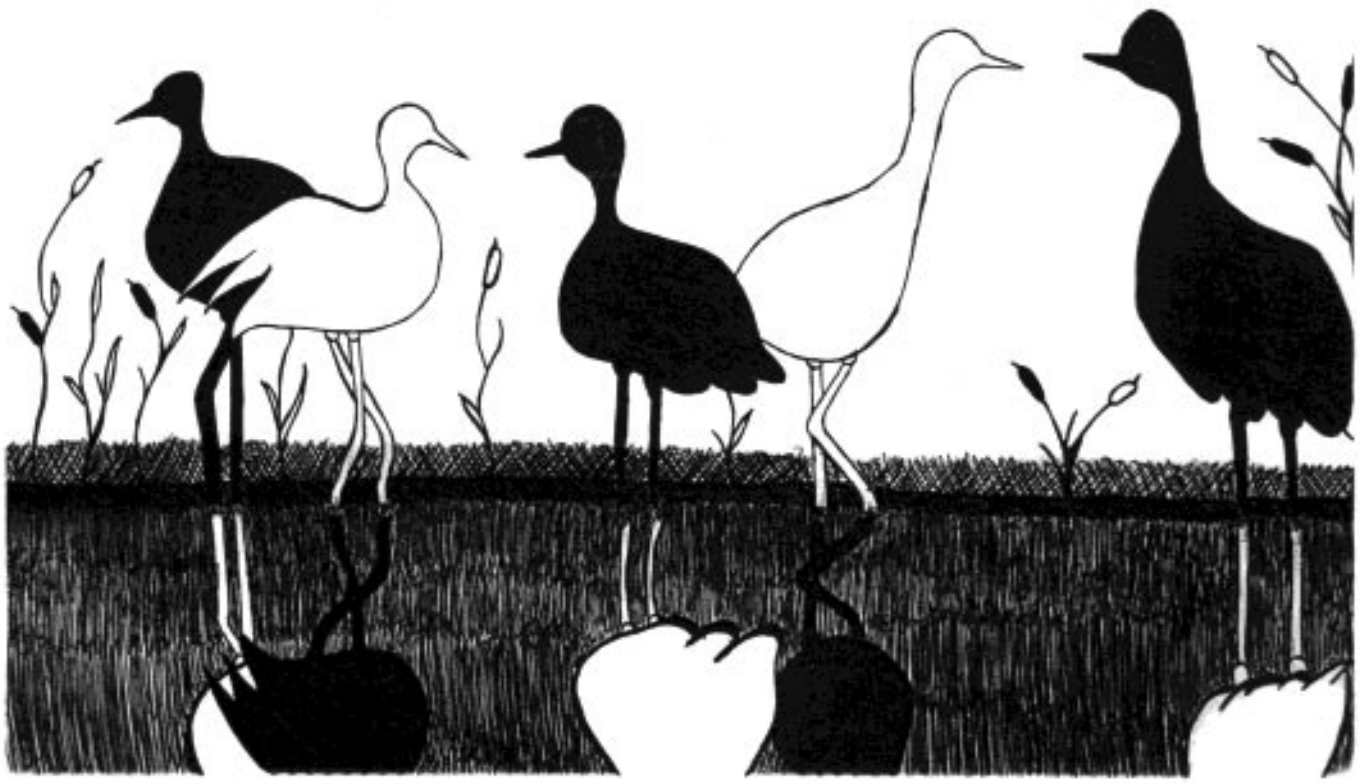
# TEXAS REGISTER

*Volume 24 Number 1 January 1, 1999* *Pages 1-223*



***This month's front cover artwork:***

***Artist:*** *Cassandra Castillo*

*10th Grade*

*New Braunfels ISD*

School children's artwork has decorated the blank filler pages of the *Texas Register* since 1987. 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.

We will display artwork on the cover of each *Texas Register.* The artwork featured on the front cover is chosen at random.

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.* The artwork does not add additional pages to each issue and does not increase the cost of the *Texas Register.*

For more information about the student art project, please call (800) 226-7199.

***Texas Register***, **ISSN 0362-4781,** is published weekly, 52 times a year. Issues will be published by the Office of the Secretary of State, 1019 Brazos, Austin, Texas 78701. Subscription costs: printed, one year $150, six month $100. First Class mail subscriptions are available at a cost of $250 per year. Single copies of most issues for the current year are available at $10 per copy in printed format.



The ***Texas Register*** is published under the Government Code, Title 10, Chapter 2002. Periodicals Postage is paid at Austin, Texas.

**POSTMASTER:** Send address changes to the ***Texas Register***, P.O. Box 13824, Austin, TX 78711-3824.

a section of the
Office of the Secretary of State
P.O. Box 13824
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## ATTORNEY GENERAL



## EMERGENCY RULES



## PROPOSED RULES

## *WITHDRAWN RULES*



## *ADOPTED RULES*

**Texas Natural Resource Conservation Commission**



**State Pension Review Board**



**Texas Department of Protective and Regulatory Services**



**Public Utility Commission of Texas**



**The Texas A&M University System, Board of Regents**

# OFFICE OF 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. To request copies of opinions, please fax your reuqest to (512) 462-0548 or call (512) 936-1730. To inquire about pending requests for opinions, phone (512) 463-2110.

## Letter Opinions

**Revised Copy of LO#98-083.**

**LO#98-083. (RQ-1080).** The Honorable Debra Danburg, Chair, Committee on Elections, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910, regarding conflict among three amendments by the Seventy-Fifth Legislature to section 33.52 of the Tax Code.

