender.

(A) Criteria. A type A violent offender youth will be eligible for transition/release to a placement of less than high restriction when the following criteria have been met:

(i) no category I rule violations within 90 days prior to the transition/release review; and

(ii) [~~(i)~~] completion of the Minimum Length of Stay (MLS); and

(iii) [~~(ii)~~] completion of phase 4 on all three components of resocialization.

(B) (No change.)

(2) Youth Whose Classifying Offense is Other Than Type A Violent Offender.

(A) Criteria. A youth other than a type A violent offender youth will be eligible for transition/release to a placement of less than high restriction when the following criteria have been met:

(i) no category I rule violations within 90 days prior to the transition/release review; and

(ii) [~~(i)~~] completion of minimum length of stay requirements:

(I) completion except three months for transition to medium restriction for youth assigned a classification MLS of less than 12 months and is low risk to fail to complete program requirements at medium restriction placement; or

(II) completion except six months for transition to medium restriction for youth assigned a classification MLS of 12 or more months and is low risk to fail to complete program requirements at medium restriction placement; or

(III) completion of the entire MLS for release to home level restriction; and

(iii) [~~(ii)~~] completion of phase requirements;

(I) phase 3 on all three components of resocialization for transition to medium restriction (for youth classified on or after January 1, 1996), (not applicable to youth in contract placements); and

(II) phase 4 on all three components of resocialization for release to home level restriction (for youth classified on or after January 1, 1996), (not applicable to youth in contract placements).

(B) (No change.)

(3) (No change.)

(f) - (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.

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Steve Robinson
Executive Director
Texas Youth Commission
Earliest possible date of adoption: June 15, 2003
For further information, please call: (512) 424-6014

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37 TAC §85.33

The Texas Youth Commission (TYC) proposes an amendment to §85.33, concerning Program Completion and Movement of Sentenced Offenders. The amendment to the section will update terminology, add criteria for military enlistment for certain youth on parole, and clarify the procedures for transfer from TYC to TDCJ.

Don McCullough, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. McCullough also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be efficient and timely release or transfer of eligible TYC youth. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted to DeAnna Lloyd, Policy Coordinator, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765, or e-mail to deanna.lloyd@tyc.state.tx.us.

The amendment is proposed under the Human Resources Code, §61.081 and §61.084, which provide the Texas Youth Commission with the authority to release under supervision youth in its custody and to terminate control pursuant to applicable state law.

The proposed amendment affects the Human Resource Code, §61.034.

§85.33. Program Completion and Movement of Sentenced Offenders.

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

(c) Explanation of Terms Used.

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

(5) Type [~~Category~~] 1 offenses--The offenses, specifically the commission, attempted commission, conspiracy to commit, solicitation, solicitation of a minor to commit, or engaging in organized criminal activity to commit: murder, capital murder, sexual assault, or aggravated sexual assault, the commission of which was on or after January 1, 1996, and for which a youth has been given a determinate sentence.

(6) Type [~~Category~~] 2 offenses--The offenses, except type [~~category~~] 1 offenses, committed on or after January 1, 1996, for which a youth has been given a determinate sentence.

(d) General Restrictions. Due to the nature of determinate sentences, some rules governing the classification, placement, release, transition, parole status, and disciplinary movement of sentenced offenders must be applied differently. Specifically:

(1) Classification. A youth classified at commitment as a sentenced offender shall retain a sentenced offender classification as long as the youth remains under the jurisdiction of TYC as a result of that commitment. The offense for which the youth received the determinate sentence will remain the youth's classifying offense until the sentence has expired even if the youth's TYC parole is revoked following a Level I hearing. See (GAP) §85.23 of this title (relating to Classification).

(2) (No change.)

(e) Program Completion Processes.

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

(4) Progress toward successful completion of criteria shall be evaluated by the Special Services Committee six (6) months after admission to TYC, [~~and~~] when the minimum period of confinement is complete, on or about the youth's 20th birthday, and at other times as requested by the Committee. The review will be documented on the Review of Progress Toward Successful Completion of Release Criteria for Sentenced Offenders form, CCF-155.

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

(5) (No change.)

(f) Youth sentenced to commitment in the Texas Youth Commission (TYC) for offenses committed on or after January 1, 1996.

(1) General Requirements.

(A) - (F) (No change.)

(G) Military Enlistment. A sentenced offender may be allowed to enlist in the military while on TYC Parole if certain conditions are met. A sentenced offender who is accepted for enlistment by the military will not be discharged from the determinate sentence until the sentence is complete. His/her TYC parole supervision will be conducted via phone calls, letters and through face-to-face contacts (when possible) until the sentence is completed. The following conditions must be met:

(i) The youth must be able to complete his/her sentence prior to his/her 21st birthday; and

(ii) The youth must have served at least 12 months consecutively on TYC parole prior to the enlistment date; and

(iii) The youth must have been assigned to the minimum level of parole supervision for at least three (3) months consecutively prior to the enlistment date; and

(iv) The youth must have completed the parole phase of resocialization prior to the enlistment date; and

(v) The youth must have no more than six (6) months left to serve on the sentence on the enlistment date; and

(vi) The youth must reside in Texas at the time of enlistment.

(2) Program Completion Criteria and Movement.

(A) Youth Whose Classifying Offense is a Type [~~Category~~] 1 Offense.

(i) Criteria. A type [~~category~~] 1 sentenced offender youth will be eligible for transition/release to a placement of less than high restriction when the following criteria have been met:

(I) no category I rule violations within 90 days prior to the transition/release review; and

(II) [~~(I)~~] completion of the minimum period of confinement, except as provided in clause (iii) of this subparagraph; and

(III) [~~(II)~~] completion of phase 4 [~~on all three components of~~] resocialization goals.

(ii) Procedure. The release of a qualified youth from a high restriction facility to either medium restriction or home level restriction may occur as follows:

(I) Staff must develop a release plan that identifies risk factors and addresses [~~is adequate to ensure~~] public safety and positive reintegration. Staff must also develop a release packet of information.

(II) - (X) (No change.)

(iii) (No change.)

(B) Youth Whose Classifying Offense is a Type [~~Category~~] 2 Offense.

(i) Criteria. A type [~~category~~] 2 sentenced offender youth will be eligible for transition/release to a placement of less than high restriction when the following criteria have been met:

(I) no category I rule violations within 90 days prior to the transition/release review; and

(II) [~~(I)~~] completion of the minimum period of confinement; and

(III) [~~(II)~~] completion of phase 4 resocialization goals. [~~requirements:~~]

[~~(-a-) phase 3 on all three components of resocialization for transition to medium restriction; or~~]

[~~(-b-) phase 4 on all three components of resocialization for release to home level restriction.~~]

(ii) Procedure. The release of a qualified youth from a high restriction facility to either medium restriction or home level restriction may occur as follows:

(I) Staff must develop a release plan that identifies risk factors and addresses [~~is adequate to ensure~~] public safety and positive reintegration. Staff must also develop a release packet of information.

(II) - (VII) (No change.)

(C) (No change.)

(3) Transfer From TYC High Restriction To TDCJ, Institution Division. Transfer from a high restriction facility to the Texas Department of Criminal Justice, Institutional Division (TDCJ-ID) may occur as described in this paragraph.

(A) (No change.)

(B) Criteria For Youth Whose Parole Has Been Revoked. A transfer shall occur if ordered by the juvenile court. TYC may request a juvenile court hearing for a youth whose parole has been revoked and the following criteria have been met:

(i) (No change.)

~~*[(ii)* youth's parole was revoked for:]~~

~~*[(I)* felony, Class A misdemeanor, or a high risk offense; or]~~

~~*[(II)* any other violation which resulted in placement in an intermediate sanction program at which the youth has failed to progress; and]~~

(ii) [~~(iii)~~] youth has not completed his/her sentence; and

(iii) [~~(iv)~~] youth's conduct indicates that the welfare of the community requires [~~require~~] the transfer.

(C) Criteria For Other Youth. A transfer shall occur if ordered by the juvenile court. TYC may request a juvenile court hearing for any other youth if the following criteria have been met:

(i) (No change.)

(ii) youth has spent at least six (6) months in a high restriction facility; and

(iii) (No change.)

(iv) youth has met at least one (1) of the following behavior criteria:

(I) (No change.)

(II) youth persistently has committed category I rule violations (on three (3) or more occasions); or

(III) youth has engaged in chronic disruption of program (five (5) security admissions or extensions in one (1) month or ten (10) in three (3) months); or

(IV) (No change.)

(v) - (vi) (No change.)

(D) (No change.)

(4) Transfer From TYC High or Medium Restriction To TDCJ, Parole Division. Transfer from a medium or high restriction facility to the TDCJ, Parole Division (TDCJ-PD) shall occur (court approval is not required) based on the youth's age as follows.

(A) Age 19 Factor.

(i) Criteria. A youth who reached age 19 while in a high restriction facility will be transferred to (TDCJ-PD) [~~TDCJ, Parole Division~~] when he becomes eligible for parole release. A youth who reached the age of 19 while in a high restriction facility and was released to TYC medium restriction will be maintained on institutional status pending the transfer to TDCJ-PD, but cannot be returned to a TYC high restriction facility without a Level I hearing.

(ii) Procedure.

(I) Staff must develop a release plan that identifies risk factors and addresses [~~is adequate to ensure~~] public safety and positive reintegration. The plan should reflect communication with the department of sentenced offender disposition [~~a TDCJ parole officer~~] regarding available resources. Staff must develop a release packet of information.

(II) - (IV) (No change.)

(V) The administrator of sentenced offender disposition will review the release packet and other supplemental information including Incident Reports, delinquent history, chronological entries, phase progression reports, and youth discipline/movement records to determine and ensure compliance with agency policy regarding release criteria and sufficiency of the release plan [~~and submit the packet requesting transfer of the offender to TDCJ, Parole Division. Within 90 days of receipt, TDCJ will process the information and forward to the Texas Board of Pardons and Paroles who will set the conditions for release. On receipt of the conditions, the administrator of sentenced offender disposition will insert the conditions into the release packet~~] and forward the packet to the juvenile corrections department in central office.

(VI) - (IX) (No change.)

(X) Upon notification of release approval, the TYC/TDCJ liaison will submit the packet requesting transfer of the offender to TDCJ-PD. Within 90 days of receipt, TDCJ will process the information and forward to the Texas Board of Pardons and Paroles who will set the conditions for release. On receipt of the conditions, the TYC/TDCJ liaison will notify the sending facility of the parole conditions and coordinate the release process.

(XI) [~~(X)~~] The final arrangements for the transfer are made by the department of sentenced offender disposition. The TYC/TDCJ liaison [~~administrator of the department of sentenced offender disposition~~] will contact TDCJ-PD and the superintendent/quality assurance administrator [~~TDCJ, Parole Division~~] to confirm the transfer date. TDCJ personnel will serve the Order of Transfer in person on that day, at which time the sentenced offender youth is discharged from the TYC and transferred to the TDCJ-PD [~~TDCJ, Parole Division~~].

(B) At Age 21.

(i) Criteria.

(I) At age 21, a youth who was sentenced for any offense other than capital murder and who has not completed the sentence will be transferred to TDCJ-PD [~~TDCJ, Parole Division~~].

(II) At age 21, a youth sentenced for capital murder, who has not completed the sentence and who has not been transferred to TDCJ or released under supervision (movement from high restriction) by juvenile court order will be transferred to:

(-a-) TDCJ-ID [~~TDCJ-Institution Division~~], if he has not completed the 10-year minimum confinement period under paragraph (f)(3) of this subsection; or

(-b-) TDCJ-PD [~~TDCJ-Parole Division~~], if he has completed the 10-year minimum confinement period.

(ii) Procedure.

(I) Prior to 90 days before the youth's 21st birthday, staff must develop a release [~~transition~~] plan that identifies risk factors and addresses public safety and positive reintegration. The plan should reflect communication with the department of sentenced offender disposition [~~a TDCJ parole officer~~] regarding available resources. Staff must develop a packet requesting transfer of the offender to TDCJ-PD.

(II) (No change.)

(III) The TYC/TDCJ liaison [~~administrator of sentenced offender disposition~~] will review the documentation and submit to TDCJ-PD [~~TDCJ, Parole Division~~]. Within 90 days of receipt, TDCJ will process the information and forward to the Texas

Board of Pardons and Paroles who will set the conditions for release. On receipt of the conditions the TYC/TDCJ liaison [~~administrator of sentenced offender disposition~~] will notify the superintendent and/or quality assurance administrator of the parole conditions and coordinate the release process.

(IV) The final arrangements for the transfer are made by the department of sentenced offender disposition. The TYC/TDCJ liaison [~~The superintendent/quality assurance administrator will contact the department of sentenced offender disposition who~~] will contact the TDCJ-PD and the parole supervisor [~~TDCJ, Parole Division~~] to confirm the transfer date (to occur on or about the youth's 21st birthday). TDCJ personnel will serve the Order of Transfer in person on that day, at which time the sentenced offender youth is discharged from TYC and transferred to TDCJ-PD [~~TDCJ, Parole Division~~].

(5) Transfer From TYC Home Parole to TDCJ, Parole Division.

(A) Criteria. Transfer from TYC parole at home level restriction to TDCJ-PD [~~TDCJ, Parole~~], shall occur (court approval not required) at age 21 if the youth has not completed his/her sentence.

(B) Procedure.

(i) Prior to 90 days before the youth's 21st birthday, the parole/quality assurance supervisor must develop a summary of TYC adjustment and recommendations for a continuing parole plan. The plan should reflect communication with the department of sentenced offender disposition [~~a TDCJ parole officer~~] regarding available resources. Staff must develop a packet requesting transfer of the offender to TDCJ-PD.

(ii) (No change.)

(iii) The TYC/TDCJ liaison [~~administrator of sentenced disposition~~] will review the documentation and submit to TDCJ-PD [~~TDCJ, Parole Division~~]. Within 90 days of receipt, TDCJ will process the information and forward to the Texas Board of Pardons and Paroles who will set the conditions for release. On receipt of the conditions the administrator of sentenced offender disposition will notify the parole/quality assurance supervisor [~~superintendent and/or quality assurance administrator~~] of the conditions and coordinate the transfer process.

(iv) The TYC/TDCJ liaison will contact the parole/quality assurance supervisor [~~The parole/quality assurance supervisor will contact the department of sentenced offender disposition~~] and TDCJ-PD [~~TDCJ, Parole Division~~] to confirm the transfer date (on or about the youth's 21st birthday), at which time the youth will be discharged from TYC and transferred to TDCJ-PD [~~TDCJ, Parole Division~~].

(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 May 2, 2003.

TRD-200302758
Steve Robinson
Executive Director
Texas Youth Commission
Earliest possible date of adoption: May 2, 2003
For further information, please call: (512) 424-6014

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37 TAC §85.37

(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 Youth Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Youth Commission (TYC) proposes the repeal of §85.37, concerning Sentenced Offender Disposition. The repeal of the section is necessary because the policy governing transition and release procedures for sentenced offenders is now included in §85.33, concerning Program Completion and Movement of Sentenced Offenders.

Don McCullough, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. McCullough also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be the efficient and timely transition and release of eligible youth. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed. No private real property rights are affected by adoption of this repeal.

Comments on the proposal may be submitted to DeAnna Lloyd, Policy Coordinator, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765, or e-mail to deanna.lloyd@tyc.state.tx.us.

The repeal is proposed under the Human Resources Code, §61.084, which provides the Texas Youth Commission with the authority to discharge eligible youth from its custody pursuant to applicable state law.

The proposed repeal affects the Human Resource Code, §61.034.

§85.37. Sentenced Offender Disposition.

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

Filed with the Office of the Secretary of State on May 2, 2003.

TRD-200302759
Steve Robinson
Executive Director
Texas Youth Commission
Earliest possible date of adoption: June 15, 2003
For further information, please call: (512) 424-6014

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CHAPTER 87. TREATMENT
SUBCHAPTER A. PROGRAM PLANNING

37 TAC §87.1

The Texas Youth Commission (TYC) proposes an amendment to §87.1, concerning Case Planning. The amendment to the section will delete a reference to another rule which is being repealed.

Don McCullough, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the

section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. McCullough also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the use of accurate and current rules among all TYC facilities. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted to DeAnna Lloyd, Policy Coordinator, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765, or e-mail to deanna.lloyd@tyc.state.tx.us.

The amendment is proposed under the Human Resources Code, §61.076, which provides the Texas Youth Commission with the authority to require youth in its care to participate in correctional training.

The proposed amendment affects the Human Resource Code, §61.034.

§87.1. Case Planning.

(a) (No change.)

[~~(b) Applicability. The Individualized Case Plan (ICP) for sentenced offenders is developed in accordance with guidelines of this rule as far as possible and within the restrictions of (GAP) §85.37 of this title (relating to Sentenced Offender Disposition).~~]

(b) [~~(c)~~] Definitions.

(1) Case Management System--The standardized process used throughout the Texas Youth Commission (TYC) [~~TYC~~] to ensure that each youth receives fair and appropriate attention and that each youth experiences treatment based on individually identified needs and strengths.

(2) Individual Case Plan (ICP)--The individualized plan for each youth that assesses a youth's needs and strengths, identifies objectives with specific strategies to address both needs and strengths, and is reviewed and adjusted as the youth progresses or as new needs are identified. A document by the same title is used to record and maintain the plan.

(3) Primary Service Worker (PSW)--The generic title given to persons at each TYC program who are assigned the primary responsibility for the case work for individual youth and for the administration of the case management system.

(c) [~~(d)~~] An ICP will be developed with and for each youth by the PSW [~~primary service worker~~]. The plan will be periodically updated. The plan will be developed in accordance with the resocialization program and identified needs and must specify measurable objectives, expected outcomes and a means to evaluate progress. See (GAP) §87.3 of this title (relating to Resocialization Program).

(d) [~~(e)~~] The ICP will be initiated during the assessment process.

(e) [~~(f)~~] the ICP development shall include long and short-term objectives and shall be developed with the youth and family when possible.

(f) [~~(g)~~] Objectives must be written so that they may be achieved within a period of time no longer than the required minimum length of stay or the expected length of stay at each program.

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

Filed with the Office of the Secretary of State on May 2, 2003.

TRD-200302760
Steve Robinson
Executive Director
Texas Youth Commission
Earliest possible date of adoption: June 15, 2003
For further information, please call: (512) 424-6014

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CHAPTER 95. YOUTH DISCIPLINE
SUBCHAPTER A. DISCIPLINARY PRACTICES

37 TAC §95.7

The Texas Youth Commission (TYC) proposes an amendment to §95.7, concerning Reclassification Consequence. The amendment to the section will delete a reference to another rule which is being repealed.

Don McCullough, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. McCullough also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the use of accurate and current rules among all TYC facilities. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted to DeAnna Lloyd, Policy Coordinator, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765, or email to deanna.lloyd@tyc.state.tx.us.

The amendment is proposed under the Human Resources Code, §61.075, which provides the Texas Youth Commission with the authority to order a youth's confinement under conditions it believes best designed for the youth's welfare and the interests of the public.

The proposed rule affects the Human Resource Code, §61.034.

§95.7. Reclassification Consequence.

(a) (No change.)

(b) Applicability.

(1) (No change.)

(2) Additional procedures and restrictions are applied prior to any movement of a sentenced offender youth. See (GAP) §85.33 of this title (relating to Program Completion and Movement of Sentenced Offenders). [~~Also see (GAP) §85.37 of this title (relating to Sentenced Offender Disposition).~~]

(c) - (f) (No change.)

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

Filed with the Office of the Secretary of State on May 2, 2003.

TRD-200302763
Steve Robinson
Executive Director
Texas Youth Commission
Earliest possible date of adoption: June 15, 2003
For further information, please call: (512) 424-6014

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37 TAC §95.9

The Texas Youth Commission (TYC) proposes an amendment to §95.9, concerning Parole Revocation Consequence. The amendment to the section will update a reference due to the repeal of another rule.

Don McCullough, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. McCullough also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the use of accurate and current rules among all TYC facilities. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted to DeAnna Lloyd, Policy Coordinator, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765, or email to deanna.lloyd@tyc.state.tx.us.

The amendment is proposed under the Human Resources Code, §61.075, which provides the Texas Youth Commission with the authority to order a youth's confinement under conditions it believes best designed for the youth's welfare and the interests of the public.

The proposed rule affects the Human Resource Code, §61.034.

§95.9. Parole Revocation Consequence.

(a) (No change.)

(b) Applicability.

(1) (No change.)

(2) Additional procedures and restrictions are applied prior to any movement of a sentenced offender youth. See (GAP) §85.33 of this title (relating to Program Completion and Movement of Sentenced Offenders). [~~(GAP) §85.29 of this title (relating to Program Completion and Movement). Also see (GAP) §85.37 of this title (relating to Sentenced Offender Disposition).~~]

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

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

Filed with the Office of the Secretary of State on May 2, 2003.

TRD-200302765
Steve Robinson
Executive Director
Texas Youth Commission
Earliest possible date of adoption: June 15, 2003
For further information, please call: (512) 424-6014

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37 TAC §95.11

The Texas Youth Commission (TYC) proposes an amendment to §95.11, concerning Disciplinary Transfer/Assigned Minimum Length of Stay/Demotion of Phase Consequence. The amendment to the section will update a reference due to the repeal of another rule. Procedures for sentenced offenders in addition to those established in this rule can now be found in §85.33.

Don McCullough, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. McCullough also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the use of accurate and current rules among all TYC facilities. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted to DeAnna Lloyd, Policy Coordinator, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765, or email to deanna.lloyd@tyc.state.tx.us.

The amendment is proposed under the Human Resources Code, §61.075, which provides the Texas Youth Commission with the authority to order a youth's confinement under conditions it believes best designed for the youth's welfare and the interests of the public.

The proposed rule affects the Human Resource Code, §61.034.

§95.11. Disciplinary Transfer/Assigned Minimum Length of Stay/Demotion of Phase Consequence.

(a) (No change.)

(b) Applicability.

(1) (No change.)

(2) Additional procedures and restrictions are applied prior to any movement of a sentenced offender youth. See (GAP) §85.33 of this title (relating to Program Completion and Movement of Sentenced Offenders) [~~(GAP) §85.37 of this title (relating to Sentenced Offender Disposition)~~].

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

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

Filed with the Office of the Secretary of State on May 2, 2003.

TRD-200302761

Steve Robinson
Executive Director
Texas Youth Commission
Earliest possible date of adoption: June 15, 2003
For further information, please call: (512) 424-6014

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CHAPTER 97. SECURITY AND CONTROL
SUBCHAPTER A. SECURITY AND CONTROL

37 TAC §97.23

The Texas Youth Commission (TYC) proposes an amendment to §97.23, concerning Use of Force. The amendment to the section will establish that physical restraint may be used to protect a youth from imminent self-harm, including the removal of or access to items or clothing which could potentially be used for self-harm. Protective clothing will be issued to such youth.

Don McCullough, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. McCullough also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the safety and protection of TYC youth who display overt suicidal behavior. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted to DeAnna Lloyd, Policy Coordinator, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765, or email to deanna.lloyd@tyc.state.tx.us.

The amendment is proposed under the Human Resources Code, §61.075, which provides the Texas Youth Commission with the authority to confine a youth under conditions it believes are best designed for the youth's welfare and the interests of the public.

The proposed rule affects the Human Resource Code, §61.034.

§97.23. Use of Force.

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

(e) Criteria for Use. Force may be used only as a last resort and only as a control measure to ensure the safety and welfare of youth, staff, or the public. The use of force (to restrain or compel movement) shall be limited to instances of:

(1) protection of the youth from imminent self-harm; (Including the removal of or access to items or clothing that could potentially be used for self-harm, the issuance of protective clothing, or the administration of medical treatment in a situation that is life threatening and/or youth is engaging in imminently serious self-injurious behavior);

(2) self-protection of staff from imminent harm;

(3) - (7) (No change.)

(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 May 5, 2003.

TRD-200302772
Steve Robinson
Executive Director
Texas Youth Commission
Earliest possible date of adoption: June 15, 2003
For further information, please call: (512) 424-6014

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the the rule (Government Code, §2001.036). If a rule is adopted without change to the text as published in the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 8. TEXAS JUDICIAL COUNCIL

CHAPTER 173. INDIGENT DEFENSE GRANTS

SUBCHAPTER D. ADMINISTERING GRANTS

1 TAC §173.309

The Task Force on Indigent Defense (Task Force) is a permanent Standing Committee of the Texas Judicial Council. The Task Force adopts an amendment to §173.309, concerning permitting the Task Force at its discretion to authorize extensions to grants awarded under the indigent defense grant program, rather than only at the request of a grantee county in accordance with §173.307(c)(3). The amended section is adopted without changes to the proposed text as published in the February 7, 2003, issue of the *Texas Register* (28 TexReg 1033) and will not be republished.

Chapter 173 establishes the guidelines for the administration of a new grant program for counties to improve indigent defense services. The amended section is adopted to give the Task Force flexibility to extend grant periods to ensure that counties have sufficient time to expend grant funding previously awarded.

No comments were received regarding adoption of the amended section.

The amended section is adopted under the authority of Texas Government Code §71.062 (Technical Support; Grants), concerning the grant and aid program, that provides the Task Force authority to provide grants to assist counties to improve indigent defense practices in the state and to promote compliance with state law concerning indigent defense practices. The Task Force interprets Texas Government Code §71.062 to require the Task Force to adopt by rule the guidelines for administering the grant program.

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

Filed with the Office of the Secretary of State on April 28, 2003.

TRD-200302676
Wesley Shackelford
Special Counsel to Task Force on Indigent Defense
Texas Judicial Council
Effective date: May 18, 2003
Proposal publication date: February 7, 2003
For further information, please call: (512) 936-6994

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PART 10. DEPARTMENT OF INFORMATION RESOURCES

CHAPTER 201. PLANNING AND MANAGEMENT OF INFORMATION RESOURCES TECHNOLOGIES

1 TAC §201.5

The Department of Information Resources (department) adopts new §201.5, concerning department vehicle use without changes to the proposed text as published in the November 30, 2002, issue of the *Texas Register* (27 TexReg 10521) and will not be republished.

The new rule is required by Texas Government Code Section 2171.1045, for agencies that are responsible for multiple vehicles. The cited Government Code section requires agencies to have rules, which comply with the State Vehicle Management Plan, promulgated by the Texas Building and Procurement Commission. The adopted rule complies with these directives.

No comments were received in response to the proposed rule.

The rule is adopted pursuant to Texas Government Code §2171.1045, which requires state agencies to adopt rules relating to the assignment and use of the agency's vehicles.

Texas Government Code §2054.052(a) and §2171.1045 are affected by the new rule.

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

Filed with the Office of the Secretary of State on May 1, 2003.

TRD-200302713
Renee Mauzy
General Counsel
Department of Information Resources
Effective date: May 21, 2003
Proposal publication date: November 30, 2002
For further information, please call: (512) 475-2153

♦ ♦ ♦

1 TAC §201.15

The Department of Information Resources (department) adopts amended §201.15, relating to charges for copies of public records without changes to the proposed text as published in the February 14, 2003, issue of the *Texas Register* (28 TexReg 1301) and will not be republished.

The amendment to the rule corrects several references, deletes the definitions and the summary of charges that were within the rule, provides that the department will follow the public records charges rules of the Texas Building and Procurement Commission, as they may be amended from time to time, and provides that the department may waive charging for copies pursuant to Texas Government Code §552.267.

No comments were received in response to the proposed amendment.

The amendment is adopted in accordance with Texas Government Code §2054.052(a), which authorizes the department to adopt rules necessary to implement its responsibilities under the Information Resources Management Act and Texas Government Code, Chapter 552, Subchapter F, relating to charges for providing copies of public information.

The amended rule affects Texas Government Code, Chapter 552, Subchapter F.

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

Filed with the Office of the Secretary of State on May 1, 2003.

TRD-200302714
Renee Mauzy
General Counsel
Department of Information Resources
Effective date: May 21, 2003
Proposal publication date: February 14, 2003
For further information, please call: (512) 475-2153

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CHAPTER 203. MANAGEMENT OF ELECTRONIC TRANSACTIONS AND SIGNED RECORDS

1 TAC §203.1, §203.2

The Department of Information Resources (department) adopts new §203.1, relating to definitions and new §203.2, relating to guidelines for the management of electronic transactions and signed records under the Uniform Electronic Transactions Act. Section 203.2 is adopted with changes to the text as published in the November 8, 2002, issue of the *Texas Register* (27 TexReg 10522). The changes are in subsections (b) and (c). Section 203.1 is adopted without changes and will not be republished.

Section 203.1 provides definitions applicable to the chapter. Section 203.2 adopts the Guidelines for the Management of Electronic Transactions and Signed Records as a rule of the department that must be followed by state agencies that send and accept electronic records and electronic signatures or otherwise create, generate, communicate, store, process, use and rely upon electronic records and electronic signatures. The Guidelines are available at http://www.dir.state.tx.us/standards/UETA_Guideline.htm. The department is changing §203.2, subsection (b) and (c) from what was proposed last November, by striking "as they may be amended from time to time by the department." The change clarifies that the department will not change the Guidelines without following the rulemaking process established by the Administrative Procedure Act.

The department received comments from the Texas Department of Transportation. The comments were generally supportive of the proposed rules, however, two issues were identified. The Texas Department of Transportation requested that the department repeal or modify its existing rule relating to digital signatures, 1 T.A.C. §201.14. The department disagrees with the recommendation. Department staff believes that the two rules are not inconsistent and contain distinct requirements. While the digital signature rule is not being amended or repealed as part of the rulemaking for 1 T.A.C. §203.1 and §203.2, the department anticipates proposing an amendment to §201.14 later to consolidate the digital signature rule into the management of electronic transactions and signed records rules. Simultaneously, the department would propose the repeal of the digital signature rule.

The Texas Department of Transportation's second comment concerned its disagreement with the statement in the preamble to the proposed rules that the rules would not affect the cost to local governments. We disagree with the Texas Department of Transportation's opinion that these rules have a fiscal impact on local governments. The department has authority to implement rules relating to state agencies, but it does not have authority to adopt rules applicable to local governments. Local governments may choose to follow the rules, but they are not required to. Therefore, there is not a fiscal cost to local governments.

The new rules are adopted in accordance with Texas Government Code §2054.052(a), which authorizes the department to adopt rules necessary to implement its responsibilities under the Information Resources Management Act and Texas Business and Commerce Code, §43.017, which provides that the department may adopt rules applicable to state agencies under the Uniform Electronic Transactions Act.

The new rules affect Texas Business and Commerce Code, §43.017.

§203.2. Guidelines for the Management of Electronic Transactions and Signed Records.

(a) General. The Guidelines for the Management of Electronic Transactions and Signed Records, which are available at http://www.dir.state.tx.us/standards/UETA_Guideline.htm were adopted by the department based on the work and recommendations of the Uniform Electronic Transactions Act Task Force. The Uniform Electronic Transactions Act Task Force was jointly created by the department and the Texas State Library and Archives Commission to advise the agencies on the rules each might adopt pursuant to Texas Business and Commerce Code §43.017.

(b) Applicability. The Guidelines for the Management of Electronic Transactions and Signed Records are applicable to state agencies that send and accept electronic records and electronic signatures to and from other persons and to state agencies that otherwise create, generate, communicate, store, process, use, and rely upon electronic records and electronic signatures.

(c) Contents. The Guidelines for the Management of Electronic Transactions and Signed Records describe electronic records, electronic signatures and trustworthy records; describe common types of risks that pertain to electronic transactions and signed records, describe the need for, and how to conduct risk assessments, as well as how to conduct a cost/benefit analysis to determine if the electronic transaction is practical. The Guidelines also discuss risk mitigation and security relating to electronic records and signatures; and records management issues, including life cycle vs. system development life cycle, preservation of electronically signed records, and the role of records managers and auditors in the implementation of a process to accept

electronically signed documents. The Guidelines include appendices that discuss current electronic signature technologies, contain a checklist for evaluating electronic signatures, discuss the technical considerations of various electronic signature alternatives and briefly comment on the International Organization for Standardization nonrepudiation model.

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

Filed with the Office of the Secretary of State on May 1, 2003.

TRD-200302717
Renee Mauzy
General Counsel
Department of Information Resources
Effective date: May 21, 2003
Proposal publication date: November 8, 2002
For further information, please call: (512) 475-2153

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TITLE 16. ECONOMIC REGULATION

PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 41. AUDITING

SUBCHAPTER C. RECORDS AND REPORTS BY LICENSEES AND PERMITTEES

16 TAC §41.52

The Texas Alcoholic Beverage Commission adopts a new subsection (g) to §41.52 with changes to the text as published in the January 31, 2003, issue of the *Texas Register* (28 TexReg 817). The change to the rule as adopted as compared to the rule as originally published is the addition of the final sentence to the rule requiring private club operators to obtain written consent from club members or prospective members when accessing the electronically readable information on their driver's licenses.

Like all alcoholic beverage providers, private club permittees violate the law if they furnish alcoholic beverages to minors. Also, private clubs are authorized to serve alcoholic beverages to members and their guests, but violate the law if they sell an alcoholic beverage to anyone. Because a significant number of private clubs are in dry areas where the citizens have not voted to authorize the sale of alcoholic beverages, sales by private clubs are often a matter of constitutional significance under Article XVI §20 of the Texas Constitution.

In light of this significance the state takes great interest in, and closely regulates, matters related to a club's membership. For example, clubs must insure that a certain number of their members reside in the county in which the club is located, or in adjacent counties. *Alcoholic Beverage Code §32.03(e).* Following this interest, the commission requires clubs to keep and maintain accurate and careful membership records reflecting, among other things, the "full name [and the] current complete address of each member." *16 TAC §41.52(c)(1)(D).* Further, as a condition of the commission's required approval for maintaining membership records through a machine system, clubs are required monthly to produce a complete membership list. Of course, if the records maintained by a club are inaccurate, the club is subject to administrative sanctions. *16 TAC §41.52(f)(2).*

In sum, both the state and private club permittees have a significant interest in insuring that club operators have current and accurate information relating to a member or prospective member's age, identity and address. A primary means of obtaining this information is through reference to identity cards and driver's licenses issued by the Texas Department of Public Safety. Further, a primary means of verifying the accuracy of information so obtained is by accessing, or scanning, the data electronically encoded on the magnetic strip of licenses and identity cards.

It was to allow such scanning by alcoholic beverage permittees that §109.61 of the Alcoholic Beverage Code was adopted, authorizing scanning "for the purpose of complying with this code or a rule of the commission, including for the purpose of preventing the person from committing an offense under [the] code." Accordingly, this rule is adopted to authorize private club permittees to scan the electronically encoded information on driver's licenses and identity cards for the purpose of verifying the accuracy of information they are required by §41.52 to collect and maintain.

Despite the importance of this activity, the commission recognizes that accessing the personal data contained on licenses and identity cards implicates individual privacy interests. Accordingly, the commission resolved to require private club permittees to obtain written consent from consumers to access license and identity card information, and to maintain records of that consent so the commission could insure compliance with that requirement. Through this mechanism, consumers could decide, through individual consent, whether to authorize access to their personal data.

Although no groups or associations commented on this rule, approximately 140 private club permittees commented in favor of the rule. The permittees were in favor of the rule because it allows them to collect and verify necessary information with efficiency to themselves and convenience to members and prospective members.

Two commenters were opposed to the rule, at least in part, because in their view the rule would allow private club permittees to violate the provisions of the federal Driver's Privacy Protection Act (DPPA). *18 U.S.C. §2721 et seq.* The commission disagreed with this view.

The DPPA regulates the publication and use of information appearing on licenses and identity cards by the Texas Department of Public Safety and private parties who have purchased the database of license and identity card information from the DPS. *18 U.S.C. §2721(a).* It does not regulate the exchange of such information between license or card holders and other persons who have not purchased the DPS database. *Attorney General Opinions JC-0423 (2001), p. 4; JC-0499 (2002), p. 7. O'Brien v. Quad Six Inc. 219 F. Supp. 933 (N.D. Ill., 2002).*

In some circumstances private clubs may compare license and card information they have scanned with the DPS database through association with a purchaser of that database. Such comparison is acceptable under the DPPA if any of a number of exceptions apply. *18 U.S.C. §2721(b).*

The commission concluded that, by taking all reasonable steps to insure the accuracy of their membership records and the age of their patrons, private club permittees are acting on behalf of

this agency in carrying out its functions of assuring that alcoholic beverages are not provided to minors or sold by clubs to non-members. This is an acceptable use of license and card information under 18 U.S.C. §2721(b)(1).

Further, by scanning licenses and cards and comparing the scanned data with the DPS database, private club permittees are acting to verify the information obtained and, if incorrect, to obtain the correct data so as to prevent fraud arising from the use of false or inaccurate licenses and cards. This is an acceptable use of license and card information under 18 U.S.C. §2721(b)(3).

Finally, information from the DPS database may lawfully be disclosed for use "by any requestor if the requestor demonstrates that it has obtained the written consent of the individual to whom the information pertains." *18 U.S.C. §2721(b)(13).* By complying with the last sentence of the rule adopted here, private club permittees place their actions within this exception.

This rule is adopted under the authority of §5.31 of the Alcoholic Beverage Code, which provides the commission with the authority to prescribe and publish rules necessary to carry out the provisions of the code.

Cross Reference: Alcoholic Beverage Code §32.03 and §109.61 are affected by this rule.

§41.52. Private Clubs--In General.

(a) Scope. This section does not apply to temporary members or to hotel patrons, as described in the Alcoholic Beverage Code, §§32.09, 32.10, and 32.11. In addition, subsection (c)(1)(G) and (H) and subsection (e) of this section do not apply to fraternal organizations or to veterans' organizations.

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

(1) Club--A private club.

(2) Member and membership--A member of and membership in a private club.

(c) Membership and related topics.

(1) No private club shall be qualified to hold a private club registration permit unless it shall:

(A) have 50 or more members at all times;

(B) have a membership committee composed of three or more members of the club and vested with authority by charter, by-law or regulation to approve or reject membership applications and terminate existing memberships. The governing body of a club, if qualified under this provision, may be the membership committee, and when functioning as such shall be subject to and governed by all provisions herein relating to the membership committee. When considering a membership application or termination of membership, the membership committee shall keep written minutes showing the meeting date, the names of all committee members present, the name of any person admitted to membership, and the name of any person whose membership was terminated. No minutes shall be required of any discussion or action regarding a membership application which is denied;

(C) have, other than charter members, no members except those approved by at least three members of the membership committee at a meeting of such a committee;

(D) keep a well bound book in which is shown the following about each member: The full name of the member, his initial membership number which shall be issued in sequence, the current complete address of such member, the date such member was admitted to membership, and the date such member was removed from membership. Provided that when a member has been removed from membership, his membership number may be reassigned to another member. Provided further that additional well bound books may be used if necessary to record the information required by this paragraph, but all such books shall be kept permanently by the club. Provided further that a club using a business machine to maintain its membership records shall not be required to keep a well bound book if such machine provides such information as shall be required by the administrator, and is approved in writing by the administrator;

(E) keep all books, records and minutes required herein on the premises of such club, and make them available to any representative of the commission upon reasonable notice;

(F) maintain in force a bond executed by: the corporation, as principal, if an incorporated club; or, an officer of the club, as principal, if an unincorporated club. Such bond shall be executed by a surety company duly authorized and qualified to do business in this state, as surety, in an amount required by rule of the commission payable to the State of Texas conditioned that all fees and taxes owned by such club to the State of Texas shall be paid. Such bond shall be in a form approved by the administrator and the attorney general of Texas;

(G) if operating under the locker system, at all times keep all liquor owned by each member under the locker system in a locker located on the premises and rented only to such member, except when the member, one of his family or his guest is present on the premises and using such liquor; and

(H) if operating under the pool system, keep a well bound book in which is recorded the following about each member of the pool: His name and membership number, the date and amount of each liquor pool assessment, and the date of payment of the assessment. The information required to be kept in a book by this paragraph may be kept in the book required in subparagraph (D) of this paragraph. Provided that a club using a business machine to bill each member of its liquor pool shall not be required to have such well bound book if such machine provides such information as shall be required by the administrator and is approved by the administrator.

(2) No membership shall be terminated except by action of the membership committee or by written resignation of the member. Resignation of any member shall be recorded immediately in the minute book of the membership committee and in the records required by paragraph (1)(D) of this subsection.

(3) The administrator may, after notice and hearing, refuse to issue a private club registration permit if he finds that the applicant has failed to comply with any requirement set forth in this subsection.

(4) After notice and hearing the administrator may suspend for a period not exceeding 60 days, or cancel, a private club registration permit if he finds that the holder of the permit, its governing body, or any of its committees, officers, directors, members, agents, servants, or employees has failed to comply with any requirement set forth in this section.

(d) Who may consume. As provided in the Alcoholic Beverage Code, §32.01, alcoholic beverages owned by members of a private club may be served only to and consumed only by a member, a member's family, or their guests.

(1) The word "member" shall mean a person who has been admitted to membership as provided in subsection (c) of this section.

(2) The term "member's family" shall mean the spouse, parents, and adult children of the member.

(3) The word "guest" shall mean an individual who is personally known by the member or one of the member's family and who is admitted to the club premises by personal introduction of, or in the physical company of, the member or one of the member's family.

(e) Food service. A private club shall provide regular food service adequate for its members and their guests. The term "food service adequate for its members and their guests" shall mean that complete meals shall be available on the club premises for service to members, their families, and guests.

(f) Suspension and cancellation. After notice and hearing the administrator may suspend for a period not exceeding 60 days, or cancel, a private club registration permit if he finds that the club or any of its members, agents, servants, or employees has:

(1) served, consumed or permitted another person to consume an alcoholic beverage on the premises of the club at any time when the private club registration permit of such club is suspended by an order of the administrator; and

(2) made a false statement or a misrepresentation in any book, record, minutes or report, or other written matter required to be kept or reported by this section or by any provision of the Alcoholic Beverage Code.

(g) Permittees may access electronically readable information on a driver's license, commercial driver's license or identification certificate for the purpose of verifying the accuracy of the records required by this rule. Information so accessed may not be retained longer than is reasonably necessary to insure verification. The information may not be marketed in any manner. Written consent must be obtained from the club member or prospective member when accessing electronically readable license information and proof of such consent must be maintained with the permittee's membership records.

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

Filed with the Office of the Secretary of State on May 2, 2003.

TRD-200302754
Jeannene Fox
Assistant Administrator
Texas Alcoholic Beverage Commission
Effective date: May 22, 2003
Proposal publication date: January 31, 2003
For further information, please call: (512) 206-3204

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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 17. CAMPUS PLANNING

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §17.4

The Texas Higher Education Coordinating Board adopts amendments to §17.4(b)(7), §17.4(d)(2), §17.4(d)(6), and §17.4(h)(2) concerning approval of projects without changes to the proposed text as published in the February 28, 2003 issue of the *Texas Register* (28 TexReg 1776). Specifically, these amendments would permit the Commissioner to approve or evaluate new construction projects that add E&G space and increase the thresholds for Committee and Board approval or evaluation of projects that add E&G space.

The following comment was received regarding the amendments to the rules:

Comment: The University of Texas System stated that they agreed with the intent and fully support these changes. They felt that these changes can potentially streamline the approval process.

Response: Because this comment was favorable, there were no changes made.

The adopted amendments are proposed under the Texas Education Code, §61.027, which provides the Coordinating Board with the authority to adopt rules. These amendments are also proposed under Texas Education Code, §61.0572 which provides the Coordinating Board the authority to develop and publish standards, rules, and regulations to guide the institutions and agencies of higher education in making application for the approval of new construction and major repair and rehabilitation of all buildings and facilities regardless of proposed use.

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

Filed with the Office of the Secretary of State on May 2, 2003.

TRD-200302749
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Effective date: May 22, 2003
Proposal publication date: February 28, 2003
For further information, please call: (512) 427-6162

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19 TAC §17.5

The Texas Higher Education Coordinating Board adopts an amendment to §17.5(b)(2) concerning submission of projects without changes to the proposed text as published in the February 28, 2003 issue of the *Texas Register* (28 TexReg 1777). Specifically, this amendment would decrease the number of days that projects must be submitted to the Coordinating Board at the regularly scheduled Board meeting.

The following comment was received regarding the amendments:

Comment: The University of Texas System commented that changing this deadline from 60 days prior to the meeting to 70 days may be problematic for the System institutions because the cycle of regent meetings for project approval prior to submission to the Coordinating Board does not coincide with Committee on Campus Planning or Coordinating Board meetings. Alternatively, a joint committee of institution and Committee on Campus Planning members could develop a streamlined application process to reduce the administrative burden on the staff and leave the submission deadline unchanged.

Response: Staff is committed to working with the institutions to receive preliminary project applications pending regent's review and approval. The additional ten days would enable Board staff to provide greater efficiency and accuracy for preparing Committee on Campus Planning agenda items. The application is currently under review, but it would not change the need for the increased time to process the increasing number of applications received. No changes were made as a result of this comment.

The amendment is adopted under the Texas Education Code, §61.027, which provides the Coordinating Board with the authority to adopt rules. This amendment is also adopted under Texas Education Code, §61.0572 which provides the Coordinating Board the authority to develop and publish standards, rules, and regulations to guide the institutions and agencies of higher education in making application for the approval of new construction and major repair and rehabilitation of all buildings and facilities regardless of proposed use.

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

Filed with the Office of the Secretary of State on May 2, 2003.

TRD-200302750
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Effective date: May 22, 2003
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For further information, please call: (512) 427-6162

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SUBCHAPTER B. NEW CONSTRUCTION AND REPAIR AND REHABILITATION PROJECTS

19 TAC §17.10

The Texas Higher Education Coordinating Board adopts amendments to §17.10(c) and §17.10(d) concerning thresholds without changes to the proposed text as published in the February 28, 2003 issue of the *Texas Register* (28 TexReg 1777). Specifically, this amendment would correct threshold language to be consistent with thresholds established in 17.4(a).

The following comment was received regarding the amendments.

Comment: Texas Tech University System commented that the use of the word "remodeled" in this paragraph may cause confusion and it is recommended that the phrase "repaired and rehabilitated buildings" be used in both instances to avoid confusion.

Response: The language in this rule is statutory, therefore no changes were made.

The amendment is adopted under the Texas Education Code, §61.027, which provides the Coordinating Board with the authority to adopt rules. This amendment is also adopted under Texas Education Code, §61.0572 which provides the Coordinating Board the authority to develop and publish standards, rules, and regulations to guide the institutions and agencies of higher education in making application for the approval of new construction and major repair and rehabilitation of all buildings and facilities regardless of proposed use.

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

Filed with the Office of the Secretary of State on May 2, 2003.

TRD-200302751
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Effective date: May 22, 2003
Proposal publication date: February 28, 2003
For further information, please call: (512) 427-6162

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SUBCHAPTER E. INSTITUTIONAL REPORTING

19 TAC §17.40

The Texas Higher Education Coordinating Board adopts the repeal of §17.40 concerning required reports without changes to the proposed text as published in the February 28, 2003 issue of the *Texas Register* (28 TexReg 1778). Specifically, the repeal of this rule would clarify reporting requirements of the Master Plans and require institutions to provide an annual report to the Coordinating Board.

The following comment was received regarding the repeal of the rule.

Comment: The University of Texas System opposes the recommended change stating that the System understands that the intent of the Bond Review Board's Capital Expense Report was to review projects financed by bonds, not all construction, which is not reflected in the proposed rules. The University of Texas System expressed concern with the potential time and expense associated with reconfiguring institutional reporting systems. The University of Texas System also questions the definition of "information resource project". The University of Texas System proposed a change to 19 TAC §17.40 (1)(B)(i) to read: Any proposed construction (new or repair and renovation) greater than $250,000 for which debt financing is a funding source, any new construction with a cost greater than $1,000,000 and any repair and renovation greater than $2,000,000.

Response: §61.0582 of the Texas Education Code requires that institutions submit a campus master plan that includes an assessment of and a plan to address deferred maintenance, the amount the institution plans to designate for repairs, rehabilitation and deferred maintenance projects, and the funding source for any new construction projects costing more than $300,000 and rehabilitation projects costing more than $600,000. Section 1231.001 of the Texas Government Code defines thresholds for those projects that have a stated term of more than five years or with an initial principal amount of more than $250,000. These comments regarding the capital improvement plan have been reviewed by the Bond Review Board staff, and they concur that these thresholds are in their statute and, unless changed by law, are not negotiable. No changes were made as a result of this comment.

The repeal rule is adopted under the Texas Education Code, §61.027, which provides the Coordinating Board with the authority to adopt rules. This new rule is also adopted under Texas Education Code, §61.0572 which provides the Coordinating Board

the authority to develop and publish standards, rules, and regulations to guide the institutions and agencies of higher education in making application for the approval of new construction and major repair and rehabilitation of all buildings and facilities regardless of proposed use.

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

Filed with the Office of the Secretary of State on May 2, 2003.

TRD-200302753
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Effective date: May 22, 2003
Proposal publication date: February 28, 2003
For further information, please call: (512) 427-6162

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19 TAC §17.40

The Texas Higher Education Coordinating Board adopts new §17.40 concerning required reports without changes to the proposed text as published in the February 28, 2003 issue of the *Texas Register* (28 TexReg 1778). Specifically, this amendment would clarify reporting requirements of the Master Plans and require institutions to provide an annual report to the Coordinating Board.

The following comments were received regarding the new rule.

Comment: The University of Texas System opposes the recommended change stating that the System understands that the intent of the Bond Review Board's Capital Expense Report was to review projects financed by bonds, not all construction, which is not reflected in the proposed rules. The University of Texas System expressed concern with the potential time and expense associated with reconfiguring institutional reporting systems. The University of Texas System also questions the definition of "information resource project". The University of Texas System proposed a change to 19 TAC §17.40 (1)(B)(i) to read: Any proposed construction (new or repair and renovation) greater than $250,000 for which debt financing is a funding source, any new construction with a cost greater than $1,000,000 and any repair and renovation greater than $2,000,000.

Comment: Texas Tech University System also recommends that project status reporting be incorporated with the MP2, MP3, and MP4 reports rather than annually on the date of project approval to reduce their administrative burden.

Response: §61.0582 of the Texas Education Code requires that institutions submit a campus master plan that includes an assessment of and a plan to address deferred maintenance, the amount the institution plans to designate for repairs, rehabilitation and deferred maintenance projects, and the funding source for any new construction projects costing more than $300,000 and rehabilitation projects costing more than $600,000. §1231.001 of the Texas Government Code defines thresholds for those projects that have a stated term of more than five years or with an initial principal amount of more than $250,000. These comments regarding the capital improvement plan have been reviewed by the Bond Review Board staff, and they concur that these thresholds are in their statute and, unless changed by law, are not negotiable. No changes were made as a result of this comment.

The new rule is adopted under the Texas Education Code, §61.027, which provides the Coordinating Board with the authority to adopt rules. This new rule is also adopted under Texas Education Code, §61.0572 which provides the Coordinating Board the authority to develop and publish standards, rules, and regulations to guide the institutions and agencies of higher education in making application for the approval of new construction and major repair and rehabilitation of all buildings and facilities regardless of proposed use.

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

Filed with the Office of the Secretary of State on May 2, 2003.

TRD-200302752
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Effective date: May 22, 2003
Proposal publication date: February 28, 2003
For further information, please call: (512) 427-6162

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CHAPTER 21. STUDENT SERVICES
SUBCHAPTER C. HINSON-HAZLEWOOD COLLEGE STUDENT LOAN PROGRAM FOR ALL LOANS WHICH ARE SUBJECT TO THE PROVISIONS OF THE FEDERAL FAMILY EDUCATION LOAN PROGRAM, THE COLLEGE ACCESS LOAN PROGRAM, THE HEALTH EDUCATION ASSISTANCE LOAN PROGRAM, AND THE HEALTH EDUCATION LOAN PROGRAM

19 TAC §§21.51 - 21.65

The Texas Higher Education Coordinating Board adopts the repeal of §§21.51 - 21.65 concerning the Hinson-Hazlewood Loan Program without changes to the proposed text as published in the February 28, 2003 issue of the *Texas Register* (28 TexReg 1779). New §§21.51 - 21.64 concerning the Hinson-Hazlewood Loan Program are contemporaneously published in this issue of the *Texas Register*. Specifically, the rules proposed for repeal cover the administration of the Hinson-Hazlewood Loan Program. This program includes the Federal Family Education Loan Program, the College Access Loan Program, the Health Education Assistance Loan Program, and the Health Education Loan Program. Board staff wished to provide better organization and to increase clarity. The proposed rewrite contains new and revised definitions, reorganizes the subchapter in a more logical sequence, updates references to federal and state law, and clarifies the authority of the Board to administer this program. The rules proposed for enactment contain very few departures from current Board practice.

There were no comments received regarding the repeal of the rules.

The repeal is adopted under the Texas Education Code, §61.027, which provides the Coordinating Board with general rule-making authority and Texas Education Code, §52.01, which provides the Board with the authority to administer the student loan program.

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

Filed with the Office of the Secretary of State on May 2, 2003.

TRD-200302748
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Effective date: May 22, 2003
Proposal publication date: February 28, 2003
For further information, please call: (512) 427-6162

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SUBCHAPTER C. HINSON-HAZLEWOOD COLLEGE STUDENT LOAN PROGRAM

19 TAC §§21.51 - 21.64

The Texas Higher Education Coordinating Board adopts new §§21.51 - 21.64 concerning the Hinson-Hazlewood Loan Program without changes to the proposed text as published in the February 28, 2003 issue of the *Texas Register* (28 TexReg 1780). Existing §§21.51 - 21.65, which these new sections replace, are contemporaneously proposed for repeal in this issue of the *Texas Register*. Specifically, these new sections cover the administration of the Hinson-Hazlewood Loan Program. This program includes the Federal Family Education Loan Program, the College Access Loan Program, the Health Education Assistance Loan Program, and the Health Education Loan Program. To provide better organization and increase clarity, the proposed new sections contain new and revised definitions, reorganize the subchapter in a more logical sequence, update references to federal and state law, and clarify the authority of the Board to administer this program. The new sections allow students who are enrolled at least half-time at an institution to be eligible for a loan through the program, simplify the information that needs to be provided by borrowers for references, eliminate the requirement of a cosigner if the borrower has received a favorable evaluation of his/her credit report, and delegate to the Commissioner of Higher Education the authority to set origination fees, loan limits, and the interest rates for the College Access Loan Program and the Health Education Loan Program.

There were no comments received regarding the new rules

The new sections are adopted under the Texas Education Code, §61.027, which provides the Coordinating Board with general rule-making authority and Texas Education Code, §52.01, which provides the Board with the authority to administer the student loan program.

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

Filed with the Office of the Secretary of State on May 2, 2003.

TRD-200302747
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Effective date: May 22, 2003
Proposal publication date: February 28, 2003
For further information, please call: (512) 427-6162

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PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

CHAPTER 239. STUDENT SERVICES CERTIFICATES

SUBCHAPTER E. MASTER TEACHER CERTIFICATE

19 TAC §§239.100 - 239.103

The State Board for Educator Certification (SBEC) adopts new Subchapter E, related to the master teacher certificates, of 19 TAC Chapter 239, related to student services certificates. New §239.100, related to general provisions for master teacher certificates; §239.101, related to master reading teacher certification; §239.102, related to master mathematics teacher certification; and §239.103, related to master technology teacher certification, without changes to the proposed text as published in the March 7, 2003, issue of the *Texas Register* (28 TexReg 2016) and will not be republished.

The purpose of the new rules is to set the requirements for obtaining a master teacher certificate. Although the statutes establishing master teacher certification for reading, mathematics, and technology are detailed, the legislation requires SBEC to adopt rules regarding the certificates. SBEC has taken this opportunity to clarify certain issues related to the statutory provisions through the adopted rules, including the following provisions:

1. all proposals for master teacher programs must be approved by the SBEC;

2. the curriculum must be based on the standards for the respective master teacher certificate;

3. any course of instruction required for certification must be completed through an SBEC-approved preparation program;

4. for candidates who do not already hold qualified certification that exempts them from the requirement, a field-based practicum must be completed through an SBEC-approved program; and

5. the master teacher candidate must satisfy other requirements generally applicable to any certificate issued by SBEC, such as paying a certification fee and clearing a criminal history check.

The regulatory requirements for each master teacher certificate reflect the related statutory provisions and are designed to ensure that every certificate candidate demonstrate the knowledge and skills expected of a master teacher in each respective field.

The State Board for Educator Certification received no comments regarding the adoption of the new rules.

The rules are adopted under the statutory authority of the following sections of the Education Code: §21.031(a), which vests SBEC with the authority to regulate and oversee all aspects of

the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(1), Education Code, which requires SBEC to propose rules that provide for the regulation of educators and the general administration of Chapter 21, Subchapter B, in a manner consistent with that subchapter; §21.041(b)(2), which requires SBEC to specify the classes of certificates to be issued; §21.041(b)(3), which requires SBEC to specify the period for which each class of educator certificate is valid; §21.041(b)(4), which requires SBEC to specify the requirements for the issuance and renewal of an educator certificate; §21.041(b)(9), which requires SBEC provide for continuing education requirements; §21.042, which requires SBEC to submit proposed rules to the State Board of Education for review prior to adoption; §21.048, which requires SBEC to propose rules prescribing comprehensive examinations for each class of certificate issued by SBEC; §21.0481, which requires SBEC to establish a master reading teacher certificate; §21.0482, as added by HB 1144, 77th Texas Legislature, 2001, which requires SBEC to establish a master mathematics teacher certificate; §21.0482, as added by HB 1475, 77th Texas Legislature, 2001, which requires SBEC to establish a master technology teacher certificate.

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

Filed with the Office of the Secretary of State on May 2, 2003.

TRD-200302766
William Franz
Executive Director
State Board for Educator Certification
Effective date: May 22, 2003
Proposal publication date: March 7, 2003
For further information, please call: (512) 238-3280

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TITLE 22. EXAMINING BOARDS

PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 535. PROVISIONS OF THE REAL ESTATE LICENSE ACT

SUBCHAPTER A. GENERAL PROVISIONS RELATING TO THE REQUIREMENT OF LICENSURE

22 TAC §535.2

The Texas Real Estate Commission (TREC) adopts amendments to §535.2, concerning broker responsibility without changes to the proposed text as published in the March 14, 2003, issue of the *Texas Register* (28 TexReg 2214) and will not be republished. The amendment effectively deletes subsection (d) a provision that attempted to clarify the minimum level of service that a consumer may expect to receive from a Texas real estate licensee who represents the consumer as an agent in a real estate transaction.

Questions were raised after the former rule was adopted regarding whether the provision, among other things, prohibited fee-for-service listing agreements or whether the minimum standards could be waived by the client. At a public meeting on January 6, 2003, persons spoke against the former rule, for the former rule, and for a modified version of the former rule.

The purpose of the former rule was to ensure that consumers were fully informed about the level of service they could expect from a licensed broker acting as their agent in a real estate transaction. There was never any intent to prohibit fee-for-service listing agreements, to set commission rates or fees, or to deny consumers the right to choose the type service they want from a licensed broker. Given the widespread interest expressed in the former rule after its final adoption, however, the Commission adopts the deletion of the subsection for further study of the issue. The effect of the amendment will be optimum consensus on the interpretation of Texas real estate agency law.

There were eight comments received by the Commission during the notice and comment period. Six persons stated that they were against the former rule as adopted and recommended repeal of the former rule. One person stated that she was in favor of the former rule as adopted. One person filed a Plea in Intervention in the pending litigation involving the former rule. The Plea in Intervention was filed to put on record the person's opposition to the relief sought in the plaintiff's original petition filed against the former rule.

The amendment is adopted under Texas Civil Statutes, Article 6573a, §5(h), which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties, to establish standards of conduct and ethics for its licensees in keeping with the purposed and intent of the Act or to insure compliance with the provisions of the Act.

The statute affected by this adoption is Texas Civil Statutes, Article 6573a.

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

Filed with the Office of the Secretary of State on April 28, 2003.

TRD-200302679
Loretta DeHay
General Counsel
Texas Real Estate Commission
Effective date: May 18, 2003
Proposal publication date: March 14, 2003
For further information, please call: (512) 465-3900

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SUBCHAPTER G. MANDATORY CONTINUING EDUCATION

22 TAC §535.71

The Texas Real Estate Commission (TREC) adopts amendments to §535.71, concerning mandatory continuing education without changes to the proposed text as published in the March 14, 2003, issue of the *Texas Register* (28 TexReg 2215) and will not be republished.

The amendment to §535.71 permits guest speakers to make a presentation for up to three hours in any TREC-approved MCE

course. The TREC-approved instructor of the course must remain in the classroom during the guest speaker's presentation and only one guest speaker per course period will be permitted. At his or her discretion, the course instructor may invite a subject-matter expert to speak for up to one hour in an MCE course without seeking approval from TREC. If the speaker is engaged for more than one hour (not to exceed 3 hours), TREC must receive a resume or other pertinent biographical information on the speaker prior to the date of the course. In all instances, the MCE course being delivered must be TREC-approved in advance. Guest speakers must observe the general outline of the approved course in choosing their topic. However, this would not preclude the speaker from discussing case studies, personal experiences, etc. in the context of the overall pre-approved course outline. The effect of the amendment will be an enhancement of the educational process for schools and instructors.

No comments were received regarding the amendment.

The amendments are adopted under Texas Civil Statutes, Article 6573a, §5(h), which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties, to establish standards of conduct and ethics for its licensees in keeping with the purposed and intent of the Act or to insure compliance with the provisions of the Act.

The statute affected by this adoption is Texas Civil Statutes, Article 6573a.

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

Filed with the Office of the Secretary of State on April 28, 2003.

TRD-200302677
Loretta DeHay
General Counsel
Texas Real Estate Commission
Effective date: May 18, 2003
Proposal publication date: March 14, 2003
For further information, please call: (512) 465-3900

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SUBCHAPTER T. EASEMENT OR RIGHT-OF-WAY AGENTS

22 TAC §535.403

The Texas Real Estate Commission (TREC) adopts amendments to §535.403, concerning Renewal of Registration of easement or right-of-way agents without changes to the proposed text as published in the March 14, 2003, issue of the *Texas Register* (28 TexReg 2216) and will not be republished. The amendments adopt by reference Renewal Application Form ERW 5-2.

The amendments to §535.403 are adopted in connection with the passage of S.B. 645 and S.B. 187 by the 77th Legislature (2001), requiring TREC to participate in an electronic system using the Internet for licensing. S.B. 645 requires TREC to participate in the electronic licensing system and pay a subscription fee to the TexasOnline Authority for participation. S.B. 187 requires TREC to increase renewal fees to cover the cost of the subscription fees charged by the TexasOnline Authority. Section 535.403 is amended to reflect the annual fees that would be effective for easement and right-of-way agents registration renewals for registrations expiring on or after August 31, 2003, and includes an additional $3 to cover the costs of the subscription fees. The effect of the amendment will be conforming TREC rules with statutory changes.

No comments were received regarding the amendments.

The amendments are adopted under Texas Civil Statutes, Article 6573a, §5(h), which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties, to establish standards of conduct and ethics for its licensees in keeping with the purposed and intent of the Act or to insure compliance with the provisions of the Act.

The statute affected by this adoption is Texas Civil Statutes, Article 6573a.

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

Filed with the Office of the Secretary of State on April 28, 2003.

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 1. GENERAL ADMINISTRATION

SUBCHAPTER F. SUMMARY PROCEDURES FOR ROUTINE MATTERS

28 TAC §§1.702 - 1.705

The Commissioner of Insurance adopts amendments to §§1.702 - 1.705 concerning activities related to summary procedures for routine matters. The amendments to §1.702 and §1.704 are adopted with changes to the proposed text as published in the December 6, 2002 issue of the *Texas Register* (27 TexReg 11451). The amendments to §1.703 and §1.705 are adopted without changes to the proposed text and will not be republished.

The amendments are necessary to update Subchapter F to reflect the restructuring of the department's divisions, statutory changes, and technological advancements regarding communication between the department and persons affected by these routine matters. Insurance Code §36.102 permits the commissioner by rule to create a summary procedure for certain routine matters. This subchapter sets forth those activities that have been designated by the commissioner as routine because they are voluminous, repetitive, believed to be noncontroversial, and of limited interest to persons other than those immediately involved or affected.

The amendments to §1.702 set forth the activities designated for summary procedure disposition. Among other things, these amendments add viatical and life settlement certificates of registration, utilization review and independent review organization certificates, and third-party administrator certificates of authority to the list of designated forms and filings and licenses, certificates, or registrations, as applicable. The amendments also eliminate outdated references to Insurance Code Chapter 5, Subchapter B, (a) rates; Chapter 5, Subchapter B, excess rate or umbrella; excess inland marine; and cessation of acceptance of workers' compensation of small premium policies. Due to statutory changes, (a) rates are no longer accepted, personal umbrella rates are subject to prior approval, and commercial umbrella rates are submitted as file and use. In House Bill 2 (72nd Legislative Session, 1991) the Texas Legislature deregulated commercial property and general liability insurance rates, and in Board Order No. 59970 (1992), the former State Board of Insurance re-designated the status of the rates to "standard" from "approved standard and uniform." The department no longer approves standard and uniform rates and Insurance Code Article 5.26 provides for rates in excess of the promulgated rate, making the language in §1.702 regarding "excess of" no longer applicable. Insurance Code Article 5.65-2, which among other things contained provisions regarding the workers' compensation small premium policy plan, was repealed effective December 31, 1993. Minor changes were also made to the section to correct punctuation.

The amendments to §1.703 delegate the various activities listed in §1.702 to the appropriate associate or deputy commissioner within the department responsible for summary procedure disposition of those activities. These amendments reflect a restructuring of various divisions within the department and assignment of responsibilities for certain functions, including the regulatory functions regarding health maintenance organizations, which is delegated in part to the Financial Program and in part to the HMO Division. Language was also added to recognize that, in the event of such a restructuring of the department in the future, the delegation of the administration over the activities will follow the appropriate associate or deputy commissioner assuming responsibility for the activities. The amendments to this section also delete language referencing the filings for which the deputy commissioner of property insurance was delegated responsibility because they were previously deleted pursuant to Board Order No. 59970 (1992). The amendments also change various references to the former state board of insurance to commissioner or department, as appropriate. Amendments to §1.704 add electronic transmission as another means of notifying a person of an action regarding a matter requiring final disposition by the department. The amendments to this section also establish the procedure to be used by the department in notifying a person of a departmental action affecting the person. Minor changes were also made to the section to correct punctuation. The amendments to §1.705 correct statutory references to the Insurance Code and clarify how to file a petition for review.

No comments were received.

The sections are adopted pursuant to Insurance Code §36.102 and §36.001. Insurance Code §36.102 provides that the commissioner of insurance may, by rule, create a summary procedure for routine matters and designate department activities that otherwise would be subject to Government Code Chapter 2001, as routine matters to be handled under summary procedure. Insurance Code §36.001 permits the commissioner to adopt rules for the conduct and execution of the powers and duties of the department as authorized by statute.

§1.702. Designated Activities.

The following statutorily prescribed activities are designated for summary procedure disposition:

(1) Filings of forms, rates, and related filings pursuant to Insurance Code Articles 3.42, 3.50-6A, 3.70-12, 3.53, 3.74, 5.13-1; Chapters 23 and 26; and §3.3325(f) and (g) of this title (relating to Medicare Select Policies, Certificates, and Plans of Operation), but not withdrawals of approval pursuant to Insurance Code Articles 3.42, 3.53, 5.13-1, and Chapter 23.

(2) Filings of forms, rates, and related filings by health maintenance organizations pursuant to §11.301(4)(A), (B), and (L), and (5)(C), (G), (K), (M), and (N) of this title (relating to Filing Requirements), but not withdrawals of approval pursuant to Insurance Code Chapter 20A.