**Summary.** Section 33.52 of the Tax Code, relating to judgment foreclosing a tax lien on real property, was amended by three different bills during the Seventy- fifth Legislative Session. The three bills, House Bills 2587, 2622, and 3306, deal with collecting from the proceeds of the foreclosure sale the current taxes and other taxes on the real property that are not yet delinquent at the date of the judgment. The three bills differ as to their mandatory or permissive effect and as to which nondelinquent taxes will be collected from the proceeds of the foreclosure sale. Because the bills make different substantive changes to the same Tax Code provision, they cannot be reconciled. House Bill 2622, which requires the judgment of foreclosure to order that the taxing unit recover from the proceeds of the foreclosure sale the tax for the current tax year and each subsequent tax year until the property is sold, is the latest enacted of the three bills, and with respect to Tax Code section 33.52, it will prevail over the other two.

TRD-9818473
Sarah Shirley
Assistant Attorney General
Office of the Attorney General
Filed: December 18, 1998

♦ ♦ ♦

**LO# 98-118. (RQ-1204).** The Honorable Frank Madla, Chair, Senate Nominations Committee, Texas State Senate, P.O. Box 12068, Austin, Texas 78711, concerning whether county may assess permit and registration fees for drilling and equipping water wells.

**Summary.** Absent specific constitutional or statutory authority, a county may not assess a well permit fee or property development fee for the drilling and equipping of water wells.

TRD-9818472
Sarah Shirley
Assistant Attorney General
Office of the Attorney General
Filed: December 18, 1998

♦ ♦ ♦

## Requests for Opinions

**RQ-#1224.** Request from Mr. D. C. Jim Dozier, Executive Director, Texas Commission on Law Enforcement, 6330 U.S. Highway 290 East, Suite 200, Austin, Texas 78723 regarding whether section 141.065, Human Resources Code, prohibits a peace officer from simultaneously serving as a juvenile probation officer.

**RQ-#1225.** Request from the Honorable John Sharp, Comptroller of Public Accounts, Office of the Comptroller, Austin, Texas 78774, regarding authority of a chief appraiser to grant an extension of the deadline for filing an application for exemption.

TRD-9818476
Sarah Shirley
Assistant Attorney General
Office of the Attorney General
Filed: December 21, 1998

♦ ♦ ♦

# EMERGENCY RULES

An agency may adopt a new or amended section or repeal an existing section on an emergency basis if it determines that such action is necessary for the public health, safety, or welfare of this state. The section may become effective immediately upon filing with the ***Texas Register***, or on a stated date less than 20 days after filing and remaining in effect no more than 120 days. The emergency action is renewable once for no more than 60 additional days.

**Symbology in amended emergency sections.** New language added to an existing section is indicated by the text being underlined. [Brackets] and ~~strike-through~~ of text indicates deletion of existing material within a section.

# TITLE 4. AGRICULTURE

## Part I. Texas Department of Agriculture

### Chapter 20. Cotton Pest Control

### Subchapter C. Stalk Destruction Program

**4 TAC §20.22**

The Department of Agriculture (the department) adopts on an emergency basis, an amendment to §20.22, concerning the authorized cotton destruction dates in Pest Management Zone 6, all counties. A prior emergency amendment published in the December, 18, 1998, issue of the *Texas Register* (23 TexReg 12841), extended the cotton destruction date for Zone 6, through December 15, 1998. That emergency extension deadline has passed. The cotton destruction deadline for all of Zone 6 will be extended through December 30, 1998, for the 1998 crop year only.

The Department of Agriculture (the department) also adopts on an emergency basis, an amendment to §20.22, concerning the authorized cotton destruction dates for part of Pest Management Zone 2 Area 4, Calhoun County only. A prior emergency amendment also published in the December 18, 1998 issue of the *Texas Register* (23 TexReg 12841) extended the current cotton destruction deadline for Refugio and Calhoun counties in Zone 2, Area 4, through December 14, 1998. That emergency extension deadline has also passed. The cotton destruction deadline for Calhoun County only will be extended through December 30, 1998 for the 1998 crop year only.

The department is acting on behalf of cotton farmers in Zone 6 and Calhoun County in Zone 2, Area 4. The department believes that changing the cotton destruction dates for Zones 6 and Calhoun County is both necessary and appropriate. Adverse weather conditions have created a situation compelling an immediate extension of the cotton destruction date for these counties. The unusually wet weather prior to the cotton destruction period has prevented many cotton producers from destroying cotton by the current deadlines and extensions. A failure to act to further extend the cotton destruction deadline could create a significant economic loss to Texas cotton producers and the state's economy.

The emergency amendment to §20.22(a) will extend the date for cotton stalk destruction through December 30 of 1998 for Zone 6 and Calhoun County in Zone 2 Area 4.

The amendment is adopted on an emergency basis under the Texas Agriculture Code, §74.006, which provides the Texas Department of Agriculture with the authority to adopt rules as necessary for the effective enforcement and administration of Chapter 74, Subchapter A; §74.004, which provides the department with the authority to establish regulated areas, dates and appropriate methods of destruction of stalks, other parts, and products of host plants for cotton pests and provides the department with the authority to consider a request for a cotton destruction extension due to adverse weather conditions; and the Government Code, §2001.34, which provides for the adoption of administrative rules on an emergency basis, without notice and comment.

*§20.22. Stalk Destruction Requirements*

(a) Deadlines and methods. All cotton plants in a pest management zone shall be destroyed, regardless of the method used, by the stalk destruction dates indicated for the zone. Destruction shall be accomplished by the methods described as follows:
Figure: 4 TAC §20.22(a)

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

Filed with the Office of the Secretary of State,on December 18, 1998.

TRD-9818471
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Effective date: December 18, 1998
Expiration date: December 31, 1998
For further information, please call: (512) 463–7541

♦ ♦ ♦

# TITLE 37. PUBLIC SAFETY AND CORRECTIONS

## Part I. Texas Department of Public Safety

### Chapter 15. Drivers License Rules

### Subchapter B. Application Requirements Original, Renewal, Duplicate, and Identification Certificates

**37 TAC §15.42**

The Texas Department of Public Safety is renewing the effectiveness of the emergency adoption of amended §15.42, for a 60-day period. The text of the amended §15.42 was originally published in the September 11, 1998, issue of the *Texas Register* (23 TexReg 9179).