(3) Filings of forms, rates, and related filings by health maintenance organizations pursuant to §11.301 of this title, except those listed in paragraph (2) of this section, but not withdrawals of approval pursuant to Insurance Code Chapter 20A.

(4) Filings of application or renewal for the following:

(A) agents and adjusters licenses pursuant to Insurance Code Articles 1.14-2, 3.75, 21.07, 21.07-1, 21.07-2, 21.07-3, 21.07-4, 21.09, 21.11, 21.14, and 23.23, insurance premium finance licenses pursuant to Insurance Code Article 24.03, and third party administrator certificates of authority pursuant to Insurance Code Article 21.07-6;

(B) viatical and life settlement certificates of registration pursuant to Insurance Code Article 3.50-6A;

(C) utilization review agent certificates pursuant to Insurance Code Article 21.58A and §§19.1704(g) and 19.2004 of this title (relating to Certification of Utilization Review Agents), and independent review organization certificates pursuant to Insurance Code Article 21.58C and §12.109 of this title (relating to Appeal of Denial of Application or Renewal); and

(D) licenses pursuant to Insurance Code Articles 9.35 - 9.38, 9.41 - 9.45, 9.56, and 9.58.

(5) Applications to change rates, forms, or deductibles for motor vehicle insurance on an individual risk basis pursuant to Rule 4 in the Texas Automobile Rules and Rating Manual adopted under Insurance Code Article 5.101.

(6) Applications to charge a rate or premium greater than the standard rate or premium approved by the commissioner for the types of insurance specified in Insurance Code Article 5.13, pursuant to Insurance Code Article 5.15(c).

(7) Filings of endorsements for negotiated deductible plans for workers' compensation insurance policies made pursuant to Insurance Code Article 5.55C.

§1.704. Summary Procedure; Notice.

(a) Actual notice for proposed negative action. In the case of proposed negative action with regard to any delegated activity designated under §1.702 of this subchapter (relating to Designated Activities), parties directly involved shall be given actual notice at least five days in advance of the action proposed. Actual notice means written or electronic notice. If the actual notice is a written notice, it will be sent by mail addressed to the last known address of the person, or, if the person is represented by an attorney, to the person's attorney of record, as submitted with the filing, application, form, or submission that is the subject of the proposed negative action. If the actual notice

is electronic, it will be sent electronically to the email address or to the electronic destination, as applicable, from which the person submitted the filing, application, form, or submission which is the subject of the proposed negative action.

(b) Notice of decision. For §1.702(1) - (7) of this subchapter, the appropriate associate or deputy commissioner shall notify the person by mail or electronic transmission of a positive or negative decision and the date of the decision, shall record the decision in the department's electronic files, and shall retain a record of the notification with the filing, application, form, or submission or cause the appropriate license, certificate, or registration to be mailed to the person.

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

Filed with the Office of the Secretary of State on May 5, 2003.

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Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
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For further information, please call: (512) 463-6327

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CHAPTER 3. LIFE, ACCIDENT AND HEALTH INSURANCE AND ANNUITIES

SUBCHAPTER A. REQUIREMENTS FOR FILING OF POLICY FORMS, RIDERS, AMENDMENTS, AND ENDORSEMENTS FOR LIFE, ACCIDENT AND HEALTH INSURANCE AND ANNUITIES

28 TAC §§3.1 - 3.21

The Commissioner of Insurance adopts the repeal of Subchapter A, §§3.1 - 3.21, concerning requirements for filing of policy forms, riders, amendments, and endorsements for life, accident and health insurance and annuities. The repeal is adopted without changes to the proposed text as published in the December 6, 2002 issue of the *Texas Register* (27 TexReg 11454) and will not be republished.

The repeal of §§3.1 - 3.21 is necessary so that new Subchapter A can be adopted which will streamline and clarify the overall process by which policy forms, certificates, riders, amendments, and endorsements for life, accident and health insurance and annuities are filed with the department for statutory and regulatory review and approval. Simultaneous to the adoption of this repeal, adopted new Subchapter A, §§3.1 - 3.21, is published elsewhere in this issue of the *Texas Register*.

The adopted repeal will result in the elimination of sections that are obsolete and combine information from several sections into the same or similar sections. This elimination of sections streamlines Chapter 3 of the Texas Administrative Code, and clarifies and simplifies the filing process with the department.

No comments were received regarding the repeal.

The repeal of §§3.1 - 3.21 is adopted under Insurance Code Article 3.42 and §36.001. Insurance Code Article 3.42(p) provides that the commissioner is authorized to adopt such reasonable rules as are necessary to implement and accomplish the specific provisions of Article 3.42. Insurance Code §36.001 authorizes the commissioner of insurance to adopt rules for the conduct and execution of the powers and duties of the department as authorized by statute.

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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Gene C. Jarmon
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For further information, please call: (512) 463-6327

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SUBCHAPTER A. SUBMISSION REQUIREMENTS FOR FILINGS AND DEPARTMENTAL ACTIONS RELATED TO SUCH FILINGS

28 TAC §§3.1 - 3.8

The Commissioner of Insurance adopts new Subchapter A, §§3.1 - 3.8, concerning requirements for filing of policy forms, certificates, riders, amendments, and endorsements for life, accident, and health insurance and annuities. Sections 3.3, 3.4 and 3.8 are adopted with changes to the proposed text as published in the December 6, 2002, issue of the *Texas Register* (27 TexReg 11455). Sections 3.1. 3.2, 3.5 - 3.7 are adopted without changes and will not be republished.

Sections 3.1 - 3.8 are necessary to streamline and clarify the overall process by which forms and related documents concerning life insurance products, annuities, accident and health insurance products, credit life insurance, credit accident and health insurance, and prepaid legal forms are filed for statutory and regulatory review and approval. To further streamline the filing process, the sections allow companies to electronically file forms with the department using a form and format determined by the department, which currently is the National Association of Insurance Commissioners (NAIC) supported SERFF (System for Electronic Rate and Form Filing) system. The department will be able to receive SERFF filings after all necessary rules are adopted. The new sections further streamline the filing process by enabling the department to notify companies of the department's decisions by letter in lieu of stamping the duplicate copy, thus eliminating the need for filing of duplicate copies of forms.

The new sections will facilitate consistent and appropriate filing of forms and rates with the department and will improve communications and understanding of the filing requirements. The sections will further combine the existing filing requirements for the regular, general and expedited review processes into one filing process by consolidating the information into one transmittal checklist with a transmittal form for miscellaneous documents. This will eliminate the use of the previously promulgated certification transmittal checklists for the regular, general and expedited review processes.

In conjunction with the adoption of the new subchapter, the department is adopting the repeal of existing Subchapter A, §§3.1 - 3.21, which is published elsewhere in this issue of the *Texas Register*.

New §3.1 sets out the scope of the subchapter to identify the types of forms and miscellaneous documents that must be filed under Chapter 3, Subchapter A, Section 3.2 defines terms used in this subchapter. Section 3.3 establishes the information that must be included in a transmittal checklist and transmittal form which must accompany all filings. Section 3.4 specifies the general submission requirements, which include information concerning the contact person, form specifications, specimen language, variable material, matrix and insert page filings, limited/partial refilings, outlines of coverage, supplemental coverage, policy or contract forms, and rates/actuarial information. Section 3.4(q)(5) clarifies that if, during any 12-month period, the cumulative increase in premium rate is equal to or greater than 50%, actuarial information must be provided to support the rate increase. For example, for a particular 12-month period, the premium rate for the first 2 months is $100. The premium increases by 10% in month three, 10% in month five and 25% in month eleven. The cumulative increase for purposes of applying the 50% test under this paragraph is 51.25% (1.10 x 1.10 x 1.25). Section 3.4(r) specifies required filing fees. Section 3.4(r)(1)(D) increases the filing fee from $50 to $100 for rates filed separately from the policy or contract that are subject to review and approval by the department. The department currently assesses a fee of $100 for other rates filed for review. Section 3.4(r)(1)(J) and (2)(H) require a filing fee of $50 for each form with a maximum fee of $500 for each matrix filing as these filings can be used to create multiple contracts or policies through the combination of various matrix provisions.

Section 3.5 sets forth the appropriate statutory and/or regulatory authorities to utilize when submitting filings to the department and the description of each filing such as: new, informational, substantially similar, exact copy, substitution, pending, and resubmission. Section 3.6 addresses information concerning certifications, attachments, and other additional information required for a complete and comprehensive review of the submitted forms. Section 3.7 contains the requirements for form acceptance and the final disposition of the form. Section 3.8 establishes an effective date for the adopted rules.

Section 3.3 was changed to correct two clerical errors and §3.4 was changed to clarify sentence structure. In §3.8, the date has been changed to June 1, 2003 in order to complete technical and administrative tasks necessary to implement the billing system.

General: A commenter expresses support of the proposed rules providing requirements for policy forms and related filings.

Agency Response: The department appreciates the commenter's support and believes the more efficient and effective policy form filing and review process will benefit all parties involved.

Matrix filings: A commenter asks for confirmation that following the approval of various matrix provisions, new form filings may reference previously approved provisions and thus only submit for review new provisions for a particular filing.

Agency Response: The commenter is correct that matrix filings submitted to the department should only include new provisions for review. Carriers should not include previously approved provisions with the new filing. Carriers must determine how they will file new product filings. A carrier may file forms for a specific policy, certificate, rider, endorsement form or for a matrix filing, however; it may not file a specific form as both.

Section 3.2(6)(D): A commenter asks for clarification regarding limited, partial refilings due to a change to the separate account for variable products when the separate account is bracketed as variable text on the initial filing. The commenter's specific concern is whether a change in funds in the separate account triggers this requirement.

Agency Response: The rule does not require limited or partial refilings for a change to the funds of the separate account if, when the form reflecting the funds was filed and approved, the fund names were bracketed as variable text.

Section 3.4(r)(1)(A) - (J): A commenter asks whether companies, when submitting a new filing, are required to pay for use of matrix filings in addition to new form filing fees.

Agency Response: Insurers are required to choose between either a matrix filing or single form filing (policy, certificate, rider, endorsement, etc.). An insurer may use a matrix filing only with other approved or exempted matrix filings, not in conjunction with single form filings. The department will charge the appropriate fee as provided by §3.4(r)(1)(A) - (J). Matrix filings are always $50 per form with a maximum of $500 (see §3.4(r)(1)(J) and (2)(H)), whether they are a new filing, an exempt filing, or a resubmission.

For with changes: New York Life Insurance Company. Against: None.

The new sections are adopted pursuant to Insurance Code Articles 3.42, 3.51-6, 3.53, 3.64, 3.70-1, 3.70-12, 3.74, 5.13-1, and 21.42, Chapters 23 and 26 and §36.001. Insurance Code Article 3.42(p) provides that the commissioner is authorized to adopt reasonable rules that are within the standards and purposes of Insurance Code Article 3.42 and necessary to implement and accomplish the specific provisions of Article 3.42. Insurance Code Article 3.51-6 §5 provides that the department is authorized to issue rules necessary to accomplish the specific provisions of Article 3.51-6. Insurance Code Article 3.53 §7(H) authorizes the department to charge a fee for forms or schedules filed under Article 3.53 in an amount to be determined by the department. Insurance Code Article 3.64(f) provides that the commissioner is authorized to adopt rules to implement and accomplish the specific provisions of Article 3.64. Insurance Code Articles 3.70-1 and 3.70-12 require the department to issue reasonable rules necessary to carry out the purposes of the articles. Insurance Code Article 3.74 provides that the department shall adopt rules in accordance with federal law applicable to the regulation of Medicare supplement insurance coverage that are necessary for the state to obtain or retain certification as a state with an approved regulatory program under 42 U.S.C. 1395ss. Insurance Code Article 5.13-1(d) authorizes the department to promulgate and enforce rules concerning legal service contracts that in the discretion of the department are deemed necessary to accomplish the purposes of the article. Insurance Code Article 21.42 provides that Texas laws govern any insurance contract that is payable to any citizen or inhabitant of Texas. Insurance Code Article 23.19 authorizes the commissioner to adopt rules concerning participation contracts and agreements related to non-profit legal services. Insurance Code Article 26.04 requires the commissioner to adopt rules as necessary to implement Chapter 26 and to meet the minimum requirements of federal law and regulations. Insurance Code §36.001 authorizes the commissioner

of insurance to adopt rules for the conduct and execution of the powers and duties of the department as authorized by statute.

§3.3. Transmittal Information.

(a) All filings submitted pursuant to this subchapter shall be accompanied by the department's transmittal checklist except for the documents listed in §3.1(11)(B) of this subchapter (relating to Scope), which shall be accompanied by the department's transmittal form as described in this section. Copies of the transmittal checklist and transmittal form are available from the Filings Intake Division, Mail Code 106-1E, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104 or 333 Guadalupe, Austin, Texas, 78701, or by accessing the department's website at www.tdi.state.tx.us.

(b) The transmittal checklist shall:

(1) provide complete and accurate information about the filing;

(2) include, at a minimum, the following information:

(A) the name and address of the submitting company;

(B) the contact person information as required in §3.4(b) of this subchapter (relating to General Submission Requirements);

(C) the unique identifying form number of each form submitted;

(D) an explanation of the purpose and use of each form as defined in §3.2 of this subchapter (relating to Definitions);

(E) an indication of the product and type;

(F) an indication of whether the filing is prompted by a business change such as an assumption, a name change, or a demutualization/conversion;

(G) the applicable authority from the Insurance Code or the Administrative Code under which the form is being submitted as described in §3.5 of this subchapter (relating to Filing Authorities and Categories);

(H) an indication of whether the filing is a matrix filing;

(I) rate filing information, if applicable;

(J) a statement that the submission will be used:

(i) on a general use basis, only with the policy being filed, or with previously approved or exempted forms; and

(ii) if the submission will be used with previously approved or exempted forms, a listing of the following:

(I) the form numbers of the previously approved or exempted forms;

(II) the approval or exemption dates of the previously approved or exempted forms; and

(III) a brief description of when or how each submitted form will be used with the previously approved or exempted forms;

(K) if the filing is a group filing, it must contain:

(i) A statement specifying the specific group type as set forth in §3.6(c)(1) of this subchapter (relating to Certifications, Attachments, and Additional Information Requirements).

(ii) A separate policy and certificate for each type of group. A submission of a single policy and certificate for use with more than one type of group is prohibited.

(iii) The following as applicable:

(I) a statement specifying the size of the group if issued under Chapter 26 of this title (relating to Small Employer Health Insurance Regulations);

(II) a copy of the trust agreement if issued to a trust;

(III) a copy of the constitution, bylaws, and articles of incorporation if issued to an association; or

(IV) certification and evidence that the master policy for the group was lawfully issued and delivered in a state in which the company was authorized to do insurance business;

(L) any certifications and attachments, including summary of differences, if applicable, or any additional information required by §3.6 of this subchapter, or variable information in accordance with §3.4(e) of this subchapter.

(3) be completed, signed, and certified by an attorney licensed to practice law in this state, an actuary familiar with the requirements of the Insurance and Administrative Codes, the chief executive officer of the filing company, or a person with authority to bind the company.

(c) The transmittal form shall:

(1) provide complete and accurate information about the filing;

(2) include, at a minimum, the following information:

(A) the name and address of the submitting company;

(B) the contact person information as required by §3.4(b) of this subchapter;

(C) an identification of the type of miscellaneous document or information being submitted as described in §3.1(11)(B) of this subchapter; and

(D) for filings to be used with previously approved or exempted forms:

(i) the form numbers of the previously approved or exempted forms;

(ii) the approval or exemption dates of the previously approved or exempted forms;

(iii) a general statement of the types of previously approved or exempted forms (e.g., waiver of surrender charge rider); and

(iv) a brief description of when or how each submitted form will be used with the previously approved or exempted forms;

(d) Notwithstanding subsections (b)(2) and (c)(2) of this section, the commissioner may prescribe a transmittal document prescribed by the NAIC for purposes of standardization.

(e) Filings that are not accompanied by a completed transmittal checklist or transmittal form, or which do not include all required certifications or signatures will not be accepted by the department and will be returned to the company as incomplete.

§3.4. General Submission Requirements.

(a) Submission. Companies shall submit one copy of the filing to the Filings Intake Division at the address set forth in §3.3(a) of this subchapter (relating to Transmittal Information). A filing submitted electronically shall be submitted in such form and format as determined by the department.

(b) Contact Person. A company submitting a filing to the department shall:

(1) have one person designated as the contact person for that filing;

(2) provide the contact person's name, address, telephone number, and if available, fax number on the transmittal checklist or transmittal form;

(3) provide, for any filing submitted by anyone other than the company, a dated letter of specific authorization which shall:

(A) designate the consulting firm, actuary, legal counsel, or other person as the designated contact person for that filing; and

(B) be signed by an officer of the company or a person with authority to bind the company; and

(4) notify the department immediately of any change of information with regard to the contact person for a pending filing, regardless of whether the contact person is the company's employee or other authorized representative.

(c) Form Specifications. Any filing submitted pursuant to this subchapter shall comply with the following:

(1) Filings submitted in paper format shall:

(A) be submitted on 8 1/2 by 11 inch paper;

(B) not be submitted in bound booklets;

(C) be legible;

(D) be in typewritten, computer generated, or printer's proof format; and

(E) not contain any color highlighting.

(2) Any form submitted shall be designated by a form number that:

(A) is sufficient to distinguish it from all other forms used by the company;

(B) is located in the lower left-hand corner of the cover page or on the first page of the form if the form number is visible with the cover closed;

(C) has the additional identifying form number requirements set forth in Subchapter FF of this chapter (relating to Credit Life and Accident and Health Insurance), if the form is submitted for consideration pursuant to Insurance Code Article 3.53; and

(D) has the additional identifying form number requirements set forth in §26.14(g) of this title (relating to Coverage), if the form is submitted for consideration pursuant to Insurance Code Chapter 26.

(d) Specimen Language and Specimen Fill-in Material.

(1) For all forms, specimen language and fill-in material shall reflect the most restrictive option available under variability. Additional descriptions of variability options shall be provided upon request or as otherwise required.

(2) Life and annuity forms shall be completed with fill-in material for specimen age 35. If the form is not issued at age 35, the fill-in material shall be completed for the youngest age at which the form may be issued. If reduced death benefits are provided for any age at issue, the specimen form shall be filled in for the age at issue for which the greatest reduction in benefits is made. The fill-in material shall be for the longest premium paying period available under the form.

(e) Variable Material.

(1) For all forms, any variable material in a form shall be bracketed and shall contain a clear explanation of how the material will vary. It is acceptable for certain materials to vary due solely to the age, sex, classification of the insured, plan type such as 403(b) and IRA, telephone numbers, and addresses depending on the manner in which the company intends to use the variations. The unique form number on a form may not be bracketed as variable.

(2) For individual life forms, the text and specifications of non-forfeiture assumptions generally cannot be considered variable material.

(f) Matrix Filings. Policies, certificates, contracts, or applications may be submitted as a matrix filing. Any company submitting a matrix filing:

(1) shall identify each provision with a unique form number that:

(A) is sufficient to distinguish it from all other provisions used by the company; and

(B) is located at the lower left-hand corner of the provision;

(2) may use the same provision filed under one form number for all products, provided the language is applicable to each product; however, any changes in the language to comply with the requirements for each product will require a unique form number;

(3) shall list the form number for each provision on the transmittal checklist and provide a statement indicating how the provision will be used and the type of product for which the provision will be used; and

(4) shall provide the certifications required in §3.6(a)(8) of this subchapter (relating to Certifications, Attachments, and Additional Information Requirements).

(g) Insert Page Filings. Policies, certificates, and contracts may be submitted with insert pages, or an insert page may be filed subsequent to the approval of a policy, certificate, or contract. Any company submitting an insert page filing:

(1) shall identify each insert page with a unique form number that:

(A) is sufficient to distinguish it from all other forms used by the company; and

(B) is located in the lower left-hand corner of the page;

(2) may use the same insert page filed under one form number for all products, provided the language is applicable to each product type; however, any changes in the language to comply with the requirements for each product type will require a unique form number;

(3) may use the same insert page to replace an existing page of a previously approved or exempted contract, if used in this manner, the replaced page, as originally filed, must reflect a unique form number that distinguishes it from the other pages of the form or contract;

(4) shall list the form number for each insert page on the transmittal checklist and provide a statement indicating how the insert page will be used and the type of product for which the insert page will be used; and

(5) shall provide the certifications required in §3.6(a)(8) of this subchapter.

(h) Limited, Partial Re-filings. Limited, partial refilings shall contain the change and any additional actuarial information necessary for a comprehensive review of the filing(s).

(i) Outline of Coverage. An outline of coverage shall be filed with each individual accident and health policy, group or individual Medicare supplement policy and/or certificate, or group or individual long-term care policy and/or certificate.

(j) Supplemental Coverages.

(1) Individual accident and health forms submitted pursuant to §3.3080 of this title (relating to Supplemental Coverage) shall be accompanied by the certification required in §3.6(a)(7) of this subchapter;

(2) Group life forms submitted pursuant to Insurance Code Article 3.50 §1(1) or (5) shall be accompanied by the certification required in §3.6(a)(7) of this subchapter.

(k) Complete Submission of Policy or Contract Forms. For a submission to be considered complete, the submission shall include the following:

(1) the toll-free notice unless the company is exempt under §1.601(c) of this title (relating to Notice of Toll-Free Telephone Numbers and Information and Complaint Procedures) or has on file a toll-free notice which is current with the requirements set forth in §1.601 of this title;

(2) the application, if applicable;

(3) in the case of group policies or contracts, the certificate;

(4) any rider which will or can be included in all issues of the form; and

(5) disclosures and other information, if applicable.

(l) Riders Included with Filing. For any rider included with the policy or contract filing, indicate whether the rider is to be used:

(1) only with the policy being filed; or

(2) with other clearly identified previously approved or exempted forms.

(m) Previously Approved or Exempted Forms. Any previously approved or exempted form (e.g., application or rider) to be used with the policy or contract filing need not be resubmitted; however, the filing shall indicate the type of form (e.g., rider, policy, application, etc.), form number, and the approval or exemption date of the previously approved or exempted form. If there is a change in the use of the previously approved or exempted form, the filing must state the form number of the form(s) with which the previously approved or exempted form was designed to be exclusively used, as well as the updated forms list.

(n) Appropriate Use of Previously Approved or Exempted Forms. The company is responsible for assuring the appropriate use of previously approved or exempted forms. This includes the appropriate use of any riders or other forms such as matrix and insert pages.

(o) Submission of a Certificate for Policies or Contracts Issued Outside of Texas. A copy of the master policy or contract issued outside of Texas must accompany any life, annuity, credit, or accident and health certificate filed for review or filed as exempt, along with certification and evidence that the master policy for the group was lawfully issued and delivered in a state in which the company was authorized to do insurance business.

(p) Rates. Initial and subsequent rate filings shall include all specific descriptions and required information as follows:

(1) policy forms for which the rate filing applies shall be specified on the transmittal checklist or the transmittal form, as applicable;

(2) credit life and credit accident and health filings submitted under Insurance Code Article 3.53 and Subchapter FF of this chapter shall include the rate information;

(3) group and individual Medicare supplement filings submitted under Insurance Code Article 3.74 §4, and Subchapter T of this chapter (relating to Minimum Standards for Medicare Supplement Policies) shall include the applicable rate schedule and experience by plan;

(4) group and individual long-term care forms submitted under Insurance Code Article 3.70-12 and Chapter 3, Subchapter Y of this chapter (relating to Standards for Long-Term Care Insurance Coverage Under Individual and Group Policies) shall include the rate schedule;

(5) all individual accident and health filings submitted under Insurance Code Article 3.42 shall include the rate schedule; and

(6) rate schedules submitted shall be accompanied by the actuarial information set forth in subsection (q) of this section.

(q) Actuarial Information.

(1) Each life filing, including riders, insert pages, or limited partial refilings, which changes the non-forfeiture values of a particular policy or certificate shall be accompanied by the information set forth in subparagraphs (A) - (C) of this paragraph:

(A) The mathematical formulas and sample calculations for the items set forth in clauses (i) - (iv) of this subparagraph.

(i) net premiums for the specimen age and plan of insurance;

(ii) specimen non-forfeiture calculations necessary to verify consistency between the non-forfeiture values and the text of the form for years one, 20, and 50;

(iii) terminal reserves for the specimen age and plan; and

(iv) any other calculations necessary to verify non-forfeiture values and reserves.

(B) An actuarial memorandum as specified in clauses (i) and (ii) of this subparagraph, as applicable:

(i) for universal life and interest sensitive forms:

(I) an actuarial memorandum shall provide the mortality table, guaranteed interest rates, maximum surrender charges, maximum expense charges, maximum risk rates (cost of insurance rates), maximum loads, and maximum fees at issue. Upon a change in basic coverage, bands and risk classes for all ages shall be provided.

(II) actuarial proof shall be provided that:

(-a-) cash surrender values meet the minimum requirements of Insurance Code Article 3.44a;

(-b-) cash surrender values will always equal or exceed the minimum values required by law; and

(-c-) provide a comparison table of all guaranteed cash surrender values, standard nonforfeiture law minimum cash surrender values, guaranteed death benefits, and reserves. Such comparison should be based on the fill-in issue age (usually age 35) as defined in subsection (d) of this section, a premium which will provide coverage to the latest available maturity date, the minimum

issue amount, minimum guaranteed interest rates, maximum guaranteed cost of insurance rates (mortality rates), maximum guaranteed charges, and a month-by-month calculation of the values shown in the comparison for the first and fiftieth years.

(ii) for variable life forms, actuarial information shall be provided as required by §3.804 of this chapter (relating to Insurance Contract and Filing Requirements), and as required by this section.

(C) A statement shall be provided certifying that all policies or certificates, in addition to the specimen language and fill-in material, will have premiums, reserves, and non-forfeiture values calculated in a manner consistent with the information furnished with the specimen language and fill-in material. Any qualifications to such certification shall be specified, including any variation in formulas at different ages at issue or at time of a change.

(2) For each annuity filing, an actuarial memorandum shall be provided to meet the minimum requirements of Insurance Code Article 3.44b and specify the guaranteed interest rates, the maximum surrender charges, and any other maximum charges applicable in the determination of non-forfeiture values. If the company intends to change the guaranteed interest rates specified in the form, notification shall be submitted to the department prior to the change. The notification shall specify the new guaranteed interest rate and the date when the new guaranteed interest rate will be effective for new issues of a specified policy form, as required by §3.1004 of this chapter (relating to Policy Form Review).

(A) For variable annuities, the actuarial information shall provide the information required in this paragraph and the information required by §3.705 of this chapter (relating to Contract Requirements), to the extent such material is applicable.

(B) For policies or contracts that contain a market-value adjustment, the actuarial memorandum shall:

(i) identify the name of the separate account;

(ii) indicate the basis for the market-value adjustment formula and that the formula provides reasonable equity to both the contract holder and the company;

(iii) detail that the reserve liabilities are established in accordance with actuarial procedures that recognize that assets of the separate account are based on market values, the variable nature of the benefits provided, and any mortality guarantees;

(iv) include a table of minimum guaranteed policy values and cash surrender values which:

(I) are based on the longest guaranteed investment period,

(II) reflect both upward and downward market-value adjustments; and

(III) show that the minimum guaranteed values prior to the adjustment are not less than the minimum non-forfeiture values required by law; and

(v) provide a numerical illustration reproducing the values shown in the table for the first, second, and third years of investment, and at the end of the guaranteed investment period.

(3) Group and individual Medicare supplement (including Medicare SELECT) rate filings shall be accompanied by supporting actuarial information as required by Subchapter T of this chapter.

(4) Group and individual long-term care:

(A) rate filings shall be accompanied by supporting actuarial information as required by Subchapter Y of this chapter; and

(B) annual reports shall include the rates, rating schedule, and supporting documentation as required by Insurance Code Article 3.70-12, §4(b).

(5) Individual accident and health premium rate increases which result in any policyholder experiencing an increase in premium rate greater than or equal to 50% in any 12-month period must be accompanied by actuarial information which includes, at a minimum, the items of information specified in subparagraphs (A) - (E) of this paragraph. For the purpose of this paragraph, an increase in premium rate greater than or equal to 50% in any 12-month period shall mean the cumulative increase with respect to such premium considered over a 12-month period.

(A) The form number or numbers to which the submitted rate increase applies.

(B) The planned effective date of the increased rate.

(C) The schedule or schedules of rates to be used.

(D) A concise explanation of the rating process, including assumptions, claims data, methodology, and formulas used in development of gross premium rates.

(E) A statement of actual and projected experience as a basis for the rate adjustments.

(6) Discretionary group filings shall be accompanied by supporting actuarial information as required by Insurance Code Articles 3.50 §1(6) and 3.51-6 §1(a)(6).

(r) Filing Fee.

(1) The appropriate filing fee for filings for approval (excluding prepaid legal filings) are set forth in subparagraphs (A) - (J) of this paragraph.

(A) For each contract or policy, including Certification Form for Prototype Forms Figure Number 45, its certificate, approved or exempted application, and all approved or exempted riders filed as part of the entire policy or contract, a fee of $100 is required.

(B) For a filing of applications filed separately from the policy or contract to which it will be attached, a fee of $100 is required.

(C) For a filing of riders filed separately from the policy or contract to which it will be attached, a fee of $100 is required.

(D) For a filing of rates filed separately from the policy(ies) or contract(s) to which it is applicable, that require approval by the department as specified in §3.1(9) of this subchapter (relating to Scope), a fee of $100 is required.

(E) For a filing of alternate face pages with constitution and bylaws, articles of incorporation, or trust agreements, a fee of $100 is required.

(F) For a filing of insert pages filed subsequent to the original approval of a policy, a fee of $100 is required.

(G) For filings which normally would be considered exempt, but which, due to certain reasons specified in Subchapter Z of this chapter (relating to Exemption from Review and Approval of Certain Life, Accident, Health and Annuity Forms and Expedition of Review) are required to be submitted to the department for approval, a fee of $100 is required.

(H) For filing a resubmission of a previously disapproved form, a fee of $50 is required.

(I) For each refiling of a previously withdrawn form, a fee of $50 is required.

(J) For a filing of matrix provisions, due to the ability to create multiple contracts or policies from matrix provisions, a fee of $50 per form with a maximum fee of $500 is required.

(2) The appropriate filing fee for a filing exempt under Subchapter Z of this chapter is set forth in subparagraphs (A) - (H), as follows:

(A) For each exempt policy or contract filed simultaneously with its certificate, application, and exempt riders which are filed as part of the entire policy or contract, a fee of $50 is required.

(B) For a filing of exempt applications filed separately from the exempt policy or contract to which it will be attached, a fee of $50 is required.

(C) For a filing of exempt riders filed separately from the exempt policy or contract to which it will be attached, a fee of $50 is required.

(D) For a filing of rates filed separately from the exempt policy or contract to which it is applicable, and which is not subject to approval by the department as specified in §3.1(11)(A) of this subchapter, a fee of $50 is required.

(E) For a filing of outlines of coverage filed separately from the exempt policy or contract to which it is applicable, and which is not subject to approval by the department as specified in §3.1(11)(A) of this subchapter, a fee of $50 is required.

(F) For a filing of alternate face pages filed subsequent to the original approval of a policy for use with multiple employer trusteed arrangements as defined in Insurance Code Articles 3.50, §1(5) and 3.51-6, §1(a)(3), a fee of $50 is required.

(G) For a filing of exempt insert pages filed separately from the exempt policy or contract to which it is applicable, a fee of $50 is required.

(H) For a filing of exempt matrix provisions to be used with only exempt products, a fee of $50 per form with a maximum fee of $500 is required.

(3) The appropriate filing fees for filings other than those specified in paragraphs (1) and (2) of this subsection are set forth in subparagraphs (A) - (C) of this paragraph, as follows:

(A) For a filing of outlines of coverage filed separately from the policy or contract to which it is applicable, and which is subject to review by the department, a fee of $50 is required.

(B) For a filing of PPO disclosures filed separately from the policy or contract to which it is applicable, and which is subject to review by the department, a fee of $50 is required.

(C) For a filing of Accident and Health or Life rates filed separately from the policy or contract to which it is applicable, and which is subject to review by the department, a fee of $50 is required.

(4) Filings as described in §3.1(11)(B) of this subchapter shall require no filing fee.

§3.8. Effective Date.

The provisions of these sections shall apply to any form received by the department on or after June 1, 2003. Forms received by this department prior to June 1, 2003 shall be governed by the laws in effect at the time of the submission.

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

Filed with the Office of the Secretary of State on May 5, 2003.

TRD-200302776
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: June 1, 2003
Proposal publication date: December 6, 2002
For further information, please call: (512) 463-6327

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CHAPTER 7. CORPORATE AND FINANCIAL REGULATION

SUBCHAPTER A. EXAMINATION AND FINANCIAL ANALYSIS

28 TAC §7.28

The Commissioner of Insurance adopts the repeal of §7.28 concerning the regulation of accounting of reinsurance agreements by insurers. The repeal of the section is adopted without changes to the proposal as published in the November 8, 2002 of the *Texas Register* (27 TexReg 10558) and will not be republished.

The repeal of the section is necessary to eliminate a redundancy between the repealed section and §7.18, and the potential for conflicting interpretations. The substantive provisions of the repealed section are contained in §7.18 which is the adoption of the National Association of Insurance Commissioners' Accounting Practices and Procedures Manual, and includes Appendix A-791. The repeal of §7.28 furthers the objective of §7.18 to codify statutory accounting guidance into a single source in order to improve consistency in the regulations applicable to the accounting standards, treatments, and practices of insurers dong business in Texas. The substantive portions of the reinsurance requirements contained in the repealed section are contained in §7.18.

The repeal of the section provides consistency in the regulations applicable to the accounting standards, treatments and practices of insurers doing business in Texas. As a result of the repeal of the section there will be more efficient and standardized accounting by insurers licensed to do business in Texas.

Comment: Commenters raised concerns that the exemptions for assumption reinsurance and for certain 100% coinsurance transaction provided in §7.28(b)(3)(A) and (B) would no longer be available if the section is repealed and contend that the provisions are not carried forward in §7.18.