Issued in Austin, Texas, on December 15, 1998.

TRD-9818377
Dudley M. Thomas
Director
Texas Department of Public Safety

Effective date: December 31, 1998
Expiration date: February 28, 1999
For further information, please call: (512) 424–2135

♦ ♦ ♦

# PROPOSED RULES

Before an agency may permanently adopt a new or amended section or repeal an existing section, a proposal detailing the action must be published in the ***Texas Register*** at least 30 days before action is taken. The 30-day time period gives interested persons an opportunity to review and make oral or written comments on the section. Also, in the case of substantive action, a public hearing must be granted if requested by at least 25 persons, a governmental subdivision or agency, or an association having at least 25 members.

**Symbology in proposed amendments.** New language added to an existing section is indicated by the text being underlined. [Brackets] and ~~strike-through~~ of text indicates deletion of existing material within a section.

# TITLE 4. AGRICULTURE

## Part II. Texas Animal Health Commission

### Chapter 31. Anthrax

**4 TAC §31.2, §31.3**

The Texas Animal Health Commission proposes amendments to §31.2 and §31.3, concerning anthrax.

Section 31.2 is being amended to assure the Texas Department of Health notification about the occurrence of a potentially serious zoonotic disease.

Section 31.3 is being amended to create a reasonable option for parties to accomplish the actions needed to control this disease without diminishing their responsibility.

Kathryn A. Reed, General Counsel, has determined for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Ms. Reed also has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be notification to the Texas Department of Health about the occurrence of a potentially serious zoonotic disease and a reasonable option for parties to accomplish the actions needed to control this disease without diminishing their responsibility. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rules as proposed.

Comments regarding the proposed amendments may be submitted to Edith Smith, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758.

The amendments are proposed under the Texas Agriculture Code, Chapter 161, §§161.041(a) and (b), 161.046, and 161.061, which authorizes the Commission to promulgate rules in accordance with the Texas Agriculture Code.

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

*§31.2. Quarantine.*

Upon laboratory confirmation of the disease by approved laboratory methods, the Texas Animal Health Commission (TAHC) shall establish quarantines upon infected and exposed animals and premises, advise the owner or caretaker how to properly dispose of carcasses, and require such treatment and vaccination as may be necessary to control and eradicate the disease. TAHC will notify the Texas Department of Health of the quarantine. Unless otherwise specified by TAHC, a quarantine will be released 10 days after vaccination of the herd with a product approved by TAHC and after proper disposal of carcasses as specified in §31.3 of this title (relating to Disposal).

*§31.3. Disposal.*

Any person who is the owner or caretaker of animals that have died from anthrax, or who owns or controls the land on which the animals have died, is responsible for assuring that [~~must set fire to~~] the carcass of each animal is set on fire and burned [~~burn it~~] until it is thoroughly consumed.

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 December 21, 1998.

TRD-9818521
Kathryn A. Reed
General Counsel
Texas Animal Health Commission
Earliest possible date of adoption: January 31, 1999
For further information, please call: (512) 719–0714

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### Chapter 33. Miscellaneous Contagious Diseases and Disinfection

**4 TAC §§33.1–33.4**

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

The Texas Animal Health Commission proposes the repeal §§33.1-33.4, concerning miscellaneous contagious diseases and disinfection.

The sections are being repealed to reduce the number of regulations in place. There are other regulations in place to assure adequate control mechanisms exist without these to be eliminated.

Kathryn A. Reed, General Counsel, has determined for the first five-year period the repeals are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Ms. Reed also has determined that for each year of the first five years the repeals are in effect, the public benefit anticipated as a result of enforcing the repeals will be a reduced number of regulations that are redundant with one another. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments regarding the proposed repeals may be submitted to Edith Smith, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758.

The repeals are proposed under the Texas Agriculture Code, Chapter 161, §161.041(a) and (b) and §161.046, which authorizes the Commission to promulgate rules in accordance with the Texas Agriculture Code.

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

*§33.1. Ornithosis; Quarantine and Treatment.*

*§33.2. Hog Cholera; Quarantine and Treatment.*

*§33.3. Miscellaneous Contagious Diseases; Quarantine of Exposed and Infected Animals.*

*§33.4. Cleaning and Disinfecting Vehicles, Premises, and Equipment.*

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 December 21, 1998.

TRD-9818522
Kathryn A. Reed
General Counsel
Texas Animal Health Commission
Earliest possible date of adoption: January 31, 1999
For further information, please call: (512) 719–0714

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## Chapter 43. Tuberculosis

The Texas Animal Health Commission proposes amendments to §§43.2, 43.10, 43.11, 43.23, and new §43.12, concerning tuberculosis.

The amendments to §§43.1, 43.10, 43.11, 43.23 and new §43.12 are being proposed to provide for special entry requirements for cattle and bison originating from TB quarantined area in Michigan.

Kathryn A. Reed, General Counsel, has determined for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Ms. Reed also has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be special entry requirements for cattle and bison originating from TB quarantined area in Michigan. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rules as proposed.

Comments regarding the proposed amendments and new section may be submitted to Edith Smith, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758.

### Subchapter A. Eradication of Tuberculosis in Cattle

**4 TAC §43.2**

The amendment is proposed under the Texas Agriculture Code, Chapter 161, §§161.041(a) and (b), 161.046, 161.081, and 162.003, which authorizes the Commission to promulgate rules in accordance with the Texas Agriculture Code.

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

*§43.2. Interstate Movement Requirements.*

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

(i) Special entry requirements for cattle and bison originating from the TB quarantined area in Michigan. The quarantined area defined by the Michigan Department of Agriculture, effective January 1, 1999, includes all premises located in an area bordered by 1-75 to the west, M-55 to the south, and Lake Huron and the Straits of Mackinac to the east and north. The quarantined area includes all of the Alcona, Alpena, Montmorency, Oscoda, and Presque Isle counties, and portions of Cheboygan, Crawford, Iosco, Ogemaw, Otsego, and Roscommon counties.

(1) All cattle and bison shall originate from an accredited herd.

(2) In addition, all animals 6 months of age and older shall be tested negative for tuberculosis within 60 days prior to entry with results of this test recorded on the certificate of veterinary inspection.

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 December 21, 1998.

TRD-9818523
Kathryn A. Reed
General Counsel
Texas Animal Health Commission
Earliest possible date of adoption: January 31, 1999
For further information, please call: (512) 719–0714

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### Subchapter B. Dairy and Meat Type Goats

**4 TAC §§43.10–43.12**

The amendments and new section are proposed under the Texas Agriculture Code, Chapter 161, §§161.041(a) and (b), 161.046, 161.081, and 162.003, which authorizes the Commission to promulgate rules in accordance with the Texas Agriculture Code.

No other statutes, articles, or codes are affected by the amendments and new section.

*§43.10. Definitions.*

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

(1) Accredited free state–A state which maintains full compliance with all of the provisions of the USDA's Uniform Methods and Rules (UMR) and where no evidence of bovine tuberculosis has been disclosed for five or more years.

(2) [~~Dairy~~] goats–Domestic caprids [~~caprine~~] (genus Capra) ,dairy goats and meat type goats kept for the purpose of producing milk or meat for human consumption.

(3) Herd–A group of [~~dairy~~] goats maintained on common ground, or two or more groups of [~~dairy~~] goats under common ownership or supervision geographically separated but which have an interchange or movement without regard to health status. (A group is construed to mean one or more animals.)

(4) Individually identified–Identification by metal eartag which provides unique identification for each individual animal conforming to the nine-character, alphanumeric National Uniform Eartagging System; or by an individual registration tattoo.

(5) Modified accredited state–A state which is actively participating in the eradication of bovine tuberculosis and which maintains its status in accordance with the provisions of these UMR.

(6) Negative animals- Goats [~~Dairy goats~~] which show no response to a tuberculin test or have been classified negative by the testing veterinarian following the application of the comparative cervical test.

(7) Reactor–Any [~~dairy~~] goat that shows a response to a tuberculin test and is classified a reactor by the testing veterinarian.

(8) Suspect–Any [~~dairy~~] goat which shows a response to the caudal fold tuberculin test and is not classified a reactor or [~~dairy~~] goats which have been classified suspects by a c-c test.

(9) Tuberculin test–A test for tuberculosis applied and reported by approved personnel. The official tuberculin tests are: the caudal fold test, the comparative cervical test, and the single cervical test.

(10) Who may administer tuberculin test–Tuberculin tests shall be conducted by a veterinarian employed by the Texas Animal Health Commission or the United States Department of Agriculture or by an accredited veterinarian.

*§43.11. Accredited Herd Plan for Dairy And Meat Type Goats.*

(a) Animals to be tested. Testing of herds for accreditation or reaccreditation shall include all goats [~~over~~] 12 months of age and older. All natural additions shall be individually identified and recorded on the test charts as members of the herd at the time of the annual test.

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

(d) Requirements following classification of a [~~dairy~~] goat as a reactor or suspect. Goat herds with animals classified as reactors or suspects will be quarantined and tested on the same schedule as cattle (see §43.1 of this title (relating to Cattle)).

*§43.12. Requirements for Entry into Texas.*

The following listed in this section are special entry requirements for cattle originating from the TB quarantined area in Michigan. The quarantined area defined by the Michigan Department of Agriculture, effective January 1, 1999, includes all premises located in an area bordered by 1-75 to the west, M-55 to the south, and Lake Huron and the Straits of Mackinac to the east and north. The quarantined area includes all of the Alcona, Alpena, Montmorency, Oscoda, and Presque Isle counties, and portions of Cheboygan, Crawford, Iosco, Ogemaw, Otsego, and Roscommon counties.

(1) All goats shall originate from an accredited herd.

(2) In addition, all animals 6 months of age and older shall be tested negative for tuberculosis within 60 days prior to entry with results of this test recorded on the certificate of veterinary inspection.

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 December 21, 1998.

TRD-9818524
Kathryn A. Reed
General Counsel
Texas Animal Health Commission
Earliest possible date of adoption: January 31, 1999
For further information, please call: (512) 719–0714

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## Subchapter C. Eradication of Tuberculosis in Cervidae

**4 TAC §43.23**

The amendment is proposed under the Texas Agriculture Code, Chapter 161, §§161.041(a) and (b), 161.046, 161.081, and 162.003, which authorizes the Commission to promulgate rules in accordance with the Texas Agriculture Code.

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

*§43.23. Requirements for Entry into Texas.*

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

(i) Special entry requirements for cervids originating from the TB quarantined area in Michigan. The quarantined area defined by the Michigan Department of Agriculture, effective January 1, 1999, includes all premises located in an area bordered by 1-75 to the west, M-55 to the south, and Lake Huron and the Straits of Mackinac to the east and north. The quarantined area includes all of the Alcona, Alpena, Montmorency, Oscoda, and Presque Isle counties, and portions of Cheboygan, Crawford, Iosco, Ogemaw, Otsego, and Roscommon counties.

(1) All cervids shall originate from an accredited herd.

(2) In addition, all cervids 6 months of age and older shall be classified negative to an official tuberculosis test conducted within 90 days prior to the date of movement.

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 December 21, 1998.

TRD-9818525

Kathryn A. Reed
General Counsel
Texas Animal Health Commission
Earliest possible date of adoption: January 31, 1999
For further information, please call: (512) 719–0714

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## Chapter 51. Interstate Shows and Fairs

**4 TAC §51.6**

The Texas Animal Health Commission proposes an amendment to §51.6, concerning interstate shows and fairs.