Agency Response: The department disagrees. The department notes that the rule applied to ceding insurers and not assuming insurers, and exemptions are continued through §7.18 and the accompanying appendixes.

For: Texas Association of Life and Health Insurers and Central United Life Insurance Company.

The repeal of the section is adopted under the Insurance Code Articles 1.11, 1.32, 3.10, 3.28, 5.75-1, 21.39-B, and 21.49-1 and §36.001. These articles authorize the Commissioner of

Insurance to adopt rules to establish or set standards for the evaluation of the financial condition of insurers and health maintenance organizations, including reinsurance transactions, reserves and insurance holding company system transactions. Section 36.001 authorizes the Commissioner of Insurance to adopt rules for the conduct and execution of the duties and functions of the department as authorized by statute. Subchapter A. Examination and Financial Analysis.

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

Filed with the Office of the Secretary of State on May 5, 2003.

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Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
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For further information, please call: (512) 463-6327

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SUBCHAPTER M. REGULATORY FEES

28 TAC §7.1301, §7.1302

The Commissioner of Insurance adopts amendments to §7.1301 and new §7.1302 concerning the establishment of a billing system for certain filings. Section 7.1301 is adopted with changes to the proposed text as published in the December 6, 2002 issue of the *Texas Register* (27 TexReg 11476). Section 7.1302 is adopted without changes to the proposed text and will not be republished.

The amendments and new section are necessary to permit the establishment and implementation of a new billing system for certain filings submitted under Chapters 3 and 11. Upon adoption of new §7.1302 and implementation of a billing system, the fee(s) will no longer be required to be submitted with the filing; instead, the regulated entity submitting the filing will be billed by itemized invoice from the department.

New §7.1302 is necessary to streamline the collection and receipt of filing fees. The billing system will reduce the process of refunding fee amounts received in excess of the actual fee amount and eliminate the need to reject filings due to insufficient fee amounts.

To permit the establishment of a billing system, new §7.1302 addresses the mailing of invoices on a periodic basis for filings received and amounts billed, and billing addresses and billing contact persons for regulated entities submitting filings, including requirements for notifying the department of a change of billing address or billing contact person information. The new section also addresses departmental handling of filing fee account balances, including filing fee accounts with invoice amounts past due and the placement of a hold on a filing fee account for any invoice amount past due 120 days or more.

Upon completion of the development and design of the billing system, the department will issue a commissioner's bulletin to notify regulated entities affected by the billing system of the official implementation date and of the specific date when they should cease submitting filing fee(s) along with certain filings to the department. Because of the implementation of the billing system adopted in §7.1302, amendments were made to §7.1301. Express fee amounts for certain filings are no longer specified in §7.1301; rather, they are addressed in amendments adopted under Chapter 3, Subchapter A. Therefore, express references to those filings have been deleted from this subchapter. The amendments to Chapter 3, Subchapter A are adopted elsewhere in this issue of the Texas Register. In §7.1301, the date has been changed to June 1, 2003 in order to complete technical and administrative tasks necessary to implement the billing system. Minor changes were also made throughout this section to correct punctuation.

No comments were received.

The sections are adopted pursuant to Insurance Code Articles 3.42, 3.53, 20A.22, 20A.32, and §36.001. Insurance Code Article 3.42(p) provides that the commissioner is authorized to adopt such reasonable rules that are within the standards and purposes of Article 3.42, and necessary to implement and accomplish the specific provisions of Article 3.42. Insurance Code Article 3.53, §7(H) authorizes the department to charge a fee for forms or schedules filed under the article in an amount to be determined by the department. Insurance Code Article 20A.22 provides that the commissioner may promulgate such reasonable rules as are necessary and proper to carry out the provisions of the HMO Act. Insurance Code Article 20A.32 requires that the expenses for filing fees for every organization subject to Insurance Code Chapter 20A shall be paid in accordance with rules adopted by the commissioner. Insurance Code §36.001 authorizes the commissioner of insurance to adopt rules for the conduct and execution of the powers and duties of the department as authorized by statute.

§7.1301. Regulatory Fees.

(a) Regulated entities subject to fees. The regulated entities subject to the fees imposed by this section shall include all authorized insurers writing any class of insurance in this state which are regulated by the Insurance Code, Chapters 1-3, 6-20, 20A, 22, and 23. For filings and other actions received by the department on and after June 1, 2003, the Texas Department of Insurance shall charge these entities fees in amounts in accordance with the provisions of this section. Filings or other actions received by the department on or before June 1, 2003, shall be governed by this subchapter as it existed immediately prior to June 1, 2003.

(b) Fees for insurers with annual gross premium receipts less than $450,000. As provided in the Insurance Code, Article 4.07, any insurer to which the article applies and whose gross premium receipts are less than $450,000 according to its annual statement for the preceding year ending December 31, shall be required to pay only one-half the amount of the fees required to be paid under subsection (d) or subsection (e) of this section. The fees will be collected at the higher rate unless the applicant can provide the Texas Department of Insurance with satisfactory documentation that gross premium receipts were less than $450,000.

(c) Fees for specified filings pursuant to the Insurance Code, Article 3.42. Fees for specified filings pursuant to the Insurance Code, Article 3.42 are set forth in Chapter 3, Subchapter A of this title (relating to Submission Requirements for Filings and Departmental Actions Related to Such Filings) and shall be governed thereby.

(d) Fees for authorized insurers writing classes of insurance in this state which are regulated by the Insurance Code, Chapters 1-3, 6-20, 20A, 22, and 23. For the following filings and actions, the fees shall be as follows.

(1) For classes of insurance for which statutory authority exists for collecting annual statement fees, the fee for filing annual statements shall be $250 unless otherwise specified.

(2) For filing amendments to certificate of authority if charter is not amended, the fee shall be $50.

(3) For reservation of name, the fee shall be $100.

(4) For renewal of reservation of name, the fee shall be $25.

(5) For filing application for admission of a foreign or alien insurance company, including issuance of certificate of authority, the fee shall be $2,000.

(6) For filing original charter, including issuance of certificate of authority, the fee shall be $1,500.

(7) For filing amendment to charter, including issuance of certificate of authority, if a hearing is held, the fee shall be $250.

(8) For filing amendment to charter, including issuance of certificate of authority, if a hearing is not held, the fee shall be $125.

(9) For filing designation of attorney for service of process or amendment thereto, the fee shall be $25.

(10) For filing a total reinsurance agreement, the fee shall be $750.

(11) For filing a partial reinsurance agreement, the fee shall be $150.

(12) For filing a direct reinsurance agreement pursuant to the Insurance Code, Article 22.19, the fee shall be $150.

(13) For filing for approval of reinsurance agreement pursuant to the Insurance Code, Article 21.26, the fee shall be $750.

(14) For filing for approval of merger pursuant to the Insurance Code, Article 21.25, the fee shall be $750.

(15) For accepting a security deposit, excluding deposits made pursuant to the Insurance Code, Article 3.16, the fee shall be $100.

(16) For substitution/amendment of a security deposit, excluding deposits made pursuant to the Insurance Code, Article 3.16, the fee shall be $50.

(17) For certification of statutory deposit, the fee shall be $10.

(18) For filing notice of intent to relocate the books/records pursuant to the Insurance Code, Article 1.28, the fee shall be $150.

(19) For filing restated articles of incorporation for domestic/foreign companies, the fee shall be $250.

(20) For filing a statement pursuant to the Insurance Code, Article 21.49-1, §5, for the first $9,900,000 of the purchase price or consideration, the fee shall be $500.

(21) For filing a statement pursuant to the Insurance Code, Article 21.49-1, §5, if the purchase price or consideration exceeds $9,900,000, an additional $250 for each $10 million exceeding $9,900,000 but not more than a $5,000 total fee.

(22) For filing registration statement pursuant to the Insurance Code, Article 21.49-1, §3, the fee shall be $150.

(23) For filing for review pursuant to the Insurance Code, Article 21.49-1, §4 or Article 22.15, the fee shall be $250.

(24) For filing for an exemption pursuant to the Insurance Code, Article 21.49-1, §5(e), the fee shall be $250.

(e) Other fees established by the Insurance Code, Article 4.07. For the following filings, the fee shall be as follows.

(1) For filing joint control agreement, the fee shall be $50.

(2) For filing substitution/amendment to the joint control agreement, the fee shall be $20.

(3) For filing a change in attorney in fact, the fee shall be $500.

(f) Administrative procedures.

(1) When a reinsurance agreement or merger agreement is filed with the Texas Department of Insurance, as enumerated in subsection (d)(11)-(15) of this section, the ceding or merged company will be the company upon which the determination of the appropriate fee to be assessed will be based.

(2) The fee relating to reinsurance transactions entered into pursuant to the Insurance Code, Article 21.49-1, §4, and subsection (d)(24) of this section shall be determined using the ceding company as a basis for such fee.

(3) When an amendment to a reinsurance agreement between affiliated insurers is filed with the Texas Department of Insurance, as mentioned in paragraph (1) of this subsection, the ceding company will be the insurer upon which the determination of the appropriate fee to be charged will be based.

(4) An amendment to the charter would constitute any change in the original charter, including, but not limited to, name change, home office change, increase in capital, conversion, and increase in lines.

(5) The fee relating to affixing the official seal and certifying to the seal shall be applied to all requests for certification, irrespective of requesting party.

(6) The fees for filing an acquisition statement pursuant to the Insurance Code, Article 21.49-1, §5 and subsection (d)(21) and (22) of this section shall apply to and be collected from the applicant whenever:

(A) the applicant is a regulated entity subject to this section; or

(B) the company being acquired is a regulated entity subject to this section.

(g) Fees pursuant to the Texas Health Maintenance Organization Act, §32. For the following filings and actions, the fees shall be as follows.

(1) For filing original application for certificate of authority, the fee shall be $7,500.

(2) For filing annual report, the fee shall be $250.

(3) For all examinations made on behalf of the State of Texas by the Texas Department of Insurance or under its authority, the fee shall be in such amounts as the commissioner shall certify to be just and reasonable.

(4) For filing evidence of coverage which requires approval, the fee shall be $100.

(5) For filing required by rule but which do not require approval, the fee shall be $50.

(h) Fees under the Insurance Code, Article 23.08. For the following filings and actions, the fees shall be as follows.

(1) For filing annual statement, the fee shall be $200.

(2) For application for certificate of authority, the fee shall be $1,500.

(3) For issuance of additional certificate of authority and amendment to same, the fee shall be $50.

(i) Fees for filings pursuant to the Insurance Code, Article 3.53. Fees for filings pursuant to the Insurance Code, Article 3.53 are set forth in Chapter 3, Subchapter A of this title and shall be governed thereby.

(j) Fees under the Insurance Code, Chapter 3. For the following filings and actions, the fees shall be as follows.

(1) For valuing policies of life insurance, and for each $1 million of insurance or fraction thereof, $10.

(2) For filing the annual statement, $250.

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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Gene C. Jarmon
General Counsel and Chief Clerk
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CHAPTER 11. HEALTH MAINTENANCE ORGANIZATION

SUBCHAPTER D. REGULATORY REQUIREMENTS FOR AN HMO SUBSEQUENT TO ISSUANCE OF CERTIFICATE OF AUTHORITY

28 TAC §11.301

The Commissioner of Insurance adopts amendments to §11.301 concerning certain health maintenance organization (HMO) filings. The amendments are adopted with changes to the proposed text as published in the December 6, 2002 issue of the *Texas Register* (27 TexReg 11478).

The amendments to §11.301 are necessary to provide uniformity in the establishment of a billing system for filing fees which is added by new §7.1302 published elsewhere in this issue of the Texas Register. Under new §7.1302, filing fees for certain filings made pursuant to Chapters 3 and 11 will be subject to the billing system. The new billing system will reduce the labor intensive process of refunding fee amounts received in excess of the actual fee amount and eliminate the need to reject filings due to insufficient fee amounts.

Upon completion of the development and design of the billing system, the department will issue a commissioner's bulletin to notify regulated entities affected by the billing system of the official implementation date and of the specific date when they should cease submitting filing fee(s) along with certain filings to the department. An HMO submitting a filing will be billed by itemized invoice from the department. The amendments to §11.301 are necessary to ensure uniformity with and the effective and efficient use of the new billing system created by §7.1302. Section 11.301 was changed to correct a misspelled word in (5)(E) and to replace language which was inadvertently omitted in a prior amendment to (7)(B).

No comments were received.

The amendments are adopted pursuant to Insurance Code Articles 20A.22, 20A.32, and §36.001. Insurance Code Article 20A.22 provides that the commissioner may promulgate such reasonable rules as are necessary and proper to carry out the provisions of the HMO Act. Insurance Code Article 20A.32 requires that the expenses for filing fees for every organization subject to Insurance Code Chapter 20A shall be paid in accordance with rules adopted by the commissioner. Insurance Code §36.001 authorizes the commissioner of insurance to adopt rules for the conduct and execution of the powers and duties of the department as authorized by statute.

§11.301. Filing Requirements.

Subsequent to the issuance of a certificate of authority, each HMO is required to file certain information with the commissioner, either for approval prior to effectuation or for information only, as outlined in paragraphs (4) and (5) of this section and in §11.302 of this title (relating to Service Area Expansion Requests). These requirements include filing changes necessitated by federal or state law or regulations.

(1) Completeness of filings. The department shall not accept a filing for review until the filing is complete. An application to modify the approved application for a certificate of authority which requires the commissioner's approval in accordance with the Insurance Code, Articles 20A.04(b) and 20A.09(l) is considered complete when all information required by this section, §11.302 of this title, and §§11.1901-11.1903 of this title (relating to Quality of Care) that is applicable and reasonably necessary for a final determination by the department, has been filed with the department.

(2) Identifying form numbers required. Each item required to be filed pursuant to paragraphs (4) and (5) of this section must be identified by a unique form number, adequate to distinguish it from other items. Such identifying form numbers shall be composed of a total of no more than 40 letters, numbers, symbols, and spaces.

(A) The identifying form number must appear in the lower left-hand corner of the page. In the case of a multiple page document, the identifying form number must appear on the lower left-hand corner of the first page. Page numbers should appear on subsequent pages.

(B) If an item is to be replaced or revised subsequent to issuance of a certificate of authority, a new identifying form number must be assigned. A change in address or phone number on a form will not require a new identifying form number. A new edition date added to the original identifying form number is an acceptable way of revising the number so that it is identifiable from any previously approved item; e.g., if G-100 was the originally approved number, the revision may be numbered G-100 12/79. Changing the case of the suffix is not considered to be a change in the number, e.g., "ED" and "ed" or "REV" and "rev" are the same for form numbering purposes.

(3) Attachments for filings. The filings required in paragraphs (4) and (5) of this section must be accompanied by the following:

(A) an original and four copies of the HMO certification and transmittal form for each new, revised, or replaced item;

(B) an original and four copies of such supporting documentation as considered necessary by the commissioner for review of the filing; and

(C) except for the filings outlined in paragraphs (4)(A), (B), and (L), and (5)(C), (G), (K), (M), and (N) of this section, the applicable filing fee for other filings as required by Insurance Code Article 20A.32, as determined by §7.1301 of this title (relating to Regulatory Fees). The fee(s) for filings outlined in paragraphs (4)(A), (B), and (L), and (5)(C), (G), (K), (M), and (N) of this section are subject to the fee amounts described in §7.1301(g) of this title, but shall not be attached with the filing. Instead, the submission of such fee(s) is subject to the billing provisions of §7.1302 of this title (relating to Billing System).

(4) Filings requiring approval. Subsequent to the issuance of a certificate of authority, each HMO shall file for approval with the commissioner information required by any amendment to items specified in §11.204 of this title if such information has not previously been filed and approved by the commissioner. In addition, an HMO shall file with the commissioner a written request to implement or modify the following operations or documents and receive the commissioner's approval prior to effectuating such modifications:

(A) the evidence of coverage and related forms, as described in §11.501 of this title (relating to Forms Which Must Be Approved Prior to Use);

(B) a description and a map of the service area, with key and scale, which shall identify the county or counties or portions thereof to be served;

(C) the form of all contracts described in §11.204(13)(A) and (C) of this title, including any amendments to contracts described in §11.204(13)(A) and (C) of this title and prior notification of the cancellation of any management contracts in §11.204(13)(D) of this title;

(D) any change in more than 10% of control of the HMO, as specified in the definition of "control" in §11.2(b)(11) of this title (relating to Definitions);

(E) transactions with affiliates related to the purchase, construction, or renovation of hospitals, medical facilities, administrative offices, or any other property which represent more than one-half of 1.0% of admitted assets of the HMO, as well as transactions involving the lease, operation, or maintenance of hospitals, medical facilities, administrative offices, or any other property from or by an affiliate if the monthly cost for such transaction exceeds one-half of 1.0% of all the monthly expenses of the HMO or such agreement places a lien on any property owned by the HMO;

(F) dividends which do not meet the requirements specified in §11.807 of this title (relating to Dividends);

(G) any new or revised loan agreements, or amendments thereto, evidencing loans made by the HMO to any affiliated person or to any medical or other health care provider, whether providing services currently, previously, or potentially in the future; and any guarantees of any affiliated person's or health care provider's obligations to any third;

(H) a copy of any proposed amendment to basic organizational documents. If the approved amendment must be filed with the secretary of state, an original, or a certified copy of such document with the original file mark of the secretary of state, shall be filed with the commissioner;

(I) a copy of any amendments to bylaws of the HMO, with a notarized certification bearing the original signature of the corporate secretary of the HMO that it is a true, accurate, and complete copy of the original;

(J) any name, or assumed name, on a form, as specified in §11.105 of this title (relating to Use of the Term "HMO," Service Mark, Trademarks, d/b/a);

(K) any agreement by which an affiliate agrees to handle an HMO's investments pursuant to §11.804 of this title (relating to Investment Management by Affiliate Companies);

(L) any material change in the HMO's emergency care procedures; and

(M) any original guarantees, modifications to existing guarantees specified in §11.808 of this title (relating to Guarantee from a Sponsoring Organization) and guarantees relating to Medicaid business as specified in §§11.1801-11.1806 of this title (relating to Solvency Standards for Managed Care Organizations Participating in Medicaid).

(5) Filings for information. Material filed under this paragraph is not to be considered approved, but may be subject to review for compliance with Texas law and consistency with other HMO documents. Each item filed under this paragraph must be accompanied by a completed HMO certification and transmittal form in addition to those attachments required under paragraph (3) of this section. Within 30 days of the effective date, an HMO must file with the commissioner, for information only, deletions and modifications to the following previously approved or filed operations and documents:

(A) the list of officers and directors and a biographical data sheet for each person listed under the Insurance Code, Article 20A.04(a)(3), on the officers and directors page and biographical affidavit forms in §11.204(5)(A) and (B) of this title;

(B) a copy of any notice of cancellation of fidelity bonds, new fidelity bonds, or amendments thereto, for officers and employees, including notarized certification by the corporate secretary or corporate president that the material is true, accurate, and complete, as described in §11.204(7) and (13)(D) of this title;

(C) the formula or method for calculating the schedule of charges, as defined in §11.2(b) of this title;

(D) any change in the physical address of the books and records described in §11.205 of this title (relating to Documents To Be Available During Examinations);

(E) any change of the certificate of authority for a domestic or foreign HMO. If the HMO is a foreign HMO, a certified copy of the certificate of authority and power of attorney must be submitted;

(F) any new trademark or service mark, or any changes to an existing trademark or service mark;

(G) a copy of the form of any new contract or subcontracts or any substantive changes to previously filed copies of forms of all contracts between the HMO and any physicians or other providers described in §11.204(13)(B) of this title, and copies of forms of all contracts between the HMO and an insurer or group hospital service corporation to offer indemnity benefits, whether utilized with all contracts or on an individual basis. If such contracts are amended, each copy of such agreement must be marked to indicate revisions. In addition, questions listed on the HMO certification and transmittal form, must be answered;

(H) any insurance contracts or amendments thereto, guarantees, or other protection against insolvency, including the

stop-loss or reinsurance agreements, if changing the carrier or description of coverage, as described in §11.204(15) of this title;

(I) changes to any of the requirements mandated for guarantees pursuant to §11.808 of this title (relating to Guarantee from a Sponsoring Organization);

(J) any change in the affiliate chart as described in §11.204(6)(A) of this title;

(K) the written description of health care plan terms and conditions made available to any current or prospective group contract holder and current or prospective enrollee of the HMO, including the enrollee handbook, pursuant to the requirements of the Insurance Code, Article 20A.04(13) and §11.1600 of this title (relating to Information to Prospective and Current Group Contract Holders and Enrollees);

(L) modifications to any types of compensation arrangements, such as compensation based on fee-for-service arrangements, risk-sharing arrangements, or capitated risk arrangements, made to physicians and providers in exchange for the provision of, or the arrangement to provide health care services to enrollees, including any financial incentives for physicians and providers;

(M) any material change in network configuration; and

(N) a description of the quality assurance program, including a peer review program, as required by the Insurance Code, Article 20A.05(a)(1). Descriptions of arrangements for sharing pertinent medical records between physicians and/or providers contracting or subcontracting pursuant to paragraph (13)(B) of §11.204 of this title with the HMO and assuring the records' confidentiality must also be provided.

(6) Approval time period. Any modification for which commissioner's approval is required is considered approved unless disapproved within 30 days from the date the filing is determined by the department to be complete. The commissioner may postpone the action for a period not to exceed 30 days, as necessary for proper consideration. The HMO will be notified by letter of any postponement.

(7) Filing Review Procedure. Within 20 days from the department's receipt of an initial filing for commissioner's approval under this section, the department shall determine whether the filing is complete or incomplete for purposes of acceptance for review and, if found to be incomplete, the department shall issue a written or electronic notice to the HMO of its incomplete filing. A filing under this subchapter that is subject to the billing provisions of §7.1302 of this title and which, upon receipt by the department, fails to comply with the requirements of that section, will be deemed to be incomplete for purposes of this subchapter.

(A) Incomplete filing. The written notice of an incomplete filing shall state that the filing is not complete and has not been accepted for review. In addition, the notice shall specify the information, documentation and corrections necessary to make the filing complete, as provided in paragraph (1) of this section. If a filing is resubmitted, in whole or in part, and is still incomplete, an additional written notice shall be issued. Such notice shall specify the corrections or information necessary for completeness, and state that the 30 day deemer will not begin until the date the department determines the filing to be complete. If a filing is not resubmitted within 30 days of the date of the written notice of incompleteness, then the filing shall be considered withdrawn by the department and closed.

(B) Processing of complete filing. The department shall in writing approve or disapprove a complete filing within the period of time set forth in paragraph (6) of this section, beginning on the date the filing is determined to be complete. The HMO may waive in writing the statutory deemer.

(C) Pending status. Complete filings will be approved or disapproved in writing within the statutory deemer period set forth in paragraph (6) of this section unless, prior to the department's issuance of notice of proposed negative action pursuant to §1.704(a) of this title (relating to Summary Procedure; Notice), the HMO has been contacted by the department regarding corrections or additional information necessary for commissioner's approval, and files with the department a written consent to waive the statutory deemer. The deemer shall be waived upon the department's receipt of the HMO's written consent. The filing shall be held in a pending status for 45 days from the date of the applicable statutory deemer, either on the 30th or 60th day from the date the filing is complete. If the necessary corrections or additional information have not been filed by the end of 45 days the filing shall be considered withdrawn.

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

Filed with the Office of the Secretary of State on may 5, 2003.

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Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
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For further information, please call: (512) 463-6327

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CHAPTER 19. AGENTS' LICENSING
SUBCHAPTER U. UTILIZATION REVIEWS FOR HEALTH CARE PROVIDED UNDER WORKERS' COMPENSATION INSURANCE COVERAGE

28 TAC §§19.2001, 19.2003 - 19.2006, 19.2010, 19.2012, 19.2015, 19.2017, 19.2019, 19.2020

The Commissioner of Insurance adopts amendments to §§19.2001, 19.2003 - 19.2006, 19.2010, 19.2012, 19.2015, 19.2017, 19.2019 and 19.2020, concerning utilization review for medical benefits provided pursuant to workers' compensation insurance coverage. Sections 19.2003 - 19.2006, 19.2010, 19.2012, 19.2015, and 19.2020 are adopted with changes to the proposed text as published in the December 20, 2002, issue of the *Texas Register* (27 TexReg 11895). Sections 19.2001, 19.2017, and 19.2019 are adopted without changes and will not be republished.

The amendments are necessary to implement changes enacted by the 77th Texas Legislature in House Bill (HB) 2600, which among other things amended the workers' compensation statute (Title 5, Labor) with regard to utilization review in the provision of workers' compensation benefits. The amendments are necessary to conform these sections to HB 2600 and to rules adopted by the Texas Workers' Compensation Commission (TWCC). The amendments are adopted to regulate persons who perform utilization review of medical benefits provided under the workers' compensation statute. Changes have been made to the proposed sections as follows. In response

to comments, language was added to §§19.2005, 19.2006 and 19.2020 to clarify that out of state doctors who perform utilization review or specialty utilization review must either be on TWCC's approved doctors list (ADL), or be licensed in their own state and perform utilization review under the direction of a Texas-licensed doctor who is on the ADL. HB 2600 changed the workers' compensation statute to provide that doctors and other health care providers, including those performing utilization review, must be on the ADL. However, it also provided that a utilization review agent may use doctors licensed in another state so long as reviews are performed under the direction of a doctor licensed in Texas. While the rule as proposed contained all these provisions, commenters pointed out that parts of the rule, if read in isolation, could be understood incorrectly. Accordingly, language was added to present a clearer and more complete picture of the requirements of HB 2600 regarding out of state doctors. In addition, changes were made to the titles of TWCC rules referenced in §§19.2003-19.2006, 19.2010, 19.2015, and 19.2020 to reflect the accurate and/or most recent citations, and to §§19.2004 and 19.2020 to remove redundant and unnecessary language. Finally, minor grammatical changes were made to the sections to correct punctuation.

The adopted amendment to §19.2001 removes as unnecessary references to legislation that has amended Insurance Code Article 21.58A. The adopted amendment to §19.2003 makes the definition of utilization review consistent with HB 2600, which added the concept of concurrent review to preauthorization and subjected requests for spinal surgery to preauthorization. It also revises the definition of preauthorization to make it consistent with TWCC's definition. The adopted amendment to §19.2005 adds the requirement that a utilization review plan must include written procedures for ensuring that doctors who perform utilization review for the utilization review agent are on the ADL. Similarly, adopted amendments to §19.2006(a) and §19.2020(f) include this requirement for doctors who perform utilization review and for doctors performing utilization review for specialty utilization review agents. The adopted amendment to §19.2006(d) provides that a utilization review agent may use doctors licensed in another state to perform reviews, but that the reviews must be performed under the direction of a doctor licensed in Texas and must comply with TWCC regulatory requirements. The adopted amendment to §19.2010 adds the requirement that a utilization review agent's notification of an adverse determination must include a plain-language notification informing the employee of the right to timely request reconsideration pursuant to TWCC rules. Adopted amendments to §19.2017 update references to the Insurance Code regarding administrative violations. In addition, adopted amendments to §§19.2003(5), 19.2004(2), 19.2012, 19.2015(2), 19.2019(a), and 19.2020(i) revise references to TWCC rules to reflect current titles. The adoption also updates references in this subchapter to names of various divisions and mail codes, as appropriate.

Section 19.2003: One commenter recommends amending the definition of "screening criteria" to include "if adopted, nationally recognized, scientifically valid, and outcome-based" treatment guidelines, in the event the Texas Workers' Compensation Commission (TWCC) elects to adopt treatment guidelines to replace those repealed effective January 1, 2001.

Agency Response: Because TWCC repealed former treatment guidelines in accordance with HB 2600 and has not adopted new treatment guidelines, the department believes it would be premature to make the requested change at this time. The commenter is correct that any such adopted guidelines would come within the definition of "screening criteria" in this rule; however, the department believes that the phrase "treatment guidelines" in the current rule would encompass any guidelines TWCC may adopt in the future.

Comment: One commenter suggests adding a definition of "voluntary certification" because TWCC rules include the processes for requesting utilization review under the definitions of preauthorization, concurrent review, and voluntary certification. Because the department's rule includes new definitions for preauthorization and concurrent review, the commenter says, it is appropriate to include "voluntary certification" for consistency between the two rules.

Agency Response: The department disagrees. HB 2600 says TWCC may not prohibit an insurance carrier and health care provider from voluntarily discussing health care treatment and treatment plans, either prospectively or concurrently, and may not prohibit a carrier from certifying or agreeing to pay for health care consistent with those agreements. TWCC's implementing rules provide that an insurance carrier is liable for all reasonable and necessary medical costs relating to the health care required to treat a compensable injury when voluntary certification was requested and payment agreed upon prior to providing the health care for any care for which preauthorization or concurrent review is not required. The rules further provide that denials of voluntary certification are not subject to prospective necessity dispute resolution, although health care for which voluntary certification was denied is subject to retrospective necessity dispute resolution. Thus, voluntary certification is not utilization review within the meaning of Title 5 of the Labor Code, Art. 21.58A of the Insurance Code, and this rule. In addition, it would not be useful to define a term for which there is no reference in the rule.

Sections 19.2005, 19.2006 and 19.2020: Two commenters recommend changing these sections to clarify that HB 2600 specifically authorizes doctors licensed out of state to perform utilization review so long as they perform under the direction of a Texas-licensed doctor. The commenters expressed concern that, as proposed, these sections could lead to the erroneous conclusion that out of state doctors performing utilization review must also be on TWCC's approved doctor list (ADL).

Agency Response: The department agrees that the ADL requirements in other parts of the rule, if read in isolation, could appear to pose a conflict with the out of state doctor provisions. Therefore, the department has added language to these sections to ensure consistency and clarity consistent with the provisions of HB 2600, stating that the utilization review plan must ensure that doctors performing utilization review are either on the ADL or are licensed in another state and will perform utilization review under the direction of a doctor licensed in Texas who is on the ADL. To further ensure consistency with HB 2600, the added language makes reference to TWCC's rules concerning out of state doctors.

Section 19.2020: One commenter says that there is no definition within Chapter 19, Subchapter U, to clarify what type of provider qualifies as a specialty utilization review agent and what sections of the rule such agents are subject to. The commenter recommends that the rule clarify the difference between "specialty utilization review" and "utilization review," possibly by adding definitions for the former and for specialty review agent.

Agency Response: The department disagrees, as it believes §19.2020 and the statute are sufficiently self-explanatory concerning requirements of the rule and statute to which specialty utilization review agents are subject.

For with changes: Insurance Council of Texas, American Insurance Association, Texas Mutual Insurance Company.

The amendments are adopted under the Insurance Code, Art. 21.58A and §36.001. Art. 21.58A, Health Care Utilization Review Agents, gives the commissioner the authority to adopt rules to implement the provisions of that article. Section 36.001 provides that the commissioner may adopt rules for the conduct and execution of the powers and duties of the department only as authorized by statute.

§19.2003. Definitions.

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

(1) Act--Insurance Code Article 21.58A, entitled "Health Care Utilization Review Agents."

(2) Active practice--A minimum of 20 hours per week in the examination, diagnosis and/or treatment of patients.

(3) Administrative Procedure Act--Government Code Chapter 2001.

(4) Adverse determination--A determination by a utilization review agent that the health care furnished or proposed to be furnished to an injured employee is not reasonable and necessary.

(5) Appeal process--The processes outlined in the Texas Workers' Compensation Act, including but not limited to Texas Labor Code §413.031, Chapter 134, Subchapter G of this title (relating Prospective and Concurrent Review of Health Care), and Chapter 133, Subchapter D of this title (relating to Dispute and Audit of Bills by Insurance Carriers).

(6) Certificate--A certificate of registration granted by the commissioner to a utilization review agent.

(7) Commissioner--The Commissioner of Insurance.

(8) Compensable injury--An injury that arises out of and in the course and scope of employment for which compensation is payable under the Texas Workers' Compensation Act.

(9) Complaint--An oral or written expression of dissatisfaction with a utilization review agent concerning the utilization review agent's process. A complaint is not an expression of dissatisfaction with a specific adverse determination, a misunderstanding or misinformation that is resolved promptly by supplying the appropriate information or clearing up the misunderstanding to the satisfaction of the complaining party.

(10) Department--Texas Department of Insurance.

(11) Dentist--A licensed doctor of dentistry, holding either a D.D.S. or a D.M.D. degree.

(12) Doctor--A doctor of medicine, osteopathic medicine, optometry, dentistry, podiatry, or chiropractic who is licensed and authorized to practice.

(13) Health care--Includes all reasonable and necessary medical aid, medical examinations, medical treatments, medical diagnoses, medical evaluations, and medical services. The term does not include vocational rehabilitation. The term includes:

(A) medical, surgical, chiropractic, podiatric, optometric, dental, nursing, and physical therapy services provided by or at the direction of a doctor;

(B) physical rehabilitation services performed by a licensed occupational therapist provided by or at the direction of a doctor;

(C) psychological services prescribed by a doctor;

(D) the services of a hospital or other health care facility;

(E) a prescription drug, medicine, or other remedy; and

(F) a medical or surgical supply, appliance, brace, artificial member, or prosthesis, including training in the use of the appliance, brace, member, or prosthesis.

(14) Health care facility--A hospital, emergency clinic, outpatient clinic, or other facility providing health care.

(15) Health care provider--Any person, corporation, facility, or institution licensed by a state to provide or otherwise lawfully providing health care that is eligible for independent reimbursement for those services.

(16) Injured employee--An employee with a compensable injury under the Texas Workers' Compensation Act.

(17) Inquiry--A request for information or assistance from a utilization review agent.

(18) Insurance carrier---

(A) an insurance company;

(B) a certified self-insurer for workers' compensation insurance; or

(C) a governmental entity that self-insures, either individually or collectively.

(19) Insurance company--A person authorized and admitted by the Texas Department of Insurance to do insurance business in this state under a certificate of authority that includes authorization to write workers' compensation insurance.

(20) Life-threatening--A disease or condition resulting from a compensable injury, for which the likelihood of death is probable unless the course of the disease or condition is interrupted.