The section is being amended to include hair sheep as a type of breeding sheep for entry purposes.

Kathryn A. Reed, General Counsel, has determined for the first five-year period the rule is in effect, there will be minimal to none fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Reed also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be that hair sheep will be included as a type of breeding sheep for entry. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments regarding the proposed amendment may be submitted to Edith Smith, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758.

The amendment is proposed under the Texas Agriculture Code, Chapter 161, §§161.041(a) and (b), 161.046, and 161.081, which authorizes the Commission to promulgate rules in accordance with the Texas Agriculture Code.

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

*§51.6. Interstate Movement of Sheep Not Known To Be Infected or Exposed to Scrapie.*

(a) Requirements for entry of sheep from states with an active scrapie control and surveillance program (state of origin requires that the state animal health official of that state be immediately notified of any suspected or confirmed case of scrapie in that state and requires that sheep and/or goats from infected or source flocks be quarantined).

(1) Breeding sheep.

(A) Finewool sheep (Rambouillet, Columbia, Debroulliet, Merino, and Targhee) and hair sheep. Sheep must be accompanied by a health certificate stating that an examination of the herd and/or premise of origin shows no evidence of exposure to scrapie.

(B) (No change.)

(2) (No change.)

(b) Movement of sheep from states with no active scrapie control and surveillance program.

(1) Breeding sheep.

(A) (No change.)

(B) [~~the~~] Texas herd must continue in the program for five years after entry of the sheep.

(2) Sheep entering Texas for grazing, slaughter or feedlots.

(A) Sheep must be accompanied by a health certificate and entry permit stating that examination of premise and/or herd of origin shows no evidence of exposure to scrapie, provided sheep consigned directly to federal inspected slaughter facilities have no entry requirements; and [~~morma~~]

(B) (No change.)

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

Filed with the Office of the Secretary of State, on December 21, 1998.

TRD-9818526
Kathryn A. Reed
General Counsel
Texas Animal Health Commission
Earliest possible date of adoption: January 31, 1999
For further information, please call: (512) 719–0714

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## Chapter 60. Scrapie

**4 TAC §60.1, §60.2**

The Texas Animal Health Commission proposes new §60.1 and §60.2, concerning scrapie.

The new sections are being proposed to establish regulations for Scrapie control since it is a reportable disease in Texas.

Kathryn A. Reed, General Counsel, has determined for the first five-year period the rules are in effect, there will be minimal to no fiscal implications for state or local government as a result of enforcing or administering the rules. If prevalence of Scrapie increases, then Texas Animal Health Commission employees will need to make annual inspections and submit diagnostic samples from suspected flocks.

Ms. Reed also has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be established regulations for Scrapie control. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rules as proposed.

Comments regarding the proposed new sections may be submitted to Edith Smith, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758.

The new sections are proposed under the Texas Agriculture Code, Chapter 161, §§161.041(a) and (b), 161.04b, and 161.081, which authorizes the Commission to promulgate rules in accordance with the Texas Agriculture Code.

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

*§60.1. Definitions.*
The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Exposed animal - Any animal which has been in the same flock at the same time within the previous 60 months as a scrapie positive animal, excluding limited contacts as defined in USDA Voluntary Scrapie Flock Certification Program.

(2) Flock/herd - All animals maintained on a single premise which are commingled; and all animals under common ownership of supervision on two or more premises with animal interchange between the premises.

(3) High risk animal - An animal which is:

(A) the progeny of a scrapie-positive dam;

(B) born in the same flock during the same lambing season as progeny of a scrapie-positive dam;

(C) born in the same flock during the same lambing season as a scrapie-positive ewe or ram.

(4) Infected flock - Any flock in which an APHIS representative or state animal health official has determined an animal to be scrapie-positive.

(5) Official identification - A unique individual identification which meets the following criteria listed in subparagraphs (A)-(D) of this paragraph. The approved identification is the tamper-resistant ear tag provided through USDA, APHIS:

(A) permanent;

(B) secure;

(C) unique numbers from a central repository;

(D) traceable.

(6) Official laboratory - A laboratory designated by a state and approved by the USDA Deputy Administrator to perform the Program-required scrapie diagnostic procedures. The National Veterinary Services Laboratory, United States Department of Agriculture, Ames, Iowa, is the reference laboratory for diagnostic procedures.

(7) Owner - An individual, partnership, company, corporation, or other legal entity which has legal or rightful title to a flock of animals, regardless of any liens held on the animals or flock.

(8) Scrapie - A nonfebrile, transmissible, insidious, degenerative spongiform encephalopathy which affects the central nervous system of sheep and goats.

(9) Source flock - A flock in which an APHIS representative or State animal health official has determined at least one animal, that was diagnosed as Scrapie-positive at an age of 54 months or less, was born.

(10) Scrapie-positive animal - An animal which has had a diagnosis of scrapie confirmed through tests by an official laboratory.

(11) Scrapie suspect - An animal which displays clinical signs suggestive of scrapie.

(12) Designated scrapie epidemiologist - A veterinarian who is trained in epidemiology and is employed by the commission or USDA, APHIS, VS.

*§60.2. General Requirements.*

(a) Quarantines/hold orders.

(1) All flocks suspicious of scrapie, including source flocks, will be placed under hold order and investigated pending final determination. Scrapie suspect animals and animals suspected of other neurological and chronic debilitating (prolonged wasting) illnesses are required to be made available to ensure proper tissue samples are collected and submitted to an official laboratory for diagnostic purposes. The final determination of the presence or absence of scrapie in a flock shall be made by the investigating Texas Animal Health Commission (TAHC) or USDA veterinarian. Animals infected flocks, must be destroyed and properly disposed of as described in subsection (b) of this section.

(2) All flocks which have been infected within the previous 5 years and not complying with the USDA Voluntary Scrapie Flock Certification Program as described in paragraph (5)(B) of this subsection will be quarantined.