(21) Medical benefit--Payment for health care reasonably required by the nature of a compensable injury and intended to:

(A) cure or relieve the effects naturally resulting from the compensable injury, including reasonable expenses incurred by the injured employee for necessary treatment to cure and relieve the injured employee from the effects of an occupational disease before and after the injured employee knew or should have known the nature of the disability and its relationship to the employment;

(B) promote recovery; or

(C) enhance the ability of the injured employee to return to or retain employment.

(22) Medical records--The entire history of diagnosis and treatment for a compensable injury, including but not limited to medical, dental, and other health care records from all disciplines rendering care to an injured employee.

(23) Nurse--A professional or registered nurse, a licensed vocational nurse, or a licensed practical nurse.

(24) Open records law--Government Code Chapter 552.

(25) Person--An individual, a corporation, a partnership, an association, a joint stock company, a trust, an unincorporated organization, any similar entity or any combination of the foregoing acting in concert.

(26) Physician--A licensed doctor of medicine or a doctor of osteopathy.

(27) Preauthorization--The process requesting approval to provide a specific treatment or service prior to rendering the treatment or service as defined and delineated in Chapter 134, Subchapter G of this title (relating to Prospective and Concurrent Review of Health Care).

(28) Retrospective review--The process of reviewing health care which has been provided to injured employees under the Texas Workers' Compensation Act to determine if the health care was medically reasonable and necessary.

(29) Screening criteria--The written policies, decision rules, medical protocols, TWCC fee and treatment guidelines, and TWCC rules and advisories used by the utilization review agent as part of the utilization review process (e.g., appropriateness evaluation protocol (AEP), and intensity of service, severity of illness, discharge, and appropriateness screens (ISD-A)). The TWCC Treatment Guidelines are tools that identify recommended treatment parameters and typical courses of intervention, whose purpose is to clarify those services that are reasonable and medically necessary. The guidelines are not to be used as fixed treatment protocols by either the health care provider or insurance carrier and shall not be viewed as prescriptive or the sole basis for approval or denial of proposed services. There may be injured employees who will require more or less treatment than is recommended in the guidelines. Treatment falling outside the parameters of the guidelines will be subject to more careful scrutiny and may require additional documentation of special circumstances to justify the need for treatment. Each guideline includes specific ground rules which establish the use of the guideline.

(30) Texas Workers' Compensation Act--Texas Labor Code Title 5.

(31) Treating doctor--The doctor primarily responsible for treating the injured employee's compensable injury as defined in the Texas Labor Code, §401.011(42).

(32) TWCC--Texas Workers' Compensation Commission.

(33) Utilization review--A system for preauthorization and concurrent review, or both preauthorization and retrospective review or both concurrent and retrospective review, to determine if health care proposed to be provided, being provided, or which has been provided to an injured employee is medically reasonable and necessary. Utilization review shall not include elective requests for clarification of coverage or prepayment guarantee.

(34) Utilization review agent--An insurance carrier, the carriers' agent(s), and/or any entity contracted or subcontracted to provide utilization review.

(35) Utilization review plan--The screening criteria and utilization review procedures of a utilization review agent.

(36) Working day--A weekday, excluding a legal holiday.

(37) Workers' compensation insurance coverage:

(A) an approved insurance policy, pursuant to Article 5.56 of the Insurance Code, to secure the payment of compensation under the Texas Workers' Compensation Act;

(B) coverage to secure the payment of compensation through self-insurance as provided by the Texas Workers' Compensation Act; or

(C) coverage provided by a governmental entity to secure the payment of compensation under the Texas Workers' Compensation Act.

(38) Concurrent review--A review of on-going health care for an extension of treatment beyond previously approved health care in accordance with §134.600 of this title (relating to Preauthorization, Concurrent Review, and Voluntary Certification of Health Care).

§19.2004. Certification of Utilization Review Agents.

(a) An application for certification of a utilization review agent must be filed with the Texas Department of Insurance at the following address: HMO Compliance/URA/IRO Section, Mail Code 103-6A, Texas Department of Insurance, P.O. Box 149104, Austin, TX 78714-9104.

(b) The application must be submitted on a form which can be obtained from the HMO Compliance/URA/IRO Section, Mail Code 103-6A, Texas Department of Insurance, P.O. Box 149104, Austin, TX 78714-9104.

(c) The attachments to the application form require the following information:

(1) a summary description of the utilization review plan which must include the matters listed in subparagraphs (A) and (B) of this paragraph. The utilization review plan must meet the requirements of §19.2005 of this title (relating to General Standards of Utilization Review);

(A) an adequate summary description of screening criteria and review procedures to be used to determine health care is medically reasonable and necessary; and

(B) a certification, signed by an authorized representative of the company, that screening criteria and review procedures to be applied in review determination are established with input from appropriate health care providers and approved by physicians;

(2) copies of procedures established for informing appropriate parties of the process for appeal of an adverse determination to TWCC. These procedures must comply with the provisions of Chapter 133, Subchapter D of this title (relating to Dispute and Audit of Bills by Insurance Carriers);

(3) copies of procedures established for handling oral or written complaints by injured employees, their representatives or health care providers. These procedures must comply with §19.2016 of this title (relating to Complaints and Information);

(4) copies of policies and procedures which ensure that all applicable state and federal laws to protect the confidentiality of medical records are followed. These procedures must comply with §19.2014 of this title (relating to Confidentiality);

(5) a certification signed by an authorized representative of the company that the utilization review agent will comply with the provisions of the Act, the Texas Workers' Compensation Act and TWCC Rules;

(6) a description of the categories of persons and names of the personnel employed or under contract to perform utilization review;

(7) a description of the hours of operation within the State of Texas and how the utilization review agent may be contacted during weekends and holidays. This description must be in compliance with

§19.2013 of this title (relating to Utilization Review Agent's Telephone Access);

(8) representative samples of all materials provided by the utilization review agent/applicant to inform its clients, injured employees, their representatives or providers of the requirements of the utilization review plan. Samples shall include language for notification of an adverse determination made in a utilization review;

(9) a description of the basis by which the utilization review agent compensates its employees or agents to ensure compliance with paragraph (10) of this subsection;

(10) a certification signed by an authorized representative of the company that the utilization review agent shall not permit or provide compensation or anything of value to its employees or agents, condition employment or its employee or agent evaluations, or set its employee or agent performance standards based on: the amount or volume of adverse determinations; reductions or limitations on lengths of stay, duration of treatment, medical benefits, services, or charges; or on the number or frequency of telephone calls or other contacts with health care providers or injured employees, which are inconsistent with the provisions of this subchapter;

(11) the organizational information, documents and all amendments, including:

(A) the bylaws, rules, or any similar document regulating the conduct of the internal affairs of the applicant with a notarized certification bearing the original signature of an officer or authorized representative of the applicant that they are true, accurate, and complete copies of the originals;

(B) for an applicant that is publicly held, the name of each stockholder or owner of more than five percent of any stock or options;

(C) a chart showing the internal organizational structure of the applicant's management and administrative staff; and

(D) a chart showing contractual arrangements of the utilization review agent related to utilization review;

(12) the name and biographical information for each director, officer and executive of the applicant.

(d) The utilization review agent shall report any material changes in the information in the application or renewal form referred to in this section, not later than the 30th day after the date on which the change takes effect. Material changes include but are not limited to new personnel hired as directors, officers, or executives, changes in the organizational structure, changes in contractual relationships, changes in the utilization review plan and changes in methods of compensation to utilization review agents or their employees.

(e) The application process is described in paragraphs (1) - (4) of this subsection.

(1) The department shall have 60 days after receipt of an application to process the application and to certify or deny it. The department shall give the applicant written notice of any omissions or deficiencies noted as a result of the review conducted pursuant to this paragraph.

(2) The applicant must correct the omissions or deficiencies in the application within 30 days of the date of the department's latest notice of such omissions or deficiencies. If the applicant fails to do so, the application file will be closed as an incomplete application. The application fee will not be refundable.

(3) The applicant may waive any of the time limits described in this subsection, except in paragraph (2). The applicant may waive the time limit in paragraph (2) of this subsection only with the consent of the department.

(4) The department shall maintain an application file which shall contain the application, notices of omissions or deficiencies, responses and any written materials generated by any person that was considered by the department in evaluating the application.

(f) An applicant for a certificate of registration as a utilization review agent must provide evidence that the applicant:

(1) has available the services of doctors, nurses, physician's assistants, or other health care providers qualified to provide the service requested by the provider to carry out its utilization review activities in a timely manner;

(2) meets any applicable provisions of this subchapter and regulations relating to the qualifications of the utilization review agents or the performance of utilization review;

(3) has policies and procedures which protect the confidentiality of medical records in accordance with applicable state and federal laws;

(4) makes itself accessible to injured employees, their representatives and health care providers 40 working hours a week during normal business hours in this state in each time zone in which it operates.

(g) A utilization review agent must apply for renewal of the certificate of registration every two years from the date of certification. A renewal form must be used for this purpose. The renewal fee must be submitted with the renewal form. The renewal form can be obtained from the address listed in subsection (b) of this section. The completed renewal form, a summary of the current screening criteria, a statement signed by an authorized representative of the company certifying that all information previously submitted is true and correct and all changes have been previously filed to the application certified by the department, and the renewal fee must be submitted to the department at the address listed in subsection (a) of this section. A utilization review agent may continue to operate under its certificate of registration, if the information and the fee have been filed for renewal and timely received by the department, until the renewal is finally denied or issued by the department. If the required information and fee are not received prior to the deadline for renewal of the certificate of registration, the certificate of registration will automatically expire and the utilization review agent must complete and submit a new application form and a new fee with all required information.

(h) If an application or renewal is initially denied under this section, the applicant or registrant may appeal such denial under the terms of the provisions of Chapter 1, Subchapter A of this title (relating to Rules of Practice and Procedure) and Government Code Chapter 2001. A hearing of such appeal shall be conducted within 45 days of the date the petition for such hearing is filed with the commissioner. A decision by the commissioner shall be rendered within 60 days of the date of the hearing.

(i) A utilization review agent providing utilization review on the effective date of this subchapter must abide by the provisions of this subchapter effective upon its adoption, and must file with the department its original application within 180 days of the effective date of this subchapter. Utilization review agents that have received their certificate of registration prior to the adoption of these rules, and are performing workers' compensation utilization review as defined in §19.2003 of this title (relating to Definitions), must file with the department all changes

to their original application as set forth in subsections (c) and (d) of this section within 180 days of the effective date of this subchapter.

(j) A utilization review agent will be required to make a single application and fee payment for one certification to cover all lines of utilization review business.

§19.2005. General Standards of Utilization Review.

The utilization review plan shall be reviewed by a physician and conducted in accordance with standards developed with input from appropriate health care providers, including doctors engaged in an active practice that are both primary and specialty doctors, and approved by a physician. The utilization review plan shall include the following components:

(1) a description of the elements of review which the utilization review agent provides, including:

(A) prospective and concurrent review in accordance with Chapter 134, Subchapter G of this title (relating to Prospective and Concurrent Review of Health Care);

(B) the elements of review in the TWCC guidelines contained in Chapter 134, Subchapter G of this title (relating to Prospective and Concurrent Review of Health Care);

(C) The elements of review contained in Chapter 133, Subchapter D of this title (relating to Dispute and Audit of Bills by Insurance Carriers).

(2) written procedures for:

(A) identification of individuals with special circumstances who may require flexibility in the application of screening criteria through utilization review decisions. Special circumstances include, but are not limited to, a person who has a disability, an acute condition or life-threatening illness. Disability shall not be construed to mean an injured employee who is off work or receiving income benefits;

(B) notification of the utilization review agent's determinations provided in accordance with Chapter 134, Subchapter G of this title and as addressed in §19.2010(b) of this title (relating to Notice of Determinations Made by Utilization Review Agents, Excluding Retrospective Review);

(C) informing appropriate parties of the process for appeal of an adverse determination to TWCC, as required by §19.2011 and §19.2012 of this title (relating to Requirements Prior to Adverse Determination and Appeal of Adverse Determinations of Utilization Review Agents);

(D) receiving or redirecting a toll-free normal business hour and after-hour calls, either in person or by recording, and assurance that a toll-free number will be maintained 40 hours per week during normal business hours as addressed in §19.2013 of this title (relating to Utilization Review Agent's Telephone Access);

(E) review including:

(i) any form used during the review process;

(ii) time frames that shall be met during the review;

(F) handling of oral or written complaints by injured employees, their representatives or health care providers as addressed in §19.2016(a) of this title (relating to Complaints and Reporting Requirements);

(G) determining if doctors or other health care providers utilized by the utilization review agent are licensed, qualified and appropriately trained, including written procedures for ensuring that doctors that perform utilization review for the utilization review agent are either on TWCC's list of approved doctors or, if licensed in another state, will perform utilization review under the direction of a doctor licensed in Texas who is on TWCC's list of approved doctors, in accordance with Chapter 180 of this title (relating to Monitoring and Enforcement);

(H) assuring that injured employee-specific information obtained during the process of utilization review, as addressed in §19.2014 of this title (relating to Confidentiality), will be:

(i) kept confidential in accordance with applicable federal and state laws;

(ii) used solely for the purposes of utilization review, quality assurance and case management;

(iii) shared with only those agencies who have authority to receive such information; and

(iv) in the case of summary data, not considered confidential if it does not provide sufficient information to allow identification of individual injured employees;

(I) providing prior written notice to a doctor or health care provider when publishing data, including quality review studies or performance tracking data which identifies a particular doctor, or health care provider;

(3) screening criteria. Each utilization review agent shall utilize written medically acceptable screening criteria as defined in §19.2003 of this title (relating to Definitions) and review procedures which are established and periodically evaluated and updated, at a minimum, upon certification renewal with appropriate involvement from the doctors, including doctors engaged in an active practice, and other health care providers. Utilization review decisions shall be made in accordance with currently accepted medical or health care practices, taking into account special circumstances of each case that may require deviation from the norm stated in the screening criteria. Screening criteria must be objective, clinically valid, compatible with established principles of health care, and flexible enough to allow deviations from the norm when justified on a case-by-case basis. Screening criteria must be used to determine only whether to approve the requested treatment. Denials must be referred to an appropriate doctor or other health care provider to determine whether health care is medically reasonable and necessary. Such written screening criteria and review procedures shall be available for review and inspection to determine appropriateness and compliance as deemed necessary by the commissioner, his or her designated representative, or TWCC and copying as necessary for the commissioner and/or TWCC to carry out the lawful duties under the Insurance Code, and the Texas Labor Code, provided, however, that any information obtained or acquired under the authority of this subchapter and the Act, is confidential and privileged and not subject to the open records law or subpoena except to the extent necessary for the commissioner to enforce this subchapter and the Act, and for TWCC to enforce the Texas Workers' Compensation Act.

(4) delegation of review. Provide circumstances, if any, under which the utilization review agent may delegate the review to qualified personnel in the hospital or health care facility where the health care is to be provided. Such delegation shall not relieve the utilization review agent of full responsibility for compliance with this subchapter, the Act, and the Texas Workers' Compensation Act, including the conduct of those to whom utilization review has been delegated.

§19.2006. Personnel.

(a) Personnel employed by or under contract with the utilization review agent to perform utilization review shall be appropriately trained and qualified and, if applicable, currently licensed. Doctors that perform utilization review for the utilization review agent must be

on TWCC's list of approved doctors in accordance with Chapter 180 of this title (relating to Monitoring and Enforcement), or comply with subsection (d) of this section. Personnel who obtain information regarding an injured employee's specific medical condition, diagnosis and treatment options or protocols directly from the doctor or other health care provider, either orally or in writing, and who are not doctors shall be nurses, physicians assistants, or health care providers qualified to provide the service requested by the provider. This provision shall not be interpreted to require such qualifications for personnel who perform clerical or administrative tasks.

(b) A utilization review agent may not permit or provide compensation or any thing of value to its employees or agents, condition employment or its employee or agent evaluations, or set its employee or agent performance standards, based on: the amount or volume of adverse determinations; reductions or limitations on lengths of stay, duration of treatment, medical benefits, services, or charges; or the number or frequency of telephone calls or other contacts with health care providers or injured employees, which are inconsistent with the provisions of this subchapter.

(c) The utilization review agent is required to provide the name, number, type, and minimum qualification or qualifications of the personnel either employed or under contract to perform the utilization review to the commissioner. Utilization review agents shall be required to adopt written procedures used to determine if doctors or other health care providers utilized by the utilization review agent are licensed, qualified, and appropriately trained, and must maintain records on such.

(d) A utilization review agent that uses doctors to perform reviews of health care services provided under a workers' compensation policy may use doctors licensed by another state to perform the reviews, but the reviews must be performed under the direction of a doctor licensed to practice in this state who is on TWCC's approved doctor list, in accordance with Chapter 180 of this title. Such doctor may be employed by or under contract to the utilization review agent.

(e) Utilization review of dental health care shall be reviewed by a dentist currently licensed by a state licensing agency in the United States prior to issuance of an adverse determination.

§19.2010. Notice of Determinations Made by Utilization Review Agents, Excluding Retrospective Review.

(a) A utilization review agent shall notify the injured employee, their representative and the treating doctor or the treating doctor's designated representative (e.g., referred health care providers or health care facilities) of a determination made in a utilization review.

(b) The notification and time frames for notification required by this section must be made in accordance with TWCC rules contained in Chapter 134, Subchapter G of this title (relating Prospective and Concurrent Review of Health Care).

(c) Notification of adverse determination by the utilization review agent must include:

(1) the principal reasons for the adverse determination;

(2) the clinical basis for the adverse determination;

(3) a description or the source of the screening criteria that were utilized as guidelines in making the determination;

(4) a description of the procedure for the complaint process to the Department and appeal process to TWCC, and

(5) plain language notifying the employee of the right to timely request reconsideration of the health care denied in accordance with Chapter 134, Subchapter G of this title (relating to Prospective and Concurrent Review of Health Care).

§19.2012. Appeal of Adverse Determination of Utilization Review Agents.

Appeals from an adverse determination by a utilization review agent shall be governed by the Texas Workers' Compensation Act and the applicable rules and procedures of the TWCC including but not limited to Chapter 134, Subchapter G of this title (relating to Prospective and Concurrent Review of Health Care) and Chapter 133, Subchapter D of this title (relating to Dispute and Audit of Bills by Insurance Carriers).

§19.2015. Retrospective Review of Medical Necessity.

(a) When a retrospective review is performed:

(1) such retrospective review shall be based on written screening criteria as defined in §19.2003 of this title (relating to Definitions) established and periodically updated, at a minimum, upon certification renewal with appropriate involvement from doctors, including doctors engaged in an active practice, and other health care providers; and

(2) such retrospective review shall be under the direction of a physician and performed in accordance with Chapter 133, Subchapter D of this title (relating to Dispute and Audit of Bills by Insurance Carriers).

(b) When retrospective review results in an adverse determination or denial of payment, the utilization review agent shall notify the health care providers of the opportunity to appeal the determination through the appeal process as outlined in Chapter 133, Subchapter D of this title (relating to Dispute and Audit of Bills by Insurance Carriers).

§19.2020. Specialty Utilization Review Agent.

(a) A utilization review agent that solely performs specialty review under the Insurance Code, Article 21.58A, §14(j) is not subject to the Insurance Code, Article 21.58A, §4(b), (c), (h) or (k) or §6(b)(3) of the Act. A utilization review agent that does not solely perform specialty review, is not subject to the provisions of this section or the Insurance Code, Article 21.58A, §14(j).

(b) A utilization review agent that performs specialty review under the Insurance Code, Article, 21.58A, §14(j) is subject to this subchapter, except §19.2004(c)(1)(B) and (c)(6) of this title (relating to Certification of Utilization Review Agents); the first sentence of §19.2005 of this title (relating to General Standards of Utilization Review); §19.2006(a), (d), (e) of this title (relating to Personnel); §19.2011 of this title (relating to Requirements Prior to Adverse Determination) and §19.2012 of this title (relating to Appeal of Adverse Determination of Utilization Review Agents).

(c) A specialty utilization review agent must submit, by attachment to the application, assurance that the utilization review plan shall be reviewed by a health care provider of the appropriate specialty and conducted in accordance with standards developed with input from a health care provider of the appropriate specialty.

(d) A specialty utilization review agent must submit by attachment to the application a description of the categories of personnel who perform utilization review, such as doctors, nurses, physicians assistants, or other health care providers of the same specialty as the utilization review agent and who are licensed or otherwise authorized to provide the specialty health care by a state licensing agency in the United States, except that this provision does not require those qualifications from personnel who perform solely clerical or administrative tasks.

(e) An applicant for a certificate of registration as a specialty utilization review agent must provide evidence that the applicant has

available the services of doctors, nurses, physician's assistants, or other health care providers of the same specialty as the utilization review agent and who are licensed or otherwise authorized to provide the specialty health care by a state licensing agency in the United States to carry out its utilization review activities in a timely manner.

(f) Personnel employed by or under contract with the specialty utilization review agent to perform utilization review shall be appropriately trained and qualified and, if applicable, currently licensed. Doctors that perform utilization review for the specialty utilization review agent must be on TWCC's list of approved doctors in accordance with Chapter 180 of this title (relating to Monitoring and Enforcement). Personnel who obtain information regarding an injured employee's specific medical condition, diagnosis, and treatment options or protocols directly from the doctor or health care provider, either orally or in writing, and who are not doctors, shall be nurses, physician's assistants, or other health care providers of the same specialty as the utilization review agent and who are licensed or otherwise authorized to provide the specialty health care by a state licensing agency in the United States. This provision shall not be interpreted to require such qualifications for personnel who perform clerical or administrative tasks.

(g) Utilization review conducted by a specialty utilization review agent shall be conducted under the direction of a health care provider of the same specialty and shall be licensed or otherwise authorized to provide the specialty health care by a state licensing agency in the United States.

(h) Subject to the notice requirements of §19.2012 of this title, in any instance where the specialty utilization review agent questions whether the health care is medically reasonable and necessary, the health care provider who ordered the services shall, prior to the issuance of an adverse determination, be afforded a reasonable opportunity to discuss the plan of treatment for the patient and the clinical basis for the decision of the utilization review agent with a health care provider of the same specialty as the utilization review agent.

(i) Appeals from an adverse determination by a specialty utilization review agent shall be governed by the Texas Workers' Compensation Act and the applicable rules and procedures of the TWCC including but not limited to Chapter 134, Subchapter G of this title (relating to Prospective and Concurrent Review of Health Care) and Chapter 133, Subchapter D of this title (relating to Dispute and Audit of Bills by Insurance Carriers).

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

Filed with the Office of the Secretary of State on May 5, 2003.

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Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
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Proposal publication date: December 20, 2002
For further information, please call: (512) 463-6327

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 114. CONTROL OF AIR POLLUTION FROM MOTOR VEHICLES

The Texas Commission on Environmental Quality (commission) adopts amendments to §§114.21, 114.260, and 114.452 and the corresponding revisions to the state implementation plan (SIP). Section 114.21 is adopted *with change* to the proposed text as published in the February 7, 2003 issue of the *Texas Register* (28 TexReg 1043), and §114.260 and §114.452 are adopted *without changes* and will not be republished. The amendments and revised SIP narrative will be submitted to the United States Environmental Protection Agency (EPA) as revisions to the SIP.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The statutory citation, "Texas Dealer Law, Article 6686, Vernon's Civil Statutes, Title 43, Texas Administrative Code" referenced in §114.21(d) has been repealed by legislative action and recodified in Texas Transportation Code, §503.001 with some changes to the terms used in the original citation. Therefore, the current citation as referenced in §114.21(d) to define the terms "wholesale dealer" and "retail dealer" is no longer valid. In addition, when the statutory language was recodified in the Texas Transportation Code, some terms were combined and their definitions broadened, which will allow the adopted revisions in §114.21(d) to simply reference the term "dealer" instead of the previous two specific terms.

Section 114.21(e)(2) previously required that certain signed statements be retained by certain sellers of vehicles, but did not specify the length of time. Because the documents pertain to the possible need to fix the emissions systems on the sold vehicles, and because there are mechanisms in place to require testing of the emissions systems in ozone nonattainment areas on an annual basis, the commission finds that the records should be retained for only two years.

The Federal Clean Air Act (FCAA) Amendments of 1990 (42 United States Code (USC), §§7401 *et seq*.) required each state to submit a revision to its SIP by November 25, 1994, establishing enforceable criteria and procedures for making conformity determinations for metropolitan transportation plans, transportation improvement programs, and projects funded by the Federal Highway Administration or the Federal Transit Administration. Final rules regarding conformity requirements were published by EPA November 24, 1993. The Texas SIP revision which incorporated conformity requirements was adopted October 19, 1994, and was approved by EPA November 8, 1995. EPA has amended the federal transportation conformity rule five times: August 7, 1995; November 14, 1995; August 15, 1997; April 10, 2000; and August 6, 2002. The commission previously incorporated the federal changes up to and including the 1997 amendment. The commission is now updating its rule to incorporate the latest federal amendments.

The Houston/Galveston ozone nonattainment area (HGA) is classified as Severe-17 under 42 USC, §§7401 *et seq*. Therefore, the area is required to attain the one-hour ozone standard of 0.12 parts per million (ppm) by November 15, 2007. Division 6, Lawn Service Equipment Operating Restrictions, of Subchapter I, adopted by the commission in 2000, was part of the HGA Post-1996 Rate-of-Progress (ROP)/Attainment Demonstration SIP that was designed to meet the one- hour ozone standard. Implementation of this control strategy is necessary in order for the HGA nonattainment area to comply with the requirements of the FCAA and achieve attainment for

ozone. However, the commission finds that for two reasons the lawn service equipment operating restrictions should be amended to allow those in the lawn and garden industry more time to submit their emission reduction plans.

First, the commission finds that, due to flaws in the Nonroad Assessment Tool and Estimator (NATE) model, the lawn care industry does not have sufficient time to create an emission reduction plan before the current May 31, 2003 deadline. The NATE model was designed to aid the lawn and garden industry in development of emission reduction plans. However, programming flaws were discovered after the NATE model was made available to the public. These flaws have been corrected, and the program is now back on the commission Web site. Second, the commission is approving a delay of the compliance requirements associated with the lawn and garden rules until 2004 to provide commission staff with the time needed to reexamine the need for the rules as part of the mid-course review of the entire HGA SIP. If it is determined that these rules are not needed or can be replaced by more effective emission reduction strategies, the new deadline reduces the expenditure of unnecessary resources in planning for compliance. Because the adopted amendment to §114.452 only concerns the date by which emission reduction plans must be submitted to the commission, no changes in the amount of emission benefits that were originally estimated to be achieved by the lawn and garden rules are anticipated.

SECTION BY SECTION DISCUSSION

The amendment to §114.21(c)(2) changes the name of the agency to its new name. The amendment to §114.21(d) replaces the terms "wholesale dealers" and "retail dealers" with the term "dealer" and identifies the statutory citation defining this term as "Texas Transportation Code, §503.001." The amendment makes reformatting and textual revisions that appropriately reflect the new broader term. This revision is necessary because the current statutory citation is no longer valid. The "Texas Dealer Law, Article 6686, Vernon's Texas Civil Statutes, Title 43, Texas Administrative Code" was repealed by legislative action and the regulatory language was recodified with changes in Texas Transportation Code, §503.001. In the amendment to §114.21(e)(2), a period of two years is added for the retention of certain records, rather than the previous indefinite period. Because the documents pertain to the possible need to fix the emissions systems on the sold vehicles, and because there are mechanisms in place to require testing of the emissions systems in ozone nonattainment areas on an annual basis, the commission finds that the records should be retained for only two years. Section 114.21(a)(1) has been changed from proposal to correct a typographical error.

The amendment to §114.260(c) incorporates the date (August 6, 2002) that EPA last amended the federal transportation conformity rule. The changes to federal regulations that are incorporated into the rule include the following. 40 Code of Federal Regulations (CFR) §93.102 was amended by adding as subsection (d) a grace period for new nonattainment areas. 40 CFR §93.102 implements an FCAA amendment, enacted October 27, 2000, that provides a one-year grace period before conformity is required in areas that are designated nonattainment for a given air quality standard for the first time. 40 CFR §93.104(e)(2), relating to the frequency of conformity determinations, was amended to change the point by which a conformity determination must be made following a state's submission of a control strategy implementation plan or maintenance plan for the first time (an "initial" SIP submission). 40 CFR §93.104(e)(2) requires conformity to be determined within 18 months of EPA's affirmative finding that the SIP's motor vehicle emission budgets are adequate. Prior to this action, the conformity rule required a new conformity determination within 18 months of the submission of an initial SIP. In order to take advantage of these positive changes and to provide consistency between state and federal conformity requirements, the commission adopts all of the current federal rules with the exception of 40 CFR §93.105, which is met through the remainder of the state conformity rule. The commission removes the reference in the rule to 40 CFR §93.102(d) because this reference was originally included in the rule to acknowledge that the grace period at that time had been invalidated by a court challenge. However, the new 40 CFR §93.102(d) is now authorized by congressional action, and the commission adopts by reference the grace period which it provides.

The amendments to §114.260(d) correct typographical errors, change the language to be consistent with current agency style and format, and update the name of the agency and the title of the Strategic Assessment Division director. The amendments to §114.260(e) clarify that compliance with the rule must begin upon the date of EPA approval of the SIP and rule revisions under FCAA, §176(c)(4)(C) and remove outdated references to previous adoption dates. The commission notes however, that the one-year conformity grace period currently applies as a statutory matter for all newly designated nonattainment areas, since this grace period was required as a matter of law once the FCAA was amended, and therefore does not require EPA approval before it is effective.

The amendments to §114.452 include changes to make the text consistent with the current agency style and format for rules and to correct typographical errors. The amendment to §114.452(c) changes the deadline to submit an emission reduction plan from May 31, 2003 to May 31, 2004. The affected area still includes the following counties within the HGA nonattainment area: Brazoria, Fort Bend, Galveston, Harris, and Montgomery. The effective date of the lawn and garden rules remains April 1, 2005. The intent of this amendment is to change the deadline by which emission reduction plans must be submitted to the commission. The amendment to §114.452(c) also changes the deadline for plan approval from May 31, 2004 to March 31, 2005 to account for the later submission deadline but still provide for approval prior to the compliance date. Amended §114.452(c) states "... commercial operators or persons not exempt under subsection (b) of this section who submit an emissions reduction plan by May 31, 2004 (which is approved by the executive director and the EPA no later than March 31, 2005) are exempt from operating hour restrictions upon implementation of these rules in 2005, and are permitted to operate during the restricted hours." In addition to changing the submission deadline the commission also deleted the sentence which states that the executive director may allow plans to be submitted after May 31, 2003. This change is made in order to resolve the conflict between this date and the new deadline of May 31, 2004.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the amendments do not meet the definition of a "major environmental rule." A major environmental rule means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity,

competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The amended sections make minor amendments to the anti-tampering rules, adopt by reference federal changes to the transportation conformity rules, and extend the deadline for filing an emission reduction plan for compliance with the lawn and garden rules. These amendments do not require additional emission controls or new capital expenses.

In addition, Texas Government Code, §2001.0225, only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The amendments to Chapter 114 are not subject to the regulatory analysis provisions of §2001.0225(b), because the amended rules do not meet any of the four applicability requirements.

TAKINGS IMPACT ASSESSMENT

The commission completed a takings impact assessment for the adopted rules. Promulgation and enforcement of the rules will not burden private real property. The amended sections will not affect private property in a manner which restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Therefore, the adopted rules do not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined the rulemaking relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq.*), and the commission rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. As required by 30 TAC §281.45(a)(3) and 31 TAC §505.11(b)(2), relating to actions and rules subject to the CMP, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this action for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council and has determined that the amendments are consistent with the applicable CMP goal expressed in 31 TAC §501.12(1) of protecting and preserving the quality and values of coastal natural resource areas, and the policy in 31 TAC §501.14(q), which requires that the commission protect air quality in coastal areas. The amendments update definitions related to motor vehicle dealers to correspond to changes made in statute, set a retention period for certain records, incorporate updates to federal rules on transportation conformity, and delay by one year the deadline by which lawn and garden companies must submit emission reduction plans to the commission. No new contaminants will be authorized by these amendments, although the submittal of emission reduction plans will be delayed on the use of lawn and garden equipment in the HGA nonattainment area.

PUBLIC COMMENT

Public hearings on this proposal were held in Houston on February 27, 2003, and in Austin on February 28, 2003, but no oral comments were received. The public comment period ended at 5:00 p.m. on February 28, 2003. Written comments were submitted by EPA and the Houston-Galveston Area Council (HGAC), indicating that they supported the amendments to §114.260.

RESPONSE TO COMMENTS

EPA stated that the draft revisions to the SIP and the rules had been received and reviewed. EPA commented that it supported the changes to §114.260 and did not have comments on the amendments to the other sections.

The commission appreciates the support for this rulemaking.

HGAC stated that it had previously provided comments in favor of having the 18-month conformity period begin when EPA finds that the motor vehicle emissions budgets in the SIP are adequate, rather than when a budget is initially submitted. HGAC commented that the method of beginning the period with submission of the budget can result in having to start the conformity process prior to the EPA adequacy finding because of the length of time needed to make a conformity determination and stated that in one case this requirement resulted in wasted resources when EPA found the budgets inadequate. HGAC further commented that revised §114.260 allows a more logical, streamlined conformity process without the potential of a futile exercise by a metropolitan planning organization, and without affecting attainment.

The commission appreciates the support for this rulemaking.

HGAC commented that the one-year grace period for areas newly designated as nonattainment areas provides a good window for conducting a full conformity analysis. HGAC further commented that the grace period provides for better public review, which is integral to the conformity process.

The commission appreciates the support for this rulemaking.

SUBCHAPTER B. MOTOR VEHICLE ANTI-TAMPERING REQUIREMENTS

30 TAC §114.21

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code (TWC), §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under Texas Clean Air Act (TCAA), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The amendment is also adopted under TCAA, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to develop a general, comprehensive plan for control of the state's air; §382.019, which provides the commission the authority to adopt rules to control and reduce emissions from engines used to propel land vehicles; and §382.208, which provides the commission the authority to coordinate with federal, state, and local transportation planning agencies to develop and implement transportation programs and other measures necessary to demonstrate and

maintain attainment of the national ambient air quality standard (NAAQS) and to protect the public from exposure to hazardous air contaminants from motor vehicles.

§114.21. Exemptions.

(a) The following exemptions shall apply to specified motor vehicles or motor vehicle engines.

(1) Motor vehicles or motor vehicle engines which are intended solely or primarily for legally sanctioned motor competitions, for research and development uses, or for instruction in a bona fide vocational training program where the use of a system or device would be detrimental to the purpose for which the vehicle or engine is intended to be used are exempt from the provisions of §114.20(a), (b), and (d) of this title (relating to Maintenance and Operation of Air Pollution Control Systems or Devices Used to Control Emissions from Motor Vehicles).

(2) Motor vehicles or motor vehicle engines intended solely or primarily for research and development uses, or for instruction in a bona fide vocational training program where the introduction of leaded gasoline or the circumvention of an emission control system or device is necessary for the intended purposes of the program are exempt from the provisions of §114.20(e) of this title.

(b) Vehicles belonging to members of the U.S. Department of Defense (DoD) participating in the DoD Privately Owned Vehicle Import Control Program or other persons being transferred to a foreign country are exempt from the provisions of §114.20(a), (b), and (d) of this title if the following conditions are met.

(1) Only the catalytic converter, oxygen sensor, and/or the fuel filler inlet restrictor are removed from the vehicle.

(2) The vehicle is delivered to the appropriate port for overseas shipment within 30 days after the emission control device(s) is removed.

(3) If the vehicle is returned to the United States, all systems or devices used to control emissions from the vehicle are restored to good operable condition within 30 days of pick-up of the vehicle from the appropriate port of importation.

(4) Documentation shall be kept with the vehicle at all times while the vehicle is operated in Texas which provides sufficient information to demonstrate compliance with all appropriate qualifications and conditions of this exemption, including the following:

(A) the unique vehicle identification number (VIN) of the subject vehicle;

(B) the agency, company, or organization which employs the owner of the subject vehicle;

(C) the country to which the owner of the subject vehicle is being transferred;

(D) the dates when applicable alterations were performed on the subject vehicle;

(E) the date when the subject vehicle is scheduled to be delivered to the appropriate port for shipment out of the United States; and

(F) the date when the subject vehicle is picked up from the port of importation upon returning to the United States.

(c) Motor vehicles are exempt from the provisions of §114.20(a), (b), and (d) of this title if the following conditions apply:

(1) the motor vehicles are registered as farm vehicles with the Vehicle Titles and Registration Division of the Texas Department of Transportation, are intended solely or primarily for use on a farm or ranch, and their air pollution control devices or systems were removed or made inoperable prior to June 1, 2000; or

(2) the motor vehicles were granted an exemption from the provisions of §114.20(a) and (b) of this title by the commission or its predecessor agency prior to June 1, 2000.

(A) A copy of the exemption shall be kept with the vehicle at all times and shall be available for inspection by representatives of the commission, the Texas Department of Public Safety (DPS), or any other law enforcement agency upon request. The approved exclusion shall also be presented to the certified vehicle inspector before each annual vehicle safety inspection of the vehicle as administered by the DPS.

(B) The exemption shall be void and all pollution control systems and devices replaced on the vehicle and/or engine covered by the exclusion when the vehicle changes ownership or is no longer used for the purpose identified in the exclusion application. The executive director shall be informed in writing prior to the change of ownership or usage.

(d) The following vehicle transactions involving a "dealer" as defined in Texas Transportation Code, §503.001, are exempt from the requirements of §114.20(c) of this title:

(1) sales or transfers from one dealer to another; and

(2) sales, transfers, or trade-ins from an individual to a dealer.

(e) Federal, state, and local agencies or their agents which sell abandoned, confiscated, or seized vehicles and any commercial vehicle auction facilities are exempt from the provisions of §114.20(c) of this title if the following conditions are met.

(1) The DPS motor vehicle safety inspection certificates must be removed from the vehicle and destroyed before the vehicle may be offered for sale or displayed for public examination.

(2) All potential buyers of the vehicle must be informed that deficiencies may be present in the vehicle pollution control systems on the vehicle. The buyer must also be informed of the liabilities to the buyer under §114.20 of this title and §114.50 of this title (relating to Vehicle Emissions Inspection Requirements) of operating the vehicle prior to the adequate restoration of all pollution control systems or devices on the vehicle as originally equipped. The seller of the vehicle shall provide to the buyer a written acknowledgment of the receipt of this information which must be signed by the buyer prior to completion of the sales transaction. The seller shall retain a copy of this signed acknowledgment for two years and shall make it available, upon request.

(f) The owner of a motor vehicle which has been totally disabled by accident, age, or malfunction and which will no longer be operated is exempt from the provisions of §114.20(c) of this title if the DPS motor vehicle safety inspection certificate is removed and destroyed before the vehicle is offered for sale or displayed for public examination.

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

Filed with the Office of the Secretary of State on May 2, 2003.

TRD-200302741

Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: May 22, 2003
Proposal publication date: February 7, 2003
For further information, please call: (512) 239-0348

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SUBCHAPTER G. TRANSPORTATION PLANNING

30 TAC §114.260

STATUTORY AUTHORITY

The amendment is adopted under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under TCAA, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The amendment is also adopted under TCAA, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to develop a general, comprehensive plan for control of the state's air; §382.019, which provides the commission the authority to adopt rules to control and reduce emissions from engines used to propel land vehicles; and §382.208, which provides the commission the authority to coordinate with federal, state, and local transportation planning agencies to develop and implement transportation programs and other measures necessary to demonstrate and maintain attainment of NAAQS and to protect the public from exposure to hazardous air contaminants from motor vehicles.

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

Filed with the Office of the Secretary of State on May 2, 2003.

TRD-200302742
Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: May 22, 2003
Proposal publication date: February 7, 2003
For further information, please call: (512) 239-0348

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SUBCHAPTER I. NON-ROAD ENGINES

DIVISION 6. LAWN SERVICE EQUIPMENT OPERATING RESTRICTIONS

30 TAC §114.452

STATUTORY AUTHORITY

The amendment is adopted under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under TCAA, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The amendment is also adopted under TCAA, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to develop a general, comprehensive plan for control of the state's air; §382.019, which provides the commission the authority to adopt rules to control and reduce emissions from engines used to propel land vehicles; and §382.208, which provides the commission the authority to coordinate with federal, state, and local transportation planning agencies to develop and implement transportation programs and other measures necessary to demonstrate and maintain attainment of NAAQS and to protect the public from exposure to hazardous air contaminants from motor vehicles.

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

Filed with the Office of the Secretary of State on May 2, 2003.

TRD-200302743
Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: May 22, 2003
Proposal publication date: February 7, 2003
For further information, please call: (512) 239-0348

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 3. TEXAS YOUTH COMMISSION

CHAPTER 85. ADMISSION AND PLACEMENT

SUBCHAPTER B. PLACEMENT PLANNING

37 TAC §85.35

The Texas Youth Commission (TYC) adopts new §85.35, concerning Maximum Length of Stay for Low and Medium Risk Offenders, with changes to the proposed text as published in the January 31, 2003, issue of the *Texas Register*(28 TexReg 918). The change includes a minor grammar change.

The justification for the new rule is to provide the agency authority to discharge a youth who do not complete the resocialization program within the minimum length of stay. When the length of institutional stay for these youth becomes disproportionate relative to the severity of their committing offense and level of risk to the community, provision must be made to cut short their resocialization program in the institution and plan for their supervision and services on parole.

The new rule would avoid undue confinement in an institutional setting for youth who have not completed the resocialization program, but have exceeded the minimum length of stay.

No comments were received regarding adoption of the new rule.

The new rule is adopted under the Human Resources Code, §61.075, which provides the Texas Youth Commission with the authority to discharge a youth from an institution setting to best serve the youth's welfare and the protection of the public.

The adopted rule implements the Human Resource Code, §61.034.

§85.35. Maximum Length of Stay for Low and Medium Risk Offenders.

(a) Purpose. The Resocialization Program is designed for youth who reasonably apply themselves to complete the program within their assigned minimum length of stay. There are, however, a small number of resistant youth who do not complete the resocialization program within the minimum length of stay. When the length of institutional stay for these youth becomes disproportionate relative to the severity of their committing offense and level of risk to the community, provision must be made to cut short their resocialization program in the institution and plan for their supervision and services on parole.

(b) Applicability. This rule does not apply to any other movement without program completion or general offenders who have completed program requirements. See (GAP) §85.29 of this title (relating to Program Completion and Movement of Other Than Sentenced Offenders).

(c) Explanation of Terms Used.

(1) Low or Medium Risk Offender - means a youth who:

(A) is classified as a general offender and has never been classified as a Sentenced Offender, Type A or B Violent Offender, Chronic Serious Offender, Controlled Substances Dealer, or Firearms Offender. See (GAP) §85.23 of this title (relating to Classification); and

(B) has a parole risk score of low or medium.

(2) Minimum Length of Stay - means the assigned minimum length of stay for the youth's classification, see (GAP) §85.23 of this title (relating to Classification), plus any disciplinary extensions to the minimum length of stay. See (GAP) §85.25 of this title (relating to Minimum Length of Stay).

(d) Parole Release for Low or Medium Risk Offenders.

(1) A low or medium risk offender who has completed the minimum length of stay, but has not earned phase four (4) on all three (3) components of Resocialization, see (GAP) §87.3 of this title (relating to Resocialization Program), will be released on parole when the following requirements are met:

(A) four (4) months have elapsed since completion of the minimum length of stay and the youth has earned at least phase 3 on all three (3) components of Resocialization;

(B) eight (8) months have elapsed since completion of the minimum length of stay and the youth has earned at least phase 2 on all three (3) components of Resocialization; or

(C) 12 months have elapsed since completion of the minimum length of stay and the youth has earned at least phase 1 on all three (3) components of Resocialization.

(2) Notwithstanding the time that has elapsed since completion of the minimum length of stay, a low or medium risk offender who has not earned phase 4 on all three (3) components of Resocialization must not have been found during the 90 days immediately preceding the release to have:

(A) engaged in aggressive or assaultive misconduct in a level III hearing according to (GAP) §95.57 of this title (relating to Level III Hearing Procedure); or

(B) engaged in any misconduct in a Level I or Level II hearing according (GAP) §95.51 of this title (relating to Level I Procedures) and (GAP) §95.55 of this title (relating to Level II Procedures).

(3) Notwithstanding the time that has elapsed since completion of the minimum length of stay or since an incident of misconduct, a low or medium risk offender who has not earned phase 4 on all three (3) components of Resocialization, will not be released on parole unless:

(A) alternative interventions to facilitate the youth's progress have been tried without success; and

(B) there is a suitable release plan addressing the youth's risk factors in the community and the services and level of supervision that will be provided the youth upon release.

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

Filed with the Office of the Secretary of State on April 29, 2003.

TRD-200302685
Steve Robinson
Executive Director
Texas Youth Commission
Effective date: May 19, 2003
Proposal publication date: January 31, 2003
For further information, please call: (512) 424-6301

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REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Commission on Environmental Quality

Title 30, Part 1

The Texas Commission on Environmental Quality (commission) files this notice of intention to review and proposes the readoption of Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment, without changes. Any updates, consistency issues, or other changes, if needed, will be addressed in a separate rulemaking.

This review of Chapter 55 is proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires state agencies to review and consider for readoption each of their rules every four years. The review must include an assessment of whether the reasons for the rules continue to exist.

CHAPTER SUMMARY

Chapter 55 addresses avenues for public participation in the permitting process for water, waste, and air applications. Specifically, Chapter 55 contains procedures and processes relating to requests for contested case hearings and requests for reconsideration. Chapter 55 also addresses procedures and processes related to public meetings and the submittal of public comments.

PRELIMINARY ASSESSMENT OF WHETHER THE REASONS FOR THE RULES CONTINUE TO EXIST

The commission conducted a preliminary review and determined that the reasons for the rules in Chapter 55 continue to exist. The rules are needed to ensure that members of the public are provided the opportunity to participate in the permitting process for water, waste, and air applications. The rules implement Texas Water Code, §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; §5.103, which establishes the commission's general authority to adopt rules necessary to carry out its powers and duties; §5.105, which establishes the commission's authority to set policy by rule; §5.115, which establishes the commission's authority to adopt rules for notices of application; Chapter 5, Subchapter M, which establishes environmental permitting procedures; §26.011, which establishes the commission's authority to adopt rules for the control of waste discharges or impending waste discharges affecting the quality of water in the state; and §26.028, which requires that notice of applications for water quality permits, permit amendments, and permit renewals be provided to persons who in the judgment of the commission may be affected by the applications; Texas Health and Safety Code, §361.024, which establishes the commission's authority to adopt rules for the control of solid waste; §361.082, which establishes the commission's authority to adopt rules for notice and hearing for hazardous waste permits; §382.017, which establishes the commission's rulemaking authority under the Texas Clean Air Act; §382.056, which establishes the commission's authority to adopt rules regarding notice and public comment; and §401.051, which establishes the commission's authority to adopt the rules for control of radiation; and Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules; and §2001.052, which prescribes the contents of notice for contested case hearings.

PUBLIC COMMENT

This proposal is limited to the review in accordance with the requirements of Texas Government Code, §2001.039. The commission invites public comment on this preliminary review of the rules in Chapter 55. Comments may be submitted to Angela Slupe, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 2003-022-055-AD. Comments must be received in writing by 5:00 p.m., June 16, 2003. For further information or questions concerning this proposal, please contact Jill Burditt, Policy and Regulations Division, at (512) 239-0560.

TRD-200302722
Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: May 2, 2003

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The Texas Commission on Environmental Quality (commission) files this notice of intention to review and proposes the readoption of Chapter 80, Contested Case Hearings, without changes. Any updates, consistency issues, or other changes, if needed, will be addressed in a separate rulemaking.

This review of Chapter 80 is proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires state agencies to review and consider for readoption each of their rules every four years. A review must include an assessment of whether the reasons for the rules continue to exist.

CHAPTER SUMMARY

Chapter 80 governs the referral, oversight, and management of contested case hearings by the State Office of Administrative Hearings (SOAH) subject to the commission's jurisdiction under the Texas Water Code (TWC), the Texas Health and Safety Code (THSC), and the Texas

Local Government Code. Subchapter A provides a general framework for the oversight of judges, referrals to SOAH, representation at hearings, the conduct and decorum of participants, consolidation and severance of issues and parties, ex parte communications, the burden of proof, audio recording of proceedings, witness fees, transcriptions of hearings, withdrawing of an application, the form of pleadings, amended and supplemental pleadings in enforcement cases, motions, and lost records and papers. Subchapter C provides the procedures in contested case hearings, including: remand matters to the executive director, the procedure before a preliminary hearing, preliminary hearings, sanctions, executive director party status in permit hearings, designation of parties, appearances, the rights of parties, the order of presentation, the administrative record, continuances, agreements, public comment in direct referral cases, evidence, the specific admissibility of evidence for concrete batch plants, objections, interlocutory appeals and certified questions, oral arguments, the submission of findings of fact and conclusions of law, and summary disposition. Subchapter D deals with the discovery process and the issuance and use of subpoenas. Subchapter F addresses post hearing procedures, including: proposals for decision, settlement of enforcement cases, waiver of rights to review judge's proposal, pleadings following proposals for decision, amending the proposal for decision, the scheduling of commission meetings, the oral presentation before the commission, reopening the record, decisions, the commission's decision after a contested enforcement case hearing, motions for rehearing, decision final and appealable, motions for rehearing not required in certain cases, the appeal of final decisions, appeals of enforcement orders, and the cost of record on appeal.

PRELIMINARY ASSESSMENT OF WHETHER THE REASONS FOR THE RULES CONTINUE TO EXIST

The commission has conducted a preliminary review of the rules under Chapter 80 and has determined that the reasons for adopting these rules continues to exist. These rules are needed to implement TWC, Chapters 5, 7, 11 - 13, 26, 27, 37, 49 - 51, 53, 54, 58, 59, 65, and 66; THSC, Chapters 341, 361, 366, 382, and 401; Texas Local Government Code, Chapter 375 and §395.080; and Texas Government Code, Chapters 2001 and 2003. The commission invites comments on whether the reasons for the rules in Chapter 80 continue to exist.

This proposal is limited to the review in accordance with the requirements of Texas Government Code, §2001.039. The commission invites comments on whether the reasons for the rules in Chapter 80 continue to exist, as well as on any corrections or other revisions that could be considered in the aforementioned future rulemaking.

PUBLIC COMMENT

This proposal is limited to the review in accordance with the requirements of Texas Government Code, §2001.039. The commission invites public comment on this preliminary review of the rules in Chapter 80. Comments may be submitted to Angela Slupe, Office of Environmental Policy, Analysis, and Assessment, Mail Code 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 2003-021-080-AD. Comments must be received in writing by 5:00 p.m., June 16, 2003. For further information or questions concerning this proposal, please contact Jill Burditt, Policy and Regulations Division, at (512) 239- 0560.

TRD-200302723

Stephanie Bergeron

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: May 2, 2003

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The Texas Commission on Environmental Quality (commission) files this notice of intention to review Chapter 328, Waste Minimization and Recycling, and proposes the readoption of Chapter 328, without changes. Any additional updates, consistency issues, or other changes, if needed, will be addressed in a separate rulemaking.

This review of Chapter 328 is proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires state agencies to review and consider for readoption each of their rules every four years. The review must include an assessment of whether the reasons for the rules continue to exist.

CHAPTER SUMMARY

Chapter 328 provides for regulations that support the diversion of materials from solid waste streams for reuse and recycling in a sustainable manner that protects the environment, public health, and safety.

Subchapter A contains general, operational, reporting, and record keeping requirements for recycling facilities. Subchapter B provides a reporting format by which to measure progress toward the state's recycling goals, and standards for the calculation of recycling rates, waste stream reduction, and per capita waste generation rates.

Subchapter C establishes procedures and requirements for the sale, transportation, recycling, and disposal of lead-acid batteries. Subchapter D contains regulations for the collection, transport, storage, and recycling of used oil filters not regulated as hazardous waste, including registration and reporting requirements, spill prevention and control, and a ban on landfill disposal. Subchapter E describes eligibility requirements and procedures for the administration of assistance grants relating to household do-it-yourself used oil collection, reuse, and recycling. Subchapter F establishes required procedures for the storage, transportation, processing, utilization, and disposal of used or scrap tires or tire pieces.

Subchapter G establishes target percentages for the manufacture and use of recycled-content newsprint in Texas for the years 1993 - 2000, including requirements for recordkeeping and reporting. The target percentages for the years 1993 - 2000 continue to be effective after the year 2000. Subchapter G also describes the commission's responsibilities regarding data collection and industry consultation in pursuit of these goals, and its authority to adopt mandatory enforcement measures in the event the goals are not reached.

Subchapter H establishes procedures and requirements for the manufacture and distribution of plastic bottles and other rigid plastic containers, specifying a symbol and numerical codes to be imprinted on each container to facilitate recycling.

PRELIMINARY ASSESSMENT OF WHETHER THE REASONS FOR THE RULES CONTINUE TO EXIST

The commission conducted a preliminary review and determined that the reasons for the rules in Chapter 328 continue to exist. These rules are needed to implement Texas Health and Safety Code, (THSC), Chapter 361, the Solid Waste Disposal Act; Chapter 371, Used Oil Collection, Management and Recycling Act; and Chapter 369, Plastic Containers.

Subchapter A fulfills the statutory requirement of THSC, §361.119, for the regulation of certain facilities as recycling facilities.

Subchapter B provides a mechanism to gauge progress toward the state's waste reduction and recycling goal, as required by THSC, §361.422, and to be considered in the state's Comprehensive Municipal Solid Waste Management Strategic Plan under THSC, §361.0201.

Subchapter C implements the requirements for the management of lead-acid batteries in THSC, Chapter 361, §§361.451 - 361.454.

Subchapter D fulfills the requirements of THSC, §§371.101 - 371.110, and 40 Code of Federal Regulations Part 279.

Subchapter E implements THSC, §371.023, Grants to Local Governments and Private Entities, in support of used oil recycling.

Subchapter F implements the legal requirements of THSC, §361.112, Storage, Transportation, and Disposal of Used or Scrap Tires.

Subchapter G implements THSC, §361.430, Newsprint Recycling Program, to develop markets and production facilities for recycled-content newsprint; and §361.423, outlining the agency's role as a member of the Recycling Market Development Board.

Subchapter H implements the coding system for plastic containers prescribed in THSC, §§369.001 - 369.003.

PUBLIC COMMENT

This proposal is limited to the review in accordance with the requirements of Texas Government Code, §2001.039. The commission invites public comment on this preliminary review of the rules in Chapter 328. Comments may be submitted to Patricia Durón, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 2003-020-328-WS. Comments must be received in writing by 5:00 p.m., June 16, 2003. For further information or questions concerning this proposal, please contact Emily Barrett, Policy and Regulations Division, at (512) 239- 3546.

TRD-200302746
Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: May 2, 2003

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Board of Nurse Examiners

Title 22, Part 11

The Board of Nurse Examiners will review and consider whether to re-adopt, re-adopt with amendments, or repeal title 22 of the Texas Administrative Code, part 11, chapter 217, relating to Licensure, Peer Assistance, and Practice. This review is done pursuant to Texas Government Code §2001.039.

The Board will assess whether the reason(s) for adopting or re-adopting this chapter continues to exist. The Advisory Committee on Education (ACE) is reviewing each section of this chapter to determine whether it is obsolete, reflects current legal and policy considerations, reflects current procedures and practices of the Board, and/or whether it is in compliance with chapter 2001 of the Texas Government Code (Administrative Practice Act).

Comments on the review may be submitted in writing within 30 days following the publication of this rule review in the *Texas Register* to Katherine Thomas, Executive Director, 333 Guadalupe, Ste. 3-460, Austin, Texas 78701. Any proposed changes to the sections of this chapter as a result of the review will be published in the Proposed Rule Section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption of any repeal, amendment, or re-adoption.

TRD-200302770
Katherine Thomas
Executive Director
Board of Nurse Examiners
Filed: May 2, 2003

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Texas Workers' Compensation Commission

Title 28, Part 2

The Texas Workers' Compensation Commission files this notice of intention to review the rules contained in Chapter 63, concerning Promptness of First Payment. This review is pursuant to the General Appropriations Act, Article IX, §167, 75th Legislature, the General Appropriations Act, Section 9-10, 76th Legislature, and Texas Government Code §2001.039 as added by SB-178, 76th Legislature.

The agency's reason for adopting the following rule contained in this chapter continues to exist and it proposes to readopt this rule:

§63.10 - Sanctions for Late Payment

The agency's reason for adopting the following rule no longer exists and therefore, this rule is not recommended for readoption:

§65.5. Quarterly Report

Comments regarding whether the reason for adopting these rules continues to exist must be received by 5:00 p.m. on June 16, 2003, and submitted to Nell Cheslock, Legal Services, MS 4-D, Texas Workers' Compensation Commission, Southfield Building, 4000 South IH-35, Austin, Texas 78704-7491.

TRD-200302724
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Filed: May 2, 2003

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Adopted Rule Reviews

Office of the Secretary of State

Title 1, Part 4

The Office of the Secretary of State has completed the review of Chapters 71, 72-76, 78-81, 83, 87, 91, 93, 95-97, and 101-105. These rules are readopted in accordance with the requirements of the Government Code, §2001.039, which directs state agencies to review and consider for readoption each of their rules every four years. The Office proposed the review of its rules in the January 3, 2003, *Texas Register* (28 TexReg 373). The Office has determined that the reasons for adopting these chapters continue to exist.

The Office has determined to propose amendments to Chapter 71, to revise rules concerning Service of Process, Special Services, and Credit Card Payment Options. An amendment is needed to clarify that entities other than corporations may be served through the Secretary of State. Chapter 71 also will be amended to update the Office's special services and credit card payment policies.

The Office has determined to propose amendments to Chapter 79, concerning Corporations. The amendments will address electronic filing procedures and to revise the rules in accordance with current practice.

The Office has determined to propose amendments to Chapter 80, concerning Unincorporated Business Entities. The amendments will address electronic filing procedures and revise the rules in accordance with current practice.

The Office has determined to propose amendments to Chapter 83, concerning Limited Partnership. The amendments will address electronic filing procedures and revise the rules in accordance with current practice.

The Office has determined to propose amendments to Chapter 87, concerning Notaries Public. The amendments will revise the rules to update mailing addresses and indicate the electronic availability of the notary public forms.

The Office this year made revisions to Chapter 91, concerning the *Texas Register*. The revisions addressed new electronic submission forms and reorganized Chapter 91 subject matter to improve readability.

The Office will propose amendment to Chapter 93, concerning Trademarks. The amendments will address electronic filing procedures and revise the rules in accordance with current practice.

The Office has determined to propose amendments to Chapter 97, concerning Business Opportunities. The amendments will revise the rules to update mailing addresses and statutory citations, and indicate the electronic availability of business opportunity forms.

The Office has determined to propose amendments to Chapter 102, concerning Health Spas. The amendments will revise the rules to update statutory citations and the Internet addresses for health spa forms.

The Office has determined to propose amendments to Chapter 105, Subchapter A., concerning Public Safety Solicitations. The amendments will revise the rules to indicate the electronic availability of telephone solicitation forms.

The Office has determined to propose amendments to Chapter 105, Subchapter B, concerning Veterans Solicitations. The amendments will revise the rules to indicate the electronic availability of telephone solicitation forms.

The Office has determined to propose amendments to Chapter 105, Subchapter C, concerning Telephone Solicitations. The amendments will revise the rules to update statutory citations and indicate the electronic availability of telephone solicitation forms.

No comments were received concerning the proposed review of the following chapters:

71. General Policies and Procedures

72. State Seal

73. Statutory Documents

74. Credit Services Organizations

75. Automobile Club

76. Use of a Deceased Individual's Name, Voice, Signature, Photograph, or Likeness

78. Athlete Agents

79. Corporations

80. Unincorporated Business Entities

81. Elections

83. Limited Partnership

87. Notary Public

91. Texas Register

93. Trademarks

95. Uniform Commercial Code

96. Electric Utility Transition Property Notice Filings

97. Business Opportunity

101. Practice and Procedure Before the Office of the Secretary of State

102. Health Spas

103. Membership Camping Resorts

104. Wrestling Promoters

105. Solicitations

TRD-200302744
Geoffrey S. Connor
Assistant Secretary of State
Office of the Secretary of State
Filed: May 2, 2003

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Texas State Soil and Water Conservation Board

Title 31, Part 17

The State Soil and Water Conservation Board readopts without changes, under Title 31, Part 17, Chapter 517, Financial Assistance, Chapter 519, Technical Assistance, Chapter 521, Agricultural Water Conservation, and Chapter 523, Agricultural and Silvicultural Water Quality Management in accordance with Article IX, §167 of the Appropriation's Act.

The proposed review was published in the April 11, 2003, issue of the *Texas Register* (28 TexReg 3090).

No comments were received regarding the adoption of these chapters.

TRD-200302721
James M. Moore
Executive Director
Texas State Soil and Water Conservation Board
Filed: May 1, 2003

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IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Ark-Tex Council of Governments

Request for Proposal for Provision of Law Enforcement Training Program

The Ark-Tex Council of Governments (ATCOG) is soliciting proposals for the provision of regional law enforcement training through a grant provided by the Texas Governor's Office, Criminal Justice Division.

The types of training to be provided include: Basic Law Enforcement Officer, Basic Jailer Certification, Basic Tele-Communicators, and Advanced Law Enforcement training. The period of performance is September 1, 2003 through August 31, 2004.

The service delivery area includes the following counties in Texas: Bowie, Cass, Delta, Franklin, Hopkins, Lamar, Morris, Red River, and Titus.

Potential respondents may obtain a copy of the request for proposal, scoring guidelines, and project scoring criteria by contacting Brenda Stone, Ark-Tex Council of Governments, P. O. Box 5307, Texarkana, Texas 75505-5307, or call (903) 832-8636. The deadline for proposal submission is June 27, 2003, at 5:00 p.m. The Ark-Tex Council of Governments Regional Criminal Justice Advisory Committee will score multiple proposals received. Respondents will be notified in writing of the date, time, and place of the meeting at which the proposals will be scored.

TRD-200302808
L.D. Williams
Executive Director
Ark-Tex Council of Governments
Filed: May 6, 2003

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Texas Building and Procurement Commission

Notice of Contract Airline Fares Request for Proposal

The Texas Building and Procurement Commission (TBPC) announces a Request for Proposal (RFP) for Contract Airline Fares (Requisition # 303-4-10001, RFP #14-0503AF) to be provided to the State of Texas pursuant to the Texas Government Code, Section 2171.052. Any contract which results from this RFP shall be for the term of September 1, 2003, through August 31, 2004.

Preproposal Conference: A preproposal conference will be held on Thursday, May 15, 2003, in Austin, Texas. The conference is scheduled from 1:30 p.m. to 4:30 p.m. at the following address: Texas Building and Procurement Commission, Central Services Building, Room 200B, 1711 San Jacinto Blvd., Austin, Texas 78701. The purpose of the conference is to review the content of this RFP and to answer attendees' questions.

Submission of Response to the RFP: Responses to the RFP shall be submitted to and received by the TBPC Bid Services Department on or before 3:00 p.m., Central Daylight Time, on June 5, 2003, and shall be delivered or sent to: The Texas Building and Procurement Commission, Attn: Bid Services, Requisition # 303-4-10001, RFP #14-0503AF, 1711 San Jacinto Blvd., Room 180, Austin, Texas 78701, or P.O. Box 13047, Austin, Texas 78711-3047.

Evaluation Criteria: Evaluation of Proposals will be based on the criteria listed in the Request for Proposal. Evaluation will be performed by an evaluation committee composed of persons designated by TBPC. The evaluation committee will evaluate the finalists and make a recommendation for award. Respondent(s) to whom contracts are awarded will be notified by mail.

Copies of RFP: If you are interested in receiving a copy of the RFP, contact Mr. Ron Hunter, at (512) 463-5773 to request a copy.

TRD-200302828
Cindy deRoch
Legal Counsel
Texas Building and Procurement Commission
Filed: May 7, 2003

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Central Texas Regional Mobility Authority

Public Notice Request for Qualifications (RFQ) for General Consulting Civil Engineering Services

The Central Texas Regional Mobility Authority (CTRMA) is soliciting Statements of Interest and Qualifications to provide General Consulting Engineering services as the General Engineering Consultant (the "GEC") for the CTRMA, including the development of the CTRMA potential US 183-A turnpike project in Williamson County, Texas. A Scope of Services has been prepared for interested professional civil engineering firms.

To obtain copies of this RFQ and the CTRMA's procurement policies, please contact Paula Gruber, Prime Strategies, Inc., 1508 South Lamar Boulevard, Austin, Texas 78704, telephone (512) 445-7074 or prime@austin.rr.com.

TRD-200302824
Michael Weaver
Interim Executive Director
Central Texas Regional Mobility Authority
Filed: May 7, 2003

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Public Notice Request for Qualifications (RFQ) for Professional Legal Counsel Services

The Central Texas Regional Mobility Authority (CTRMA) is soliciting Statements of Interest and Qualifications for professional legal counseling services for the general operations of the CTRMA as well as the development of the proposed US 183-A turnpike project and other future projects. A Scope of Services has been prepared for interested professional legal counseling firms.

To obtain copies of this RFQ and the CTRMA's procurement policies, please contact Paula Gruber, Prime Strategies, Inc., 1508 South Lamar Boulevard, Austin, Texas 78704, telephone (512) 445-7074 or prime@austin.rr.com.

TRD-200302825
Michael Weaver
Interim Executive Director
Central Texas Regional Mobility Authority
Filed: May 7, 2003

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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. 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. Requests for federal consistency review were deemed administratively complete for the following projects(s) during the period of April 25, 2003, through May 1, 2003. The public comment period for these projects will close at 5:00 p.m. on June 06, 2003.

FEDERAL AGENCY ACTIONS:

Applicant: Bayside Developers, Inc.; Location: The project is located in Galveston Bay, at the terminus of Avenue A, in San Leon, Galveston County. The project can be located on the U.S.G.S. quadrangle map entitled: Bacliff, Texas. Approximate UTM Coordinates: Zone 15; Easting: 311975; Northing: 3264963. Project Description: The applicant proposes to retain one existing pier and boathouse, extend and improve one rock groin, and construct an additional pier and boathouse. Both piers are for private use. The rock groin extension is proposed to stabilize the shoreline behind the groin and the additional pier is proposed to be constructed over the rock groin for ease of access. CCC Project No.: 03-0132-F1; Type of Application: U.S.A.C.E. permit application #23002 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. §125-1387). NOTE: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

Applicant: Suncoast Technical Services; Location: The project is located at Alligator Point, adjacent to the Gulf Intracoastal Waterway, in Brazoria County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Sea Isle, Texas. Approximate UTM Coordinates: Zone 15; Easting: 294114; Northing: 3228870. Project Description: The applicant proposes to place fill material into wetlands adjacent to West Galveston Bay during the installation, operation, and maintenance of structures and equipment necessary for oil and gas drilling, production, and transportation activities. Such activities include installation of two typical shell and gravel pads for drilling operations, production structures (provided the well(s) are producible) and attendant facilities, and flow lines. The applicant also proposes to directionally drill under Chocolate Bay to avoid impacts to oyster reefs. CCC Project No.: 03-0134-F1; Type of Application: U.S.A.C.E. permit application #22990 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. §125-1387). NOTE: The consistency review for this project may be conducted by the Texas Railroad Commission as part of its certification under §401 of the Clean Water Act.

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Diane P. Garcia, Council Secretary, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or diane.garcia@glo.state.tx.us. Comments should be sent to Ms. Garcia at the above address or by fax at 512/475-0680.

TRD-200302830
Larry L. Laine
Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council
Filed: May 7, 2003

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Sections 303.003 and 303.009, Tex. Fin. Code.