(3) Flocks determined to be infected will be quarantined and the following listed in subparagraphs (A)-(B) of this paragraph will be required.

(A) A flock plan to eradicate the disease from the flock will be developed. The flock plan will be developed by a state/federal regulatory veterinarian in consultation with the flock owner or caretaker and his veterinarian (if requested by the owner). The plan shall include provisions for release of quarantine as specified in paragraph (5) of this subsection. If a plan cannot be agreed upon, then the plan developed by the commission shall be final and the owner or caretaker will be provided a copy.

(B) An epidemiological investigation will be performed following the diagnosis of infection. Traces to all animals or flocks, that could have been exposed, will be investigated for clinical signs. Animals and flocks being traced will be placed under hold order until a determination of the absence of scrapie can be made by either the observation of no clinical signs or by a preclinical test approved by USDA, APHIS. An agreement (or enrollment in the USDA Voluntary Scrapie Flock Certification Program Complete or Selective Monitored Category) will be made to provide for monitoring of the flock for evidence of scrapie for two years. Animals displaying clinical signs must be destroyed to ensure proper tissue samples are collected and submitted to an official laboratory for diagnostic purposes.

(4) Movement restrictions. Animals showing clinical signs of scrapie shall not be removed from the premise until a diagnosis can be made. Animals not showing clinical signs of scrapie on a quarantined or hold order premise may be moved under the following conditions listed in subparagraphs (A)-(B) of this paragraph:

(A) the animals are permitted on a VS 1-27 form and individually identified, or moved in an offically sealed conveyance and;

(B) the animals are consigned directly to an approved slaughter facility for immediate slaughter.

(5) Quarantines will be released in the following instances listed in subparagraphs (A)-(B) of this paragraph:

(A) once the flock has completed the requirements of an individual flock plan and an epidemiological investigation is performed;

(B) unless modified or waived by a designated scrapie epidemiologist, the flock plan will require, but not be limited to, the following listed in clauses in (i)-(ii) of this subparagraph:

*(i)* removal of all high risk animals from the flock in accordance with paragraph (4) of this subsection;

*(ii)* the flock must be enrolled and participating in the USDA Voluntary Scrapie Flock Certification Program as outlined in the flock plan.

(b) Destruction of diseased animals will be accomplished by complete burning or burial of the carcasses on the premise where

disclosed. Immediate destruction will be required in the following cases listed in paragraphs (1)-(2) of this subsection:

(1) scrapie-positive animals;

(2) suspect animals in infected flocks unless waived by a designated scrapie epidemiologist.

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 December 21, 1998.

TRD-9818527
Kathryn A. Reed
General Counsel
Texas Animal Health Commission
Earliest possible date of adoption: January 31, 1999
For further information, please call: (512) 719–0714

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# TITLE 7. BANKING AND SECURITIES

## Part IV. Texas Savings and Loan Department

### Chapter 75. Applications

### Subchapter A. Charter Applications

**7 TAC §75.3, §75.10**

The Finance Commission of Texas proposes to amend 7 TAC §75.3 and §75.10 regarding charter application procedures for state savings banks to update and enhance flexibility in the charter application process.

The proposed amendment to §75.3 removes the requirement for specific language to be published in notices of charter applications. The 74th Legislature authorized the Finance Commission to employ a hearings officer to provide services to the Texas Department of Banking, Savings and Loan Department and Office of Consumer Credit Commissioner. In 1995, the Finance Commission adopted 7 T.A.C., Chapter 9 establishing practices and procedures to be followed by the hearing officer in the conduct of hearings for the Department. At that time, Department rules regarding notice and hearing procedures were modified to provide consistency and give the Commissioner the flexibility to approve publication of a notice worded differently than the existing §75.3. This amendment to §75.3 clarifies that process.

The proposed amendment to §75.10 gives discretion to the Commissioner to set a hearing to consider the facts or obtain additional information for a change of name application.

James L. Pledger, Savings and Loan Commissioner, has determined that for the first five year period the new sections as proposed will be in effect, the public benefit will be less regulatory burden and faster application processing, and that there will be no fiscal implications for state and local government as a result of enforcing or administering these sections. Mr. Pledger estimates that, for the first five years the proposed section is in effect, there will be no economic costs as a result of complying with the proposed sections. No difference will exist between the cost of compliance for small businesses and the cost of compliance for the largest businesses affected by these sections.

Comments on the proposed sections may be submitted in writing to James L. Pledger, Commissioner, Savings and Loan Department, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705-4294, or e-mailed to TSLD@mail.capnet.state.tx.us.

The new sections are proposed under §11.302 of the *Finance Code*, which authorizes the commission to adopt rules to promote a stable banking environment, provide the public with convenient, safe, and competitive banking services, preserve and promote the competitive parity of state savings banks with federal savings banks and other depository institutions in this state consistent with the safety and soundness of state savings banks and the state thrift system, and allow for economic development within this state.

Subtitle C of the *Finance Code*, §§92.001-92.063, Vernon's Texas Annotated Civil Statutes, are affected by the new sections.

*§75.3. Publication of Notice of Charter Application.*

The proposed incorporators shall publish at least 20 days before the date of the hearing in a newspaper printed in the English language of general circulation in the county where the proposed savings bank will have its principal office[~~,~~] a notice approved by the commissioner. [~~in the following form:~~]

[~~"Notice is hereby given that application has been made to the Savings and Loan Commissioner of the State of Texas for the approval of a charter for _____ (corporate title of proposed savings bank) with principal office to be located at _____ in the city of _____, _____County, Texas.~~]

[~~Notice is further given that a hearing on the application will be held at _____, on the _____day of _____, 19__, in the _____ (location of the hearing), pursuant to authority and jurisdiction granted by the Texas Savings Bank Act, Article _____.~~]

[~~The nature and purpose of the hearing is to accumulate a record of pertinent information and data in support of the application and in opposition to the application, from which the commissioner shall determine whether to grant or deny the charter application.~~]

[~~The applicants for charter assert that:~~]

~~[(1) The prerequisites to incorporation required by Chapter 92, Subchapter B of the Texas Savings Bank Act have been satisfied;]~~

~~[(2) The character, responsibility, and general fitness of the persons named in the articles of incorporation command confidence and warrant belief that the business of the proposed savings bank will be honestly and efficiently conducted in accordance with the intent and purpose of the Texas Savings Bank Act and that the proposed savings bank will have qualified full-time management;]~~

~~[(3) There is a public need for the proposed savings bank and the volume of business in the community in which the proposed savings bank will conduct its business indicates that a profitable operation is probable; and]~~

~~[(4) The operation of the proposed savings bank will not unduly harm any existing savings bank or state or federal savings and loan association.]~~

~~[Any person intending to appear and to participate in the hearing on this application may do so only if written notice of such intention is~~

~~filed with and received by the commissioner at 2601 North Lamar, Suite 201, Austin, Texas 78705, and by the applicant's agent named above, at least 10 days prior to the date of such hearing. Such notice shall include the docket number of the application. If a protest is filed, the hearing on the application may be continued to a later date at the same location.]~~

~~[ISSUED in Austin, Texas, the _____day of _____, 19___."]~~

*§75.10. Change of Name.*

(a) (No change.)

(b) As provided for new charter applications, notice must be given [~~An application~~] for change of name application. If protested, the commissioner shall consider the protest and may in the exercise of his sole discretion [~~shall be~~] set the application for hearing to consider the facts or obtain additional information. [~~by the commissioner and notice given as provided for new charter applications, and the hearing may be dispensed with by the commissioner under the same conditions.~~]

~~[(c) The commissioner shall furnish approved forms of the application for change of name. Copies of the applications may be obtained from the Department at 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705.]~~

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 December 15, 1998.

TRD-9818378
James L. Pledger
Commissioner
Texas Savings and Loan Department
Earliest possible date of adoption: January 31, 1999
For further information, please call: (512) 475-1350

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## Subchapter B. Expedited Applications

**7 TAC §§75.25-75.27**

The Finance Commission of Texas proposes new 7 TAC §§75.25 through 75.27 regarding expedited application procedures for certain state savings banks relating to branch offices, change of office location, merger, consolidation, or purchase and assumption transactions. A reduction in related application fees in Chapter 79 is separately proposed for amendment for expedited applications.

Proposed §75.25 establishes the criteria for a savings bank to be eligible to file an expedited application. This is proposed as a reduction of regulatory burden to those savings banks that are well rated, well managed, and not operating under any regulatory directive or agreement.

Proposed §75.26 describes the items necessary to be filed with an expedited application. It requires that the applicant supply the Commissioner all information necessary to make a fully informed decision regarding an expedited filing.

Proposed §75.27 permits discretion to the Commissioner to deny expedited filing treatment to an otherwise eligible applicant if he finds that the proposed transaction involves significant policy, supervisory, or legal issues.

James L. Pledger, Savings and Loan Commissioner, has determined that for the first five year period the new sections as proposed will be in effect, the public benefit will be reduced regulatory burden and faster application processing, and that there will be no fiscal implications for state and local government as a result of enforcing or administering these sections. Mr. Pledger estimates that, for the first five years the proposed section is in effect, those institutions that are eligible to file under expedited treatment will have reduced economic costs as a result of complying with the proposed sections. No difference will exist between the cost of compliance for small businesses and the cost of compliance for the largest businesses affected by these sections.

Comments on the proposed sections may be submitted in writing to James L. Pledger, Commissioner, Savings and Loan Department, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705-4294, or e-mailed to TSLD@mail.capnet.state.tx.us.

The new sections are proposed under §11.302 of the *Finance Code*, which authorizes the commission to adopt rules to promote a stable banking environment, provide the public with convenient, safe, and competitive banking services, preserve and promote the competitive parity of state savings banks with federal savings banks and other depository institutions in this state consistent with the safety and soundness of state savings banks and the state thrift system, and allow for economic development within this state.

Subtitle C of the *Finance Code*, §92.063 and §§92.351-92.355, Vernon's Texas Annotated Civil Statutes, are affected by the new sections.

*§75.25. Eligible Institution.*

An eligible institution is a financial institution that:

(1) is well capitalized as defined in 12 CFR §325.103;

(2) received a composite rating of either 1 or 2 as defined by the Uniform Financial Institutions Rating System (CAMELS) at the most recent examination by the department or federal regulatory agencies, and management is rated either 1 or 2;

(3) received a CRA rating of satisfactory or above at the savings bank's most recent inspection by the appropriate federal regulatory agency;

(4) is not operating in violation of a regulatory condition or directive imposed by the state or federal banking regulatory agency; and,

(5) is not operating under a memorandum of understanding, order to cease and desist, or other state or federal supervisory enforcement order issued by a state or federal banking regulatory agency.

*§75.26. Expedited Applications.*

(a) An eligible institution as defined in §75.25 of this title (relating to Eligible Institution) may file an expedited filing in lieu of an application required pursuant to §75.33 of this title (relating to Branch Office Applications), §75.38 of this title (relating to Change of Office Location), or §75.81 of this title (relating to Reorganization, Merger, Consolidation or Purchase and Assumption Transaction), and simultaneously tender the required filing fee pursuant to Chapter 79 of this title, §§79.91-79.99 of this title (relating to Fees and Charges).

(b) An expedited filing must include the following items, unless waived in writing by the commissioner:

(1) a detailed description of the transaction;

(2) a pro forma balance sheet and income statement for all parties to the transaction, including adjustments, reflecting the proposed transaction as of the most recent quarter ended immediately prior to the filing of the application, demonstrating that the resulting state savings bank is well capitalized as defined in 12 CFR §325.103;

(3) a certified resolution of the board and, if required, shareholders approving the proposed transaction;

(4) copies of all other required regulatory notices or filings submitted concerning the transaction; and,

(5) a copy of the public notice published in conformity with the section of this subsection that would apply had the applicant not filed an expedited filing.