The weekly ceiling as prescribed by Sections 303.003 and 303.009 for the period of 05/12/03 -- 05/18/03 is 18% for Consumer[1]/Agricultural/Commercial [2]/credit thru $250,000.

The weekly ceiling as prescribed by Sections 303.003 and 303.09 for the period of 05/12/03 -- 05/18/03 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-200302807
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: May 6, 2003

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Deep East Texas Local Workforce Development Board

Request for Proposals

The Deep East Texas Local Workforce Development Board, Inc. is seeking qualified entities to enter into a contract to provide the following services on an individual referral basis for the period July 1, 2003 through June 30, 2004.

Occupational skills training for persons funded under the Workforce Investment Act Youth program, Welfare-to-Work program, and Temporary Assistance to Needy Families program. Occupational skills training is education/training of generally two (2) years or less in a program that leads to a degree, certification, or licensure that prepares an individual to enter employment in an occupation on the targeted occupation list for Deep East Texas.

Intensive services for persons funded under the Workforce Investment Act (WIA), Welfare-to-Work (WtW) program, and Temporary Assistance to Needy Families (TANF) program. Intensive services are those programs or courses lasting six (6) months or less, not leading to a

degree, certification, or licensure, that prepare an individual to enter/re-enter employment or training. Examples of intensive services are English-as-a-Second-Language, GED preparation, basic skills/literacy, tutoring, and computer literacy. (Note: If any of these services are provided in conjunction with occupational skills, they are not intensive services but are classified as training and a separate Training Provider application must be submitted).

Qualified programs/services are those offered to the general public at a specified cost. Eligible entities include secondary and post-secondary education agencies; adult, literacy and continuing education providers; for-profit and not-for-profit providers; and community-based and charitable/faith-based organizations. Interested parties must submit a completed Request for Information form and meet minimum criteria for service providers set by the Board.

A Request for Information can be obtained by contacting:

Chris Gaston

Procurement/Contract Manager

Deep East Texas Local Workforce Development Board, Inc.

1318 S. John Redditt, Suite C

Lufkin, TX 75904

Phone: 936-639-8898

Fax: 936-633-7491

Email: chris.gaston@twc.state.tx.us

TRD-200302786
Chris Gaston
Procurement/Contract Manager
Deep East Texas Local Workforce Development Board
Filed: May 6, 2003

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Texas Education Agency

Request for Applications Concerning Texas Reading First Initiative for Grades K-3

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications for grants under the Texas Reading First Initiative for Grades K-3 under Request for Applications (RFA) # 701-03-018 from school districts, including open-enrollment charter schools, that meet the Texas Reading First criteria or from a shared services arrangement (SSA) of local education agencies (LEAs) in which each member district and school meets the Texas Reading First criteria. Education Service Centers (ESCs) are not eligible to apply as fiscal agents.

Description. The purpose of the Texas Reading First Initiative is to ensure that all children in Texas can read at or above grade level by the end of the third grade. Through Texas Reading First, Texas school districts and charter schools will focus on the most rigorous scientific research available and apply this research- and the proven instructional and assessment tools consistent with the research- to teach all children to read. The program will provide professional development and direct technical assistance to schools implementing scientifically research-based, comprehensive core reading programs. Assistance will also be provided in selecting and implementing effective instructional materials, programs, learning systems, and strategies that have been proven to teach reading. Texas Reading First will also provide assistance for the selection and administration of screening, diagnostic, progress monitoring, and outcome assessments with proven validity and reliability to measure where students are and monitor their academic progress in reading. Taken together, the complementary assessments, research-based programs, practices, and tools required by Texas Reading First will give teachers the skills and support they need to teach all children to read fluently by the end of third grade. An annual review of student progress in reading in participating LEAs will be conducted to determine if instructional adjustments need to be made and/or if subgrant funding will be continued.

Dates of Project. Applicants should plan for a starting date of no earlier than August 15, 2003, and an ending date of no later than June 30, 2004.

Project Amount. Approximately $63,204,694 will be available for funding. As Reading First Guidance stipulates, each funded project "will receive at least the same percentage of the State's total Reading First subgrant funds as the LEA received of the total Title I, Part A funds received by all LEAs in the State for the preceding fiscal year." Through this funding model and a minimum award of $170,000 for each funded LEA, TEA will ensure that all LEAs have sufficient funding to successfully implement all activities in their Texas Reading First plans. LEAs may use this formula to determine the minimum grant awards they are eligible to receive. The amount of funding awarded to an LEA will also be directly related to the number of students, Grades K-3, who are reading below grade level. This project is funded 100% from Reading First federal funds.

Selection Criteria. Applications will be selected based on the expert review panel's assessment of each applicant's ability to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary objective(s) and intent of the project. Applications must address each requirement, as specified in the RFA, to be considered for funding. In order to be eligible to submit a subgrant proposal, an applicant must meet the following eligibility criteria: (1) The LEA must have a failure rate on the Grade 3 Reading portion of the 2002 Texas Assessment of Academic Skills (TAAS) equal to or greater than the state average failure rate of 13.6%; and (2) The LEA must have jurisdiction over at least one of the following: (a) a geographic area that includes an area designated as an empowerment zone or enterprise community under the Internal Revenue Code (26 USC), Chapter 1, Subchapter U, Part I; (b) at least one low-performing campus identified for school improvement under the Elementary and Secondary Education Act (ESEA) as reauthorized by the No Child Left Behind Act of 2001, Title I, Part A; or (c) at least 15% of its student population or greater than 6,500 students counted for allocations under ESEA, Title I, Part A, in comparison to other LEAs in the state. The TEA reserves the right to select from the highest ranking applications those that address all requirements in the RFA and that are most advantageous to the project.

The TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. A complete copy of RFA #701-03-018 may be obtained by writing the: Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 N. Congress Avenue, Austin, Texas 78701; by calling (512) 463-9304; by faxing (512) 463-9811; or by e- mailing dcc@tea.state.tx.us. Please refer to the RFA number and title in your request. Provide your name, complete mailing address, and phone number including area code. The announcement letter and complete RFA will also be posted on the TEA website at http://www.tea.state.tx.us/grant/announcements/grants2.cgi for viewing and downloading.

Further Information. For clarifying information about the RFA, contact Ann Fiala, Office of Statewide Initiatives, Texas Education Agency, (512) 463-9027.

Deadline for Receipt of Applications. Applications must be received in the Document Control Center of the TEA by 5:00 p.m. (Central Time), Thursday, July 10, 2003, to be considered for funding.

TRD-200302832
Cristina De La Fuente-Valadez
Manager, Policy Planning
Texas Education Agency
Filed: May 7, 2003

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Commission on State Emergency Communications

Request for Proposals - Internal Auditor Services

The Commission on State Emergency Communications (CSEC) is requesting proposals from qualified entities to provide internal auditing services. The purpose of this request is to select a party to provide internal audit services which will enable the Commission to comply with the Texas Internal Auditing Act pursuant to the Texas Government Code Annotated §2102.

Written proposals are due by June 6, 2003, by 5:00 p.m. central daylight savings time on this date to be considered. Three typewritten, bound/stapled and signed originals of the proposal are required. Late proposals will not be accepted. Proposals can be submitted electronically via email.

The Request for Proposal packet can be downloaded from the CSEC website at www.911.state.tx.us under "What's New."

Interested firms may also obtain the packet at the CSEC offices at 333 Guadalupe Street, Suite 2-212, Austin, Texas 78701, or by contacting Brian Millington at 512-305-6923. All questions regarding the Request for Proposal can be sent to the attention of Brian Millington by email to brian.Millington@csec.state.tx.us, faxed to 512-305-6937, or mailed to the CSEC office at 333 Guadalupe Street, Suite 2-212, Austin, Texas 78701.

TRD-200302823
Paul Mallett
Executive Director
Commission on State Emergency Communications
Filed: May 7, 2003

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Texas Commission on Environmental Quality

Notice of Application and Preliminary Decision for a Municipal Solid Waste Permit

For The Period of May 5, 2003.

APPLICATION Valley By Products, Inc., P.O. Box 628, Canutillo, Texas 79835, has applied to the Texas Commission on Environmental Quality (TCEQ) for a permit for a new municipal solid waste permit (No. MSW-2299) to authorize a Type V municipal solid waste facility that will process liquid waste by separating the liquids from the solids. The facility will be authorized to accept grease trap waste, grit trap waste, septage waste, and rendering wash down and condensate water. The facility is located on a 0.713 acre site located at 1001 Wall Street, El Paso, El Paso County, Texas. This permit application was submitted to the TCEQ on August 9, 2002.

The TCEQ executive director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The executive director has made a preliminary decision to issue this draft permit. The permit application, executive director's preliminary decision, and draft permit are available for viewing and copying at the Office of the City Clerk, City of El Paso, 2 Civic Plaza, El Paso, Texas 79901. The telephone number of the City Clerk is (915) 541-4127.

MAILING LISTS. You may ask to be placed on a mailing list to obtain additional information regarding this application by sending a request to the Office of the Chief Clerk at the address below. You may also ask to be on a county-wide mailing list to receive public notices for TCEQ permits in the county.

PUBLIC COMMENT / PUBLIC MEETING. The TCEQ held a public meeting at 7:00 pm on October 3, 2002, at the City of El Paso City Council Chambers, El Paso, Texas. You may submit additional public comments or request another public meeting about this application. The purpose of a public meeting is to provide the opportunity to submit comment or to ask questions about the application. The TCEQ will hold a public meeting if the executive director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

You may submit additional written public comment to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087 within 30 days from the date of newspaper publication of this notice.

OPPORTUNITY FOR A CONTESTED CASE HEARING. After the deadline for public comments, the executive director will consider the comments and prepare a response to all relevant and material or significant public comments. The response to comments, along with the executive director's decision on the application, will be mailed to everyone who submitted public comments or who requested to be on a mailing list for this application. If comments are received, the mailing will also provide instructions for requesting a contested case hearing or reconsideration of the executive director's decision. A contested case hearing is a legal proceeding similar to a civil trial in a state district court.

A contested case hearing will only be granted based on disputed issues of fact that are relevant and material to the Commission's decision on the application. Further, the Commission will only grant a hearing on issues that were raised during the public comment period and not withdrawn. Issues that are not raised in public comments may not be considered during a hearing.

EXECUTIVE DIRECTOR ACTION. The executive director may issue final approval of the application unless a timely contested case hearing request or request for reconsideration is filed. If a timely hearing request or request for reconsideration is filed, the executive director will not issue final approval of the permit and will forward the application and requests to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

INFORMATION. If you need more information about this permit application or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.tnrcc.state.tx.us.

Further information may also be obtained from Ms. Natalie Jerome, President, P.O. Box 628, Canutillo, Texas 79835, or by calling Ms. Jerome at (915) 877-3131.

TRD-200302817

LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: May 6, 2003

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Notice of Application and Preliminary Decision for Hazardous Waste Modification

For the Period of May 1, 2003.

APPLICATION Union Oil Company of California (UNOCAL), P. O. Box 237, Nederland, Texas 77627, a petroleum refinery, has applied to the Texas Commission on Environmental Quality (TCEQ) for a Class 3 modification to Permit No. HW-50157 to replace the current closure/post- closure plan for the Sludge Disposal Impoundment with the new closure/post-closure plan to implement a unified closure of the entire North Area of the Beaumont Terminal. The facility is located on Highway 366 on the north side of Texas FM 366 near its intersection with Texas Highway 347 on approximately 560 acres in Nederland, Jefferson County, Texas. This application was submitted to the TCEQ on June 12, 2002.

The TCEQ executive director has reviewed this action for consistency with the goals and policies of the Texas Coastal Management Program (CMP) in accordance with the regulations of the Coastal Coordination Council and has determined that the action is consistent with the applicable CMP goals and policies.

The TCEQ executive director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The executive director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. The permit application, executive director's preliminary decision, and draft permit are available for viewing and copying at the City of Nederland, 1400 Boston Avenue, Nederland, Texas 77627.

PUBLIC COMMENT / PUBLIC MEETING. You may submit public comments or request a public meeting about this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. Generally, the TCEQ will hold a public meeting if the executive director determines that there is a significant degree of public interest in the application, if requested in writing by an affected person, or if requested by a local legislator. A public meeting is not a contested case hearing.

Written public comments and requests for a public meeting must be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087 within 45 days from the date of newspaper publication of this notice.

OPPORTUNITY FOR A CONTESTED CASE HEARING. After the deadline for public comments, the executive director will consider the comments and prepare a response to all relevant and material or significant public comments. The response to comments, along with the executive director's decision on the application, will be mailed to everyone who submitted public comments or requested to be on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting a contested case hearing or reconsideration of the executive director's decision. A contested case hearing is a legal proceeding similar to a civil trial in a state district court.

A contested case hearing will only be granted based on disputed issues of fact that are relevant and material to the Commission's decision on the application. Further, the Commission will only grant a hearing on issues that were raised during the public comment period and not withdrawn. Issues that are not raised in public comments may not be considered during a hearing.

EXECUTIVE DIRECTOR ACTION. The executive director may issue final approval of the application unless a timely contested case hearing request or request for reconsideration is filed. If a timely hearing request or request for reconsideration is filed, the executive director will not issue final approval of the permit and will forward the application and requests to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

MAILING LIST. In addition to submitting public comments, you may ask to be placed on a mailing list to receive future public notices mailed by the Office of the Chief Clerk. You may request to be added to: (1) the mailing list for this specific application; (2) the permanent mailing list for a specific applicant name and permit number; and/or (3) the permanent mailing list for a specific county. Clearly specify which mailing list(s) to which you wish to be added and send your request to the TCEQ Office of the Chief Clerk at the address below. Unless you otherwise specify, you will be included only on the mailing list for this specific application.

INFORMATION. If you need more information about this permit application or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.TCEQ.state.tx.us. The permittee's compliance history during the life of the permit being modified is available from the Office of Public Assistance.

Further information may also be obtained from UNOCAL at the address stated above or by calling Mr. Timothy J. Fournier at (409) 724-3311.

TRD-200302818
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: May 6, 2003

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Notice of Public Hearing (30 TAC Chapter 30)

The Texas Commission on Environmental Quality (TCEQ) will conduct a public hearing to receive testimony concerning revisions to 30 Texas Administrative Code (TAC) Chapter 30, concerning Occupational Licenses and Registrations, §§30.237, 30.240, 30.242, 30.244, and 30.246, under the requirements of Texas Health and Safety Code, §382.017 and Texas Government Code, Subchapter B, Chapter 2001.

The proposed rulemaking would allow individuals licensed as professional geoscientists by the State of Texas, to become site evaluators, provided the individuals meet the other requirements for a site evaluator license. The proposed rules would not allow a person who is only certified as a professional soil scientist to obtain a site evaluator license. Additionally, the proposed rulemaking would delete experience requirements for obtaining Installer II and site evaluator licenses and delete requirements that are no longer applicable.

A public hearing on this proposal will be held in Austin on June 3, 2003 at 10:00 a.m. at the Texas Commission on Environmental Quality in Building F, Room 2210, located at 12100 Park 35 Circle. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the Office of Environmental Policy, Analysis, and Assessment at (512) 239-4900. Requests should be made as far in advance as possible.

Comments may be submitted to Lola Brown, MC 205, Office of Environmental Policy, Analysis, and Assessment, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or by fax to (512) 239-4808. All comments should reference Rule Log Number 2003-009-030-WS. Comments must be received by 5:00 p.m., June 16, 2003. For further information, please contact Michael Bame, Policy and Regulations Division, (512) 239-5658.

TRD-200302726
Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: May 2, 2003

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Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 115

The Texas Commission on Environmental Quality (commission) will conduct public hearings to receive comments regarding revisions to 30 TAC Chapter 115 and to the state implementation plan (SIP) under the requirements of the Texas Health and Safety Code, §382.017; Texas Government Code, Subchapter B, Chapter 2001; and 40 Code of Federal Regulations, §51.102, of the United States Environmental Protection Agency (EPA) regulations concerning SIPs. The amendments to Chapter 115 are proposed as a revision to the SIP.

The proposed rulemaking would include revisions to the source control requirements which are already included within the SIP submitted for the Houston/Galveston ozone nonattainment area. The amendments also modify existing portions of the Chapter 115 rules which apply in the Beaumont/Port Arthur, Dallas/Fort Worth, and El Paso ozone nonattainment areas, as well as in 95 attainment counties located in east and central Texas, in order to improve implementation of the existing Chapter 115 rules.

Public hearings on this proposal will be held in Houston on June 2, 2003, at 2:00 p.m. at the City of Houston, City Hall Annex Public Level Conference Room, located at the City Hall Annex Building, 900 Bagby, Street Level, and at 7:00 p.m. at the City of Houston, City Council Chambers, located at 901 Bagby; and in Arlington on June 4, 2003, at 2:00 p.m. at North Central Texas Council of Governments, Third Floor, Transportation Board Room, located at 616 Six Flags Drive, Suite 200. Individuals may present oral or written statements when called upon in order of registration. There will be no open discussion during the hearings; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearings, and will answer questions before and after the hearings.

Comments may be submitted to Angela Slupe, MC 205, Office of Environmental Policy, Analysis, and Assessment, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Log Number 2003-027-115-AI. Comments must be received by 5:00 p.m., June 4, 2003. For further information, please contact Ashley Forbes of the Strategic Assessment Division at (512) 239-0493 or Eddie Mack, also of the Strategic Assessment Division, at (512) 239-1488.

Persons with disabilities who have special communication or other accommodation needs, who are planning to attend the hearing, should contact the Office of Environmental Policy, Analysis, and Assessment at (512) 239- 4900. Requests should be made as far in advance as possible.

TRD-200302725
Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: May 2, 2003

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Notice of Water Quality Applications

The following notices were issued during the period of April 22, 2003 through April 29, 2003.

The following require the applicants to publish notice in the newspaper. The public comment period, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P O Box 13087, Austin Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THIS NOTICE.

CITY OF BAYTOWN has applied for a renewal of TPDES Permit No. 10395-002, which authorizes the discharge of treated domestic wastewater an annual average flow not to exceed 6,200,000 gallons per day. The facility is located at 1709 West Main Street in Harris County, Texas.

CARGILL INCORPORATED which operates the Sweet Bran Terminal, an animal feed loading and transfer station, has applied for a new permit, Proposed Permit No. 04494 to authorize the disposal of wash water from animal feed production and distribution at an annual average flow not to exceed 2,500 gallons per day via irrigation 60 acres. This permit will not authorize a discharge of pollutants into water in the State. The facility and disposal area are located approximately one-half mile west of the intersection of U.S. Highway 87 and West Ranch Road 1727, northwest of the City of Dalhart, Dallam County,Texas.

COMPONENT STRUCTURES, INC has applied for a renewal of TPDES Permit No. 12320- 001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 2,000 gallons per day. The facility is located approximately 2200 feet east of the intersection of Hardy Road and Richey Road, north of the City of Houston in Harris County, Texas.

FERNCO DEVELOPMENT, LTD., LENCO DEVELOPMENT, LTD., AND NORCO DEVELOPMENT, LTD. has applied for a renewal of TPDES Permit No. 11051-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 60,000 gallons per day. The facility is located approximately 500 feet east of Windfern Road on the south bank of Whiteoak Bayou and one mile northeast of U.S. Highway 290 and approximately 14 miles northeast of the City of Houston central business district in Harris County, Texas.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 208 has applied for a renewal of TPDES Permit No. 11947-001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 6,700,000 gallons per day. The facility is located at 7926 State Highway 6, approximately 3/4 mile northeast of the intersection of State Highway 6 and Farm-to- Market Road 529 (Spencer Road) in Harris County, Texas.

K-3 RESOURCES, INC has applied for a new TPDES permit, Proposed Permit No. 04538, to authorize the storage and treatment of liquid domestic wastewater plant sludge and domestic septage from multiple sources. This permit will not authorize a discharge of pollutants into waters in the State. The facility is within the Karlis Ecrums III Life

Insurance Trust property located at the northwest corner of the intersection of State Highway 362 and State Highway 529 in Waller County, Texas.

KWIK-KOPY CORPORATION which manages the wastewater treatment of its conference center, has applied for a renewal of TPDES Permit No. 13059-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 15,000 gallons per day. The facility is located at 12715 Telge Road and is approximately 1.25 miles north of the intersection of Telge Road and State Highway 6 and U.S. Highway 290 in Harris County, Texas.

RAYBURN COUNTRY MUNICIPAL UTILITY DISTRICT has applied for a renewal of TPDES Permit No. 10788-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 300,000 gallons per day. The facility is located approximately 2,000 feet north of the intersection of Recreational Road 255 and Farm-to-Market Road 1007 and 3 miles west of the intersection of U.S. Highway 96 and Recreational Road 255 in Jasper County, Texas.

TECON WATER COMPANY, L.P. has applied for a renewal of TPDES Permit No. 12478- 001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 250,000 gallons per day. The facility is located 300 feet south of Farm-to-Market Road 565 and 6,500 feet east of the intersection of Farm-to-Market Road 565 and Farm-to-Market Road 1405 in Chambers County, Texas.

TERRELL COUNTY WCID NO.1 has applied for a major amendment to Permit No. 14120- 001, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day via surface irrigation on 28 acres of native grassland. The current permit authorizes the discharge of treated domestic wastewater to the Rio Grande Above Amistad Reservior. The proposed permit does not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located approximately one-fourth mile north of the intersection of U.S. Highway 90 and Southern Pacific Railroad and approximately two and one-half miles southeast of the Community of Sanderson in Terrell County, Texas.

CITY OF WEATHERFORD MUNICIPAL UTILITY BOARD OF TRUSTEES has applied for a renewal of TPDES Permit No. 14198-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 636,000 gallons per day. The facility is located approximately 1,400 feet east and 2,100 feet south of the pump station at the dam of Lake Weatherford in Parker County, Texas.

WOODLAND LAKE DEVELOPMENT, LTD. has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. 14414-001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 900,000 gallons per day. The facility will be located approximately 4,200 feet southeast of the intersection of State Highway 242 and Donwick Drive in Montgomery County, Texas.

Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, at the address provided in the information section above, WITHIN 30 DAYS OF THE ISSUED DATE OF THIS NOTICE

CITY OF DONNA has applied for a minor amendment to TPDES Permit No. 10504-001 to replace the existing chlorination/dechlorination of the treated effluent with UV disinfection. The existing permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,700,000 gallons per day. The facility is located immediately west of Farm-to-Market Road 493 ans approximately 1.5 miles south of U.S. Highway 83(Business Route) in Hidalgo County, Texas.

TRD-200302816
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: May 6, 2003

♦ ♦ ♦

State Superfund Registry

The executive director (ED) of the Texas Commission on Environmental Quality (TCEQ or commission) is issuing a notice of intent to delete the Aztec Ceramics State Superfund site (the site) from the state registry, the list of state Superfund sites which may constitute an imminent and substantial endangerment to public health and safety or the environment due to a release or threatened release of hazardous substances into the environment. The commission is proposing this deletion because the ED has determined that due to the remedial actions performed, the site no longer presents such an endangerment.

The site, including all land, structures, appurtenances, and other improvements, is approximately 8.8 acres located at 4735 Emil Road, San Antonio, Bexar County, Texas. The site also included any areas where hazardous substance had come to be located as a result, either directly or indirectly, of releases of hazardous substance from the site. The TCEQ proposed the land use for the site as commercial/industrial. In accordance with 30 TAC §350.53, the current land use is determinative. The most recent use of the property is commercial/industrial. Based upon the most recent use of the site, and due to the fact that no information to the contrary was presented at the public meeting of August 1999, the ED of TCEQ selected commercial/industrial as the appropriate land use for purposes of selecting a remedial action at the site.

The site was in use from 1940 to 1988 as a ceramic tile manufacturing company. Surface impoundments were used for the management of solid wastes such as fired and unfired tile rejects as well as glaze waste. Heavy metal pigments were used as the coloring agents in the glaze mixture including lead, barium, titanium, cadmium, nickel, and chromium. The remedial investigation (RI) found that the site presented risks to on-site workers and trespassers who might come in contact with or ingest contaminated soils and wastes. The RI also found no unacceptable impacts to the underlying shallow groundwater associated with the wastes on the site. The major elements of the remedy implemented in August 2002 included: installation of an asphalt cap to prevent contact or ingestion of contaminated materials by site occupants or trespassers and to minimize infiltration through the waste which might cause adverse groundwater impacts; a fence around the site which was left in place at the conclusion of the remedial action to prevent unauthorized entry to the site by vehicles which might damage the asphalt cap; preservation of monitor wells which were installed during the RI to facilitate future groundwater monitoring; and recordation of a deed notice in the real property records of Bexar County which warns that the land use must be limited to industrial/commercial activities unless further corrective actions are undertaken to render the site suitable for other uses. Post-closure care includes annual inspections of the cap and fence. Sampling of the monitoring wells will also be done to be sure that the groundwater has not been impacted. A copy of the Operations and Maintenance Plan can be found attached to the deed notice in the real property records of Bexar County and in Central Records at TCEQ, Austin, Texas.

As a result of the remedial actions that have been performed at the site, the ED has determined that the site no longer presents an imminent and

substantial endangerment to public health, safety, and the environment. Therefore, the site is eligible for deletion from the state registry as provided by 30 TAC §335.344(c).

In accordance with 30 TAC §335.344(b), the commission will hold a public meeting to receive comments on this proposed deletion. This meeting will not be a contested case hearing within the meaning of Texas Government Code, Chapter 2001. The meeting will be held at 7:00 p.m., on Tuesday, June 17, 2003, in the library at Pfeiffer Elementary School, located at 4551 Dietrich, San Antonio, Texas.

All persons desiring to make comments regarding the proposed deletion of the site may do so prior to or at the public meeting. All comments submitted prior to the public meeting must be received by 5:00 p.m., June 17, 2003 **and should be sent in writing** ***to Mr. Alan Etheredge, project manager, TCEQ, Remediation Division, Superfund Cleanup Section, MC 143, P. O. Box 13087, Austin, Texas 78711-3087 or by facsimile (512) 239-2450. The public comment period for this action will end at the close of the public meeting of June 17, 2003.***

A portion of the record for the site including documents pertinent to the ED's proposed deletion is available for review during regular business hours at the Carver Branch Library, 3350 Commerce, San Antonio, Texas, (210) 225-7801. The complete public file may be obtained during regular business hours at the commission's Records Management Center, Building E, First Floor, 12100 Park 35 Circle, Austin, Texas 78753, (800) 633-9363 or (512) 239-2920. Fees are charged for photocopying file information.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the meeting should contact the agency at (800) 633-9363 or (512) 239-2463. Requests should be made as far in advance as possible.

For further information about the public meeting, please call Ms. Janie Montemayor at (800) 633-9363.

TRD-200302822
Paul C. Sarahan
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: May 7, 2003

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Texas Department of Health

Licensing Actions for Radioactive Materials

The Texas Department of Health has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Austin	Austin Diagnostic Clinic	L05646	Austin	00	4/28/03
Dallas	Regional Nuclear Pharmaceuticals of Dallas	L05610	Dallas	00	4/23/03
Houston	Trinity Physics Consulting LLC	L05639	Houston	00	4/23/03
Mission	South TX Imaging Center	L05636	Mission	00	4/18/03
Throughout TX	RAM Testing Inc	L05663	Houston	00	4/16/03

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Aransas Pass	North Bay General Hospital	L03446	Aransas Pass	25	4/17/03
Austin	Seton Medical Center	L02896	Austin	69	4/20/03
Beeville	Christus Spohn Health System Corporation	L04510	Beeville	19	4/23/03
Channelview	Lyondell Chemical Company	L04439	Channelview	18	4/16/03
Corpus Christi	The Corpus Christi Medical Center Bay Area	L04723	Corpus Christi	31	4/23/03
Corpus Christi	Narain D Mangla MD PA	L05630	Corpus Christi	01	4/25/03
Corpus Christi	Spohn Hospital	L02495	Corpus Christi	76	4/30/03
Dallas	Truglo Inc	L05519	Dallas	01	4/18/03
El Paso	Desert Imaging	L05626	El Paso	01	4/16/03
El Paso	Southwestern General Hospital	L02338	El Paso	28	4/24/03
Friendswood	ISO Tex Diagnostics Inc	L02999	Friendswood	35	4/28/03
Ft Worth	Cardinal Health	L02905	Ft Worth	63	4/29/03
Gonzales	Gonzales Healthcare System	L03473	Gonzales	08	4/16/03
Houston	Houston Cardiovascular Assoc	L05070	Houston	08	4/17/03
Houston	H & G Inspection Company Inc	L02181	Houston	160	4/24/03
Houston	Digirad Imaging Solutions Inc	L05414	Houston	13	4/25/03
Houston	American Diagnostic Tech LLC	L05514	Houston	06	4/25/03
LaGrange	Austin Heart La Grange	L05516	LaGrange	02	4/15/03
Nacogdoches	Nacogdoches Heart Clinic	L04382	Nacogdoches	07	4/15/03
Pasadena	Gulf Coast Cancer Center	L05185	Pasadena	04	4/16/03
Plano	Woman's Diagnostic of Texas	L05601	Plano	01	4/25/03
Port Arthur	Gulf Coast Cardiology Group PA	L05393	Port Arthur	08	4/18/03
Port Arthur	Christus St Mary Hospital	L01212	Port Arthur	72	4/24/03
Port Arthur	Christus St Mary Hospital	L01212	Port Arthur	73	4/29/03
San Antonio	Baptist Imaging Center	L04506	San Antonio	36	4/16/03
San Antonio	Cancer Therapy & Res Ctr Res Foundation	L03350	San Antonio	34	4/17/03
San Antonio	Methodist Healthcare System of San Antonio	L00594	San Antonio	175	4/18/03
San Antonio	Bionumerik Pharmaceuticals Inc	L05226	San Antonio	07	4/18/03
San Antonio	University of Texas at San Antonio	L01962	San Antonio	47	4/16/03
San Antonio	Heart Institute of South Texas	L04377	San Antonio	20	4/18/03
San Antonio	CTRC Clinical Foundation	L01922	San Antonio	68	4/25/03
Sherman	Sherman Cardiovascular Care Assoc. PA	L05271	Sherman	04	4/18/03
Stephenville	Tarleton State University	L05612	Stephenville	01	4/23/03
Stephenville	Stephenville Medical & Surgical Clinic	L05309	Stephenville	02	4/23/03

(CONTINUED) AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Taylor	Johns Community Hospital	L03657	Taylor	25	4/23/03
Temple	Scott & White Memorial Hospice	L00331	Temple	67	4/24/03
The Woodlands	Nasser Cardiology PA	L05434	The Woodlands	02	4/18/03
Throughout TX	Lotus LLC	L05147	Andrews	07	4/25/03
Throughout TX	Global X-ray & Testing Corp	L03663	Aransas Pass	91	4/18/03
Throughout TX	Reinhart and Associates Inc	L03189	Austin	38	4/18/03
Throughout TX	TX Department of Transportation	L00197	Austin	94	4/18/03
Throughout TX	Rodriguez Engineering	L04700	Austin	07	4/18/03
Throughout TX	Trinity Engineering Testing Corporation	L01351	Austin	43	4/24/03
Throughout TX	X-R-I Non-Destructive Testing	L05275	Beaumont	26	4/11/03
Throughout TX	Construction Services	L05625	Christoval	02	4/17/03
Throughout TX	Computalog Wireline Services Inc	L04286	Ft Worth	47	4/18/03
Throughout TX	Washington Group	L02662	Houston	90	4/16/03
Throughout TX	Greenspan Incorporated	L04628	Houston	07	4/22/03
Throughout TX	Testmasters Inc	L03651	Houston	18	4/11/03
Throughout TX	HVJ Associates Inc	L03813	Houston	21	4/22/03
Throughout TX	Cooperheat-MQS Inc	L00087	Houston	102	4/24/03
Throughout TX	METCO	L03018	Houston	132	4/28/03
Throughout TX	RCOA Imaging Services Inc	L05329	Irving	09	4/23/03
Throughout TX	Non Destructive Inspection Corporation	L02712	Lake Jackson	106	4/28/03
Throughout TX	All American Inspection Inc	L01336	San Antonio	44	4/29/03
Throughout TX	Specialty Pharmacy Services Inc	L04883	Temple	19	4/20/03
Throughout TX	Blazer Inspection Inc	L04619	Texas City	33	4/23/03
Throughout TX	H & H X-ray Services Inc	L02516	Tyler	40	4/18/03
Throughout TX	Soloco Texas LP	L04708	Winnie	12	4/23/03
University Park	Cirrus Health	L05600	University Park	02	4/15/03
Victoria	Victoria of Texas LP	L01630	Victoria	38	4/28/03
Waco	Hillcrest Baptist Medical Center	L00845	Waco	71	4/28/03

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Pasadena	Crown Central Petroleum Corporation	L01344	Pasadena	24	4/18/03
Throughout TX	Sivalls Inc	L02298	Odessa	32	4/11/03
Throughout TX	Raba-Kistner Consultants Inc	L01571	Pasadena	50	4/22/03

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Borger	Panhandle NDT & Inspection Inc	L02627	Borger	47	4/22/03
McAllen	Upper Valley Radiology Clinic	L04335	McAllen	11	4/28/03
San Angelo	Ethicon Inc	L00720	San Angelo	48	4/16/03
San Antonio	Diagnostic Imaging Assoc of San Antonio	L05187	San Antonio	05	4/25/03
San Antonio	Boeing Aerospace Support Center	L05321	San Antonio	05	4/25/03
Throughout TX	Odell Geer Construction Company	L01804	Belton	15	4/22/03

LICENSE EXEMPTION ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Corpus Christi	Riverside Hospital Inc	L02977	Corpus Christi		4/25/03
Pasadena	Microtec Services Inc	L04656	Pasadena		4/30/03

In issuing new licenses, amending and renewing existing licenses, or approving exemptions to Title 25 Texas Administrative Code (TAC), Chapter 289, the Texas Department of Health (department), Bureau of Radiation Control, has determined that the applicants are qualified by reason of training and experience to use the material in question for the purposes requested in accordance with 25 TAC, Chapter 289 in such a manner as to minimize danger to public health and safety or property and the environment; the applicants' proposed equipment, facilities and procedures are adequate to minimize danger to public health and safety or property and the environment; the issuance of the new, amended, or renewed license (s) or the issuance of the exemption (s) will not be inimical to the health and safety of the public or the environment; and the applicants satisfy any applicable requirements of 25 TAC, Chapter 289. In granting termination of licenses, the department has determined that the licensee has properly decommissioned its facilities according to the applicable requirements of 25 TAC, Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC, Chapter 289.

This notice affords the opportunity for a hearing on written request of a licensee, applicant, or person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A licensee, applicant, or person affected may request a hearing by writing Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189. For information call (512) 834-6688.

TRD-200302773
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: May 5, 2003

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Houston-Galveston Area Council

Public Meeting Notice

Draft 2004-2006 Transportation Improvement Program (TIP)

Houston-Galveston Area Council

3555 Timmons Lane

Houston, Texas 77027

Tuesday, May 20, 2003

5:30 p.m. - 6:30 p.m.

2nd Floor, Conference Room A

On Tuesday, May 20, 2003, at 5:30 p.m., the Houston-Galveston Area Council (H-GAC) will host a public meeting on the Draft 2004-2006 Transportation Improvement Program (TIP). The public is encouraged to attend this important meeting and provide comments to H-GAC.

The public comment period on the Draft 2004-2006 TIP begins **Thursday, May 1, 2003.** All comments must be received by H-GAC no later than **5 p.m., Monday, June 9, 2003.** To obtain more detailed information and a copy of the Draft 2004-2006 TIP, please visit H-GAC's Web site at **www.h-gac.com/transportation** or call Pat Waskowiak, Transportation Senior Planner, at (713) 993-2456. Written comments may be submitted to Pat Waskowiak, Houston-Galveston Area Council, P.O. Box 22777, Houston, Texas 77227, emailed to patricia.waskowiak@h-gac.com or faxed to (713) 993-4508.

In compliance with the Americans with Disabilities Act, H-GAC will provide for reasonable accommodations for persons with disabilities attending H-GAC functions. Requests should be received by H-GAC 24 hours prior to the function. Call Pat Waskowiak at (713) 993-2456 to make arrangements.

TRD-200302820
Alan Clark
MPO Director
Houston-Galveston Area Council
Filed: May 7, 2003

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Request for Proposal

The Houston-Galveston Area Council (H-GAC) is currently requesting proposals to develop an Action plan to address Coordination and Implementation of the Public Transportation Program in Fort Bend County. A pre-proposal meeting was held on Thursday, April 24, 2003, at H-GAC. Proposals must be received by **noon on Tuesday, May 27, 2003**. Twelve (12) typewritten, bound/stapled and signed copies of the proposal are required. Late proposals will **NOT** be accepted. The Request for Proposal packet can be downloaded from the H-GAC Transportation Department Web site at **www.h-gac.com/HGAC/Home/RFP/default.htm.** Proposals can be mailed to the attention of Alan Clark, Houston-Galveston Area Council, P.O. Box 22777, Houston, Texas 77227-2777, or delivered to 3555 Timmons Lane, Suite 120, Houston, Texas 77027. For more information, please contact Alan Clark, MPO Director, at (713) 627-3200.

TRD-200302821
Alan Clark
MPO Director
Houston-Galveston Area Council
Filed: May 7, 2003

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Texas Department of Insurance

Company Licensing

Application for Admission to the State of Texas by National Grange Mutual Insurance Company, a foreign fire and/or casualty company. The home office is in Keene, New Hampshire.

Any objections must be filed with the Texas Department of Insurance, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200302827
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: May 7, 2003

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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 for admission to Texas of Delta Dental Plan of California, a foreign third party administrator. The home office is San Francisco, California.

Application for admission to Texas of MedPayeXpress, L.L.C., a foreign third party administrator. The home office is Lake Charles, Louisiana.

Application for admission to Texas of AFIC Administrators, Inc., a foreign third party administrator. The home office is Jackson, Mississippi.

Application for incorporation in Texas of 2003 Healthplan Texas, Inc., a domestic third party administrator. The home office is Laredo, Texas.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Matt Ray, MC 107-1A, 333 Guadalupe, Austin, Texas 78701.

TRD-200302826
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: May 7, 2003

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Texas Lottery Commission

Instant Game No. 388 "Bingo"

1.0 Name and Style of Game.

A. The name of Instant Game No. 388 is "BINGO". The play style is "bingo".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 388 shall be $5.00 per ticket.

1.2 Definitions in Instant Game No. 388.

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 - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: B01, B02, B03, B04, B05, B06, B07, B08, B09, B10, B11, B12, B13, B14, B15, I16, I17, I18, I19, I20, I21, I22, I23, I24, I25, I26, I27, I28, I29, I30, N31, N32, N33, N34, N35, N36, N37, N38, N39, N40, N41, N42, N43, N44, N45, G46, G47, G48, G49, G50, G51, G52, G53, G54, G55, G56, G57, G58, G59, G60, O61, O62, O63, O64, O65, O66, O67, O68, O69, O70, O71, O72, O73, O74, O75, 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, and FREE.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each 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. 388 - 1.2D

PLAY SYMBOL	CAPTION
B01	
B02	
B03	
B04	
B05	
B06	
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B13	
B14	
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I17	
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FREE	

E. Retailer Validation Code - Three small letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are:

Figure 2: GAME NO. 388 - 1.2E

CODE	PRIZE
FIV	$5.00
TEN	$10.00
FTN	$15.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four (4) digit security number which will be boxed and 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 format will be: 0000000000000.

G. Low-Tier Prize - A prize of $5.00, $10.00, $15.00, or $20.00.

H. Mid-Tier Prize - A prize of $25.00, $30.00, $40.00, $50.00, $75.00, $100, $200, or $500.

I. High-Tier Prize - A prize of $1,000, $2,000, $5,000, $20,000, or $50,000.

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 (388), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 000 and end with 074 within each pack. The format will be: 388-0000001-000.

L. Pack - A pack of "BINGO" Instant Game tickets contain 75 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 000 and back of 074 while the other fold will show the back of ticket 000 and front of 074.

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 "BINGO" Instant Game No. 388 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 "BINGO" Instant Game is determined once the latex on the ticket is scratched off to expose 190 (one hundred ninety) play symbols. The player must scratch off the "LUCKY NUMBERS" area to reveal 40 (forty) Lucky Numbers. The player must then scratch all numbers on Card 1 through Card 6 that match the Lucky Numbers until they turn dark blue. Each card has a corresponding prize legend. If the player matches all bingo numbers in a complete horizontal, vertical, or diagonal line pattern in a single card the player will win $5 in Card 1, $10 in Card 2, $15 in Card 3, $20 in Card 4, $25 in Card 5, or $30 in Card 6. If the player matches all bingo numbers in all four (4) corners pattern in a single card the player will win $20 in Card 1, $40 in Card 2, $50 in Card 3, $75 in Card 4, $100 in Card 5, or $200 in Card 6. If the player matches all bingo numbers to make a complete "X" pattern in a single card the player will win $200 in Card 1, $500 in Card 2, $1,000 in Card 3, $5,000 in Card 4, $20,000 in Card 5, or $50,000 in Card 6. A ticket can win only one (1) prize on each "Card", but a prize can be won on up to six (6) "Cards" provided that each "Card" has a winning pattern. 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 190 (one hundred ninety) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, 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;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 190 (one hundred ninety) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 190 (one hundred ninety) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 190 (one hundred ninety) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. There will never be more than one win on a single Player's Card.

C. There cannot be two identical Player's Cards on a ticket.

D. No duplicate Lucky Numbers play symbols.

E. On each of the Player's Cards, the numbers will appear to be mixed randomly, but under each vertical line will appear only the number valid for that line. For example: 1 to 15 for line B; 16 to 30 for line I; 31 to 45 + FREE for line N; 46 to 60 for line G; 61 to 75 for line O.

F. In the center of each Player's card their will be a FREE space.

G. The 40 Lucky Number will match between 59 and 91 numbers (on Player's Cards) per ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "BINGO" Instant Game prize of $5.00, $10.00, $15.00, $20.00, $25.00, $30.00, $40.00, $50.00, $75.00, $100, $200, or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $50.00, $75.00, $100, $200, or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "BINGO" Instant Game prize of $1,000, $2,000, $5,000, $20,000, or $50,000, 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 "BINGO" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "BINGO" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "BINGO" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game. 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.

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 therefor, 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 therefor, 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 therefor. 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 3,052,575 tickets in the Instant Game No. 388. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 388 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$5	396,873	7.69
$10	203,510	15.00
$15	111,919	27.27
$20	61,046	50.00
$25	36,654	83.28
$30	7,377	413.80
$40	6,151	500.00
$50	7,483	406.78
$75	3,697	825.69
$100	2,531	1,206.07
$200	1,278	2,388.56
$500	258	11,831.69
$1,000	30	101,752.50
$2,000	10	305,257.50
$5,000	8	381,571.88
$20,000	4	763,143.75
$50,000	3	1,017,525.00

*The number of actual winners may vary based on sales, distribution, and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.64. The individual odds of winning for a particular prize level may vary based on sales, distribution, and number of prized claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

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. 388 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. 388, 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-200302792
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: May 6, 2003

♦ ♦ ♦

Instant Game No. 391 "The Cash Zone"

1.0 Name and Style of Game.

A. The name of Instant Game No. 391 is "THE CASH ZONE". The play style is "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 391 shall be $2.00 per ticket.

1.2 Definitions in Instant Game No. 391.

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 - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, $1.00, $2.00, $4.00, $5.00, $10.00, $20.00, $50.00, $100, $200, $2,000, $25,000.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each 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. 391 - 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
21	TWON
22	TWTO
23	TWTH
24	TWFR
$1.00	ONE$
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$50.00	FIFTY
$100	ONE HUND
$200	TWO HUND
$2,000	TWO THOU
$25,000	25 THOU

E. Retailer Validation Code - Three small letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are:

Figure 2: GAME NO. 391 - 1.2E

CODE	PRIZE
TWO	$2.00
FOR	$4.00
FIV	$5.00
TEN	$10.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four (4) digit security number which will be boxed and 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 format will be: 0000000000000.

G. Low-Tier Prize - A prize of $2.00, $4.00, $5.00, $10.00, or $20.00.

H. Mid-Tier Prize - A prize of $50.00, $70.00, $100.

I. High-Tier Prize - A prize of $2,000 or $25,000.

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 (391), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 000 and end with 249 within each pack. The format will be: 391-0000001-000.

L. Pack - A pack of "THE CASH ZONE" Instant Game tickets contain 250 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of two (2). Tickets 000 and 001 will be on the top page, tickets 002 and 003 on the next page and so on, and tickets 248 and 249 will be on the last page. Please note the books will be in an A - B configuration.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "THE CASH ZONE" Instant Game No. 391 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 "THE CASH ZONE" Instant Game is determined once the latex on the ticket is scratched off to expose 22 (twenty-two) play symbols. If the player matches any of the YOUR NUMBERS to either WINNING NUMBER, the player will win the prize shown for that number. 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 22 (twenty-two) 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, 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;

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 22 (twenty-two) 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 22 (twenty-two) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 22 (twenty-two) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, "spot for spot".

B. No duplicate non-winning Your Numbers play symbols on a ticket.

C. No duplicate Winning Numbers play symbols on a ticket.

D. No more than one pair of duplicate non-winning prize symbols on a ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "THE CASH ZONE" Instant Game prize of $2.00, $4.00, $5.00, $10.00, $20.00, $50.00, $70.00, or $100, 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, $70.00, or $100 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "THE CASH ZONE" Instant Game prize of $2,000 or $25,000, 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 "THE CASH ZONE" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "THE CASH ZONE" 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 "THE CASH ZONE" 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. 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.

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 therefor, 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 therefor, 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 therefor. 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 10,084,250 tickets in the Instant Game No. 391. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 391 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$2	968,113	10.42
$4	806,790	12.50
$5	161,323	62.51
$10	100,793	100.05
$20	100,861	99.98
$50	41,188	244.83
$70	18,894	533.73
$100	3,784	2,664.97
$2,000	26	387,855.77
$25,000	12	840,354.17

*The number of actual winners may vary based on sales, distribution, and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.58. The individual odds of winning for a particular prize level may vary based on sales, distribution, and number of prized claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

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. 391 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. 391, 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-200302791
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: May 6, 2003

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Instant Game No. 410 "Boot Loot"

1.0 Name and Style of Game.

A. The name of Instant Game No. 410 is "BOOT LOOT". The play style is "match up".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 410 shall be $1.00 per ticket.

1.2 Definitions in Instant Game No. 410.

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 - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: $1.00, $2.00, $4.00, $5.00, $10.00, $20.00, $50.00, $100, $500, $3,000.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each 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. 410 - 1.2D

PLAY SYMBOL	CAPTION
$1.00	ONE$
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$50.00	FIFTY
$100	ONE HUND
$500	FIV HUND
$3,000	THR THOU

E. Retailer Validation Code - Three small letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are:

Figure 2: GAME NO. 410 - 1.2E

CODE	PRIZE
ONE	$1.00
TWO	$2.00
FOR	$4.00
FIV	$5.00
TEN	$10.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four (4) digit security number which will be boxed and 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 format will be: 0000000000000.

G. Low-Tier Prize - A prize of $1.00, $2.00, $4.00, $5.00, $10.00, $20.00.

H. Mid-Tier Prize - A prize of $50.00, $100, $500.

I. High-Tier Prize - A prize of $3,000.

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 (410), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 000 and end with 249 within each pack. The format will be: 410-0000001-000.

L. Pack - A pack of "BOOT LOOT" Instant Game tickets contain 250 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 000 to 004 will be on the top page, tickets 005 to 009 will be on the next page and so forth and tickets 245 to 249 on the last page. Tickets 000 and 249 will be folded down to expose the pack-ticket number through the shrink-wrap.

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 "BOOT LOOT" Instant Game No. 410 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 "BOOT LOOT" Instant Game is determined once the latex on the ticket is scratched off to expose nine (9) play symbols. If the player matches three (3) identical dollar amounts, the player will win that amount. 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 nine (9) 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, 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;

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 nine (9) 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 nine (9) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the nine (9) 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 four or more like play symbols on a ticket.

C. No more than two (2) pairs of like play symbols on a ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "BOOT LOOT" 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 2.3.C of these Game Procedures.

B. To claim a "BOOT LOOT" Instant Game prize of $3,000, 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 "BOOT LOOT" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "BOOT LOOT" 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 "BOOT LOOT" 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. 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.

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 therefor, 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 therefor, 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 therefor. 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 19,995,500 tickets in the Instant Game No. 410. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 410 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$1.00	2,319,629	8.62
$2.00	1,199,833	16.67
$4.00	239,828	83.37
$5.00	159,923	125.03
$10.00	120,005	166.62
$20.00	79,982	250.00
$50.00	26,720	748.33
$100	10,410	1,920.80
$500	168	119,020.83
$3,000	84	238,041.67

*The number of actual prizes may vary based on sales, distribution, testing, and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.81. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 410 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. 410, 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-200302790

Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: May 6, 2003

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Manufactured Housing Division

Notice of Administrative Hearing

Thursday, May 29, 2003, 1:00 p.m.

State Office of Administrative Hearings, William P. Clements Building, 300 West 15th Street, 4th Floor

Austin, Texas

AGENDA

Administrative Hearing before an administrative law judge of the State Office of Administrative Hearings in the matter of the complaint of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs and Charlene S. Holub to hear denial of a title to a manufactured home, HUD Label TEX0122115, by the Department for a home titled to Charles E. Seidel, Jr. and David R. Seidel. SOAH 332-03-2995. Department MHD2003001153-RH.

Contact: Tim K. Irvine, P.O. Box 12489, Austin, Texas 78711-2489, (512) 475-3589, tirvine@tdhca.state.tx.us

TRD-200302755
Bobbie Hill
Executive Director
Manufactured Housing Division
Filed: May 2, 2003

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Public Utility Commission of Texas

Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On April 28, 2003, UAI of Texas, Inc. filed an application with the Public Utility Commission of Texas (PUC) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60297. Applicant intends to reflect a change in ownership/control, whereby CityNet Telecommunications, Inc. will acquire indirect control of UAI of Texas, Inc.

The Application: Application of UAI of Texas, Inc. for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 27705.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at PO Box 13326, Austin, Texas, 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than May 21, 2003. 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 27705.

TRD-200302745
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 2, 2003

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Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On May 1, 2003, CallNet Communications, Inc. 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 60333. Applicant intends to remove the resale-only restriction.

The Application: Application of CallNet Communications, Inc. for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 27722.

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 May 21, 2003. 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 27722.

TRD-200302785
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 5, 2003

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Notice of Application for Certificate of Convenience and Necessity in Crane and Upton Counties, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application filed on April 24, 2003, for a certificate of convenience and necessity in Crane and Upton Counties, Texas.

Docket Style and Number: Application of AEP Texas North Company (AEP Texas North) for a Certificate of Convenience and Necessity (CCN) for a 69-kV Transmission Line in Crane and Upton Counties. Docket Number 27484.

The Application: AEP Texas North (formerly known as West Texas Utilities Company) filed with the commission an application for a CCN to build a new single circuit 69-kV transmission line between AEP Texas North's Crane Substation and the existing 69-kV North McCamey to McElroy Transmission Line in Crane and Upton Counties, Texas.

AEP Texas North's proposed 1.57-mile route would exit the east side of AEP Texas North's Crane Substation, which is located on private property approximately 0.74 mile northeast of the City of Crane, and approximately 0.87 mile east of U.S. Highway 385. From the substation, the proposed route would extend in an easterly direction for approximately 0.40 mile then turn southeastwardly for approximately 0.38 mile before turning again in an eastward direction for approximately 0.59 mile then turn to the northeast for approximately 450 feet before continuing in an easterly direction for approximately another 600 feet to the McElroy/North McCamey Cut- In. The 1.57-mile segment would be located parallel to and approximately 0.44 mile north of State Highway 329 at its closest point. The McElroy/North McCamey Cut-In would be located on the McElroy to North McCamey 69-kV Transmission Line, which currently connects the North McCamey Substation to the McElroy Substation. The McElroy/North McCamey Cut-In would be located on private property approximately 2.27 miles east of the northeastern limits of the City of Crane. The entire route would be approximately 1.57 miles long and traverse the McElroy Oil Field in eastern Crane and western Upton Counties, Texas.

The cost of the transmission facilities project is approximately $748,326.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas no later than June 9, 2003 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 27484.

TRD-200302813
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 6, 2003

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Notice of Application for Certificate of Convenience and Necessity in Liberty County, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application filed on May 1, 2003, for a certificate of convenience and necessity in Liberty County, Texas.

Docket Style and Number: Application of Entergy Gulf States, Incorporated (EGSI) for a Certification of Convenience and Necessity (CCN) for Transmission Line in Liberty County. Docket Number 27607.

The Application: EGSI filed an application with the commission for a CCN to install a double circuit 138-kV transmission line in Liberty County, Texas. This line is needed to meet the electric service needs of an industrial customer in Liberty County. The estimated cost of the project is approximately $3.25 million.

Preferred Route (Route 3) - From approximately 1.9 miles east of State Highway (SH) 61, EGSI's preferred route leaves Line 424 to the south and traverses southeasterly for approximately 0.7 mile. The route turns southwest and continues for approximately 1,200 feet to a private road that parallels a property line. It then continues south along the east side of the road for approximately 0.8 mile, where it crosses a drainage ditch and turns west. The proposed route continues west on the south side of the ditch for approximately 2,000 feet, then turns south through cropland and continues for another 2,000 feet. There, the route turns southwesterly, continues for 800 feet, where it crosses a property boundary fence. The proposed route parallels a private road to the southwest for approximately 0.6 mile, then turns west and continues for approximately 1,200 feet to the Kinder Morgan property line. The route then turns south for approximately 300 feet to the Devers Marsh Switchyard. The entire length of the proposed route is approximately 3.6 miles.

Alternate Route 1 - From just east of SH 61, Route 1 leaves L-424 to the south, goes approximately 2.6 miles on the east side of SH 61, turns and continues southeast cross-country parallel on the north side of a pipeline right-of-way for approximately 0.9 mile. The route then turns northeast and parallels White's Bayou across Kinder Morgan property for approximately 500 feet to the Devers Marsh Switchyard. The total length of Route 1 is approximately 3.6 miles.

Alternate Route 2 - From approximately 1.9 miles east of SH 61, Route 2 leaves Line 424 to the south and traverses southeasterly for approximately 0.7 mile. The route turns southwest and continues for approximately 1,200 feet to a private road that parallels a property line. It then continues south along the east side of the road for approximately 0.8 mile, where it crosses a drainage ditch and turns west. The proposed route continues west on the south side of the ditch for approximately 2,000 feet, then turns south through cropland and continues for another 2,000 feet. There, the route turns southwesterly, continues for 800 feet, where it crosses a property boundary fence. Continuing along property boundaries, Route 2 turns west across forest for approximately 0.4 mile, then south for 0.6 mile to the Devers Marsh Switchyard. The total length of Route 2 is approximately 3.7 miles.

Alternate Route 4 - From approximately 2.3 miles east of SH 61, Route 4 leaves L-424, and goes south approximately 2.1 miles. The route turns west at a property corner and continues for approximately 0.3 mile, then turns south at another property corner and traverses another 0.8 mile where it turns west along a private road and continues approximately 1.0 mile, then turns northwest paralleling a pipeline for approximately 260 feet to the Kinder Morgan property line. The route then turns north for approximately 0.1 mile to the Devers Marsh Switchyard. The entire length of Route 4 is approximately 4.3 miles.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by June 16, 2003, by mail at PO 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 27607.

TRD-200302814
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 6, 2003

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Notice of Application for Relinquishment of a Service Provider Certificate of Operating Authority

On April 29, 2003, Phone America filed an application with the Public Utility Commission of Texas (commission) to relinquish its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60184. Applicant intends to relinquish its certificate.

The Application: Application of Phone America for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 27663.

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 May 21, 2003. 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 27663.

TRD-200302784
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 5, 2003

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Notice of Filing to Discontinue 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 April 22, 2003 to discontinue services.

Docket Title and Number: Application of Verizon Southwest (Verizon) to Revise Intralata Interexchange Tariff to Remove Transport LAN Connect Service Pursuant to P.U.C. Substantive Rule §26.208(h). Docket Number 27681.

Verizon has filed an application to remove its Transport LAN Connect (TLC) service from its IntraLata Interexchange Services Tariff. Current customers may retain TLC service until the expiration of their existing contracts; however, they may not add to, or relocate the service. A customer may order a replacement service such as Transparent LAN Service (TLS), Asynchronous Transfer Mode (ATM), or OC3 Private Line. Verizon stated the reason for withdrawing the service is due to the low number of customers subscribing to it and the development of other products such as TLS, ATM, or OC3 Private Line.

Persons wishing to comment on this application should contact the Public Utility Commission of Texas no later than June 2, 2003 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 Docket Number 27681.

TRD-200302782
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 5, 2003

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Notice of Petition for Expanded Local Calling Service

Notice is given to the public of the filing with the Public Utility Commission of Texas of a petition on March 27, 2003, for expanded local calling service (ELCS), pursuant to Chapter 55, Subchapter C of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Project Title and Number: Petition of the Lake Arrowhead Exchange for Expanded Local Calling Service, Project Number 27564.

The petitioners in the Lake Arrowhead exchange request ELCS to the exchanges of Archer City, Bellevue, Henrietta, Holliday and Joy.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Customer Protection Division at (512) 936-7120 no later than June 2, 2003. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200302783
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 5, 2003

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Public Notice of Amendment to Interconnection Agreement

On April 28, 2003, Southwestern Bell Telephone, LP doing business as SBC Texas and Advanced Communicating Techniques, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2003) (PURA). The joint application has been designated Docket Number 27708. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing three copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 27708. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by May 30, 2003, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, PO Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936- 7136. All correspondence should refer to Docket Number 27708.

TRD-200302718
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 1, 2003

♦ ♦ ♦

Public Notice of Amendment to Interconnection Agreement

On April 29, 2003, Southwestern Bell Telephone, LP doing business as SBC Texas and Covad Communications Company, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104,

110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2003) (PURA). The joint application has been designated Docket Number 27713. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing three copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 27713. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by May 30, 2003, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, PO Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936- 7136. All correspondence should refer to Docket Number 27713.

TRD-200302719
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 1, 2003

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Public Notice of Amendment to Interconnection Agreement

On April 28, 2003, Southwestern Bell Telephone, LP doing business as SBC Texas and NII Communications, Ltd., collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2003) (PURA). The joint application has been designated Docket Number 27714. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing three copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 27714. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by May 30, 2003, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, PO Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936- 7136. All correspondence should refer to Docket Number 27714.

TRD-200302720
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 1, 2003

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Public Notice of Amendment to Interconnection Agreement

On May 1, 2003, Southwestern Bell Telephone, LP doing business as SBC Texas and KMC Telecom, Inc., collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2003) (PURA). The joint application has been designated Docket Number 27723. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing three copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 27723. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by June 2, 2003, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, PO Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936- 7136. All correspondence should refer to Docket Number 27723.

TRD-200302811
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 6, 2003

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Public Notice of Amendment to Interconnection Agreement

On May 1, 2003, Southwestern Bell Telephone, LP doing business as SBC Texas and KMC Telecom II, Inc., collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2003) (PURA). The joint application has been designated Docket Number 27724. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing three copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 27724. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by June 3, 2003, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, PO Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936- 7136. All correspondence should refer to Docket Number 27724.

TRD-200302812
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 6, 2003

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Public Notice of Interconnection Agreement

On April 30, 2003, United Telephone Company of Texas, Inc. doing business as Sprint, Central Telephone Company of Texas doing business as Sprint, and Habla Communicaciones, Inc., collectively referred to as applicants, filed a joint application for approval of interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2003) (PURA). The joint application has been designated Docket Number 27719. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing three copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 27719. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by June 2, 2003, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, PO Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech- impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 27719.

TRD-200302810

Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 6, 2003

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Public Notice of Post-Interconnection Dispute

On March 26, 2003, Birch Telecom of Texas, Ltd. L.L.P., AT&T Communications of Texas, L.P., TCG Dallas, and Teleport Communications of Houston, Inc. filed a petition for post-interconnection dispute resolution against Southwestern Bell Telephone, L.P. doing business as SBC-Texas pursuant to the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and P.U.C. Procedural Rule §22.326. The petition has been designated Docket Number 27559. The petition is available for public inspection at the commission's offices in Austin, Texas.

The underlying petition requests dispute resolution regarding power charges made pursuant to SBC-Texas's Physical Collocation Tariff as approved by the commission in Docket Number 21333. In accordance with Order No. 3 issued by the arbitrators assigned to Docket Number 27559, other parties that may have a similar dispute shall file a separate request for post-interconnection dispute resolution. Such requests may be consolidated with Docket Number 27559.

Persons with questions about this petition, should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, PO Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936- 7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200302809
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 6, 2003

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Public Notice of Workshop on Modifications to Electric Low-Income Discount Rules

The staff of the Public Utility Commission of Texas (commission) will hold a workshop regarding the commission's substantive rules on low-income discounts, specifically §25.454, relating to Rate Reduction Program, on Wednesday, May 21, 2003, at 9:00 a.m. in Hearing Room Gee, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. This workshop was originally scheduled for May 15, 2003. The May 15, 2003 workshop is cancelled due to a scheduling conflict. Project Number 27711, *Modifications to Electric Low-income Discount Rules* has been established for this proceeding.

The Low-Income Telephone and Electric Utility Program (LITE-UP) has been in operation since January 2002. The staff has reviewed the existing electric rules and the state of current operations, and has determined that both process modifications and rule clarifications need to be made. The goals of these modifications are to ensure that eligible electric customers are enrolled in the program either through automatic enrollment or self-certification and that they receive the appropriate discounts, and to minimize the problem solving efforts and resources required by retail electric providers (REPs), the Low-Income Discount Administrator (LIDA) and commission staff.

Staff has developed a revised process for identifying and enrolling eligible customers in the program. If implemented, this process would eliminate the Electric Reliability Council of Texas (ERCOT) duties in the LITE-UP matching process. Each REP who provides service to residential customers would provide a list of customers to LIDA on a monthly basis, and LIDA would match the customer names and addresses from the REP customer lists to the client list provided by the Texas Department of Human Services and to the list of self-certified customers. LIDA would then post the list of matched customers for the REPs on a monthly basis.

The purpose of this workshop is to discuss the logistics of the planned modifications. Interested parties should come to the workshop prepared to discuss the details of how this process could be implemented. Interested parties will also have an opportunity to suggest other alternatives, if they believe that there are alternatives that will better achieve the accurate identification of eligible customers.

Questions concerning the workshop or this notice should be referred to Lauren Clark, Retail Market Analyst, Retail Market Oversight Section, Electric Division, 512-936-7401. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200302781
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 5, 2003

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Request for Comments Regarding Applicability of Chapter 26, Substantive Rules Applicable to Telecommunications Service Providers

The Public Utility Commission of Texas (commission) has initiated Project Number 27688, *Proceeding to Examine the Applicability of Chapter 26 Rules to Both DCTUs and NCTUs*. The purpose of this project is to examine the commission's rules in Chapter 26, *Substantive Rules Applicable to Telecommunications Service Providers*, to determine (1) whether the rules should apply equally to both dominant certificated telecommunications utilities (DCTUs) and non-dominant certificated telecommunications utilities (NCTUs); (2) whether the commission has the statutory authority and jurisdiction to apply the rules equally to both DCTUs and NCTUs; (3) whether it is in the public interest to apply the rules equally under current market conditions; and (4) whether equal application of the rules is consistent with the State's telecommunications policy stated in the Public Utility Regulatory Act (PURA) §51.001. To assist in this determination, the commission requests comments on the questions listed below. All comments should be organized in a manner consistent with the organization of the rules in Chapter 26.

1. Which rule sections in Chapter 26 that currently apply only to DCTUs should be amended to also apply equally to NCTUs?

2. For each section that you believe should be amended under Question Number One, provide the following information:

(a) The statutory authority to apply this section to NCTUs;

(b) The effect that equal application of this section to both DCTUs and NCTUs would have on the current competitive market conditions; and

(c) Whether equal application is consistent with the State's telecommunications policy in PURA §51.001.

Responses may be filed by submitting 16 copies to the commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, PO Box 13326, Austin, Texas 78711-3326 no later than 3:00 p.m. on Monday, June 16, 2003. Reply comments may be filed no later than 3:00 p.m. on Wednesday, June 25, 2003. All responses should reference Project Number 27688. This notice is not a formal notice of proposed rulemaking, however, the parties' responses to the questions and comments will assist the commission in developing commission policy or determining the necessity for related rulemakings.

Questions concerning this notice should be referred to Roni Dempsey, Rules Coordinator, Policy Development Division, at (512) 936-7308, or Katherine Farrell, Attorney, Legal Division, at (512) 936-7265. 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.

TRD-200302815
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 6, 2003

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San Antonio-Bexar County MPO

Request for Proposals

San Antonio-Bexar County Metropolitan Planning Organization (MPO) is seeking proposals from qualified firms for Travel Demand Modeling Assistance for the Metropolitan Transportation Plan.

Obtain Request for Proposals (RFP) by calling Jeanne Geiger, Deputy Administrator, at (210) 227-8651 or by downloading the RFP and attachments from the MPO's website at www.sametroplan.org. Anyone wishing to submit a proposal must do so by 12:00 p.m. (CDT), Friday, June 6, 2003 at the MPO office:

Joanne Walsh, Administrator

San Antonio-Bexar County MPO

1021 San Pedro, Suite 2200

San Antonio, Texas 78212

Contract award will be made by the MPO's Transportation Steering Committee based on the recommendation of the project's oversight committee that will review submitted proposals based on the evaluation criteria listed in the RFP.

Funding for this study, in the amount of $100,000, is contingent upon the availability of Federal transportation funds.

Issued in San Antonio, Texas on April 30, 2003.

TRD-200302708
Joanne Walsh
Administrator
San Antonio-Bexar County MPO
Filed: May 1, 2003

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Request for Proposals

San Antonio-Bexar County Metropolitan Planning Organization (MPO) is seeking proposals from qualified firms for Public Involvement Assistance for the Metropolitan Transportation Plan.

Obtain Request for Proposals (RFP) by calling Jeanne Geiger, Deputy Administrator, at (210) 227-8651 or by downloading the RFP and attachments from the MPO's website at www.sametroplan.org. Anyone wishing to submit a proposal must do so by 12:00 p.m. (CDT), Friday, June 6, 2003 at the MPO office:

Joanne Walsh, Administrator

San Antonio-Bexar County MPO

1021 San Pedro, Suite 2200

San Antonio, Texas 78212

Contract award will be made by the MPO's Transportation Steering Committee based on the recommendation of the project's oversight committee that will review submitted proposals based on the evaluation criteria listed in the RFP.

Funding for this project, in the amount of $65,000, is contingent upon the availability of Federal transportation planning funds.

Issued in San Antonio, Texas on April 30, 2003.

TRD-200302709
Joanne Walsh
Administrator
San Antonio-Bexar County MPO
Filed: May 1, 2003

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How to Use the Texas Register

Information Available: The 13 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 a 30-day 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.

Open Meetings - notices of open meetings.

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 26 (2001) is cited as follows: 26 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 "26 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 26 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 Cod***e, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For subscription information, see the back cover or call the Texas Register at (800) 226-7199.

Texas Administrative Code

The ***Texas Administrative Code (TA***C) is the compilation of all final state agency rules published in the ***Texas Registe***r. Following its effective date, a rule is entered into the ***Texas Administrative Cod***e. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TA***C.

The ***TAC*** volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the ***TA***C, 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 Cod***e; ***TAC*** stands for the ***Texas Administrative Cod***e; §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 Cod***e, please look at the ***Table of TAC Titles Affecte***d. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 19, April 13, July 13, and October 12, 2001). If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

40 TAC §3.704.....950, 1820

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).

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