(c) The commissioner shall approve or deny an expedited filing on or before a date that is 30 days after the date the expedited filing is deemed complete. The commissioner may, in the exercise of discretion, before the expiration of the period for decision, give the applicant written notice that the commissioner will convene a hearing to obtain evidence related to the application, and the decision will thereafter be made in accordance with §§79.71-79.73 of this title (relating to Hearings).

(d) The applicant bears the burden to supply all material information necessary to enable the commissioner to make a fully informed decision regarding the expedited filing.

*§75.27. Denial of Expedited Treatment.*

(a) The commissioner may deny expedited filing treatment to an otherwise eligible applicant, in the exercise of discretion, if the commissioner finds that the proposed transaction involves significant policy, supervisory, or legal issues; is contingent upon other statutory or regulatory approval; results in an entity that is not a financial institution; or involves an entity that is not domiciled in Texas.

(b) The commissioner shall provide written notification to the applicant within 15 days after receipt of the application if expedited filing treatment is denied, indicating the reason for denial. Notification is effective when mailed by the commissioner and is not subject to appeal.

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

Filed with the Office of the Secretary of State on December 15, 1998.

TRD-9818352
James L. Pledger
Commissioner
Texas Savings and Loan Department
Earliest possible date of adoption: January 31, 1999
For further information, please call: (512) 475-1350

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# TITLE 16. ECONOMIC REGULATION

## Part I. Railroad Commission of Texas

## Chapter 7. Gas Utilities Division

## Subchapter B. Substantive Rules

**16 TAC §7.47, §7.90**

*(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 Railroad Commission of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Railroad Commission of Texas proposes the repeal of §7.47, relating to recovery of the Btu measurement adjustments by intrastate pipelines, local distribution companies, and customers, and §7.90, relating to delegation of authority to the Gas Utilities Division to approve temporary sales of drilling rig fuel by Lo-Vaca Gathering Company.

Karl J. Nalepa, Deputy Assistant Director, Gas Services Division, has determined that for the first five-year period after the repeal of each of the rules is in effect there will be no fiscal impact upon state or local governments.

Mr. Nalepa has also determined that there will be no economic cost to small or large businesses as a result of the proposed repeals. The public benefit anticipated as a result of enforcing the repeals will be the removal of rules from the *Texas Administrative Code* that are obsolete and no longer applicable to the regulation of gas utilities.

The commission has not requested a local employment impact statement pursuant to Texas Government Code, §2001.022(h).

Comments on the proposal may be submitted to Mr. Karl J. Nalepa, Deputy Assistant Director, Gas Services Division, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967. Comments will be accepted for 14 days after publication in the Texas Register and should refer to Gas Utilities Docket (GUD) No. 8916. For additional information, call Mr. Nalepa at (512) 463-8574.

The commission proposes repeal of these rules under Texas Utilities Code, §121.151, which authorizes the commission to establish rules for the control and supervision of gas pipelines in their relations with the public; and under Texas Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

Texas Utilities Code, 121.151, and Texas Government Code, §2001.004, are affected by the proposed repeals.

Issued in Austin, Texas, on December 15, 1998.

*§7.47. Recovery of the Btu Measurement Adjustments by Intrastate Pipelines, Local Distribution Companies, and Customers.*

*§7.90. Delegation of Authority to Gas Utilities Division to Approve Temporary Sales of Drilling Rig Fuel by Lo-Vaca Gathering Company.*

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 December 16, 1998.

TRD-9818406
Mary Ross McDonald
Deputy General Counsel
Railroad Commission of Texas
Earliest possible date of adoption: January 31, 1999
For further information, please call: (512) 463–7008

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# Part II. Public Utility Commission of Texas

## Chapter 23. Substantive Rules

## Subchapter C. Rates

### 16 TAC §§23.24-23.28

*(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 Public Utility Commission of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Public Utility Commission of Texas (commission) proposes the repeal of §§23.24 relating to Form and Filing of Tariffs, 23.25 relating to Procedures Applicable to Chapter 58-Electing Incumbent Local Exchange Companies (ILECs), 23.26 relating to New and Experimental Services, 23.27 relating to Rate-Setting Flexibility for Services Subject to Significant Competitive Challenges, and 23.28 relating to Promotional Rates for LEC Services. Project Number 17709 has been assigned to this proceeding. The Appropriation Act of 1997, HB 1, Article IX, Section 167 (Section 167) requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Such reviews shall include, at a minimum, an assessment by the agency as to whether the reason for adopting or readopting the rule continues to exist. The commission held three workshops to conduct a preliminary review of its rules. As a result of these workshops, the commission is reorganizing its current substantive rules located in 16 Texas Administrative Code (TAC) Chapter 23 to (1) satisfy the requirements of Section 167; (2) repeal rules no longer needed; (3) update existing rules to reflect changes in the industries regulated by the commission; (4) do clean-up amendments made necessary by changes in law and commission organizational structure and practices; (5) reorganize rules into new chapters to facilitate future amendments and provide room for expansion; and (6) reorganize the rules according to the industry to which they apply. As a result of this reorganization, §§23.24 - 23.28 will be duplicative of proposed new sections for Chapter 25, Substantive Rules Applicable to Electric Service Providers, and Chapter 26, Substantive Rules Applicable to Telecommunications Service Providers.

Under Project Number 20074, the commission is proposing new §25.241 relating to Form and Filing of Tariffs to replace §23.24 as it relates to electric service providers. Under Project Number 20075, the commission is proposing §§26.207 - 26.212 concerning tariffs for telecommunications service providers to replace §§23.24 - 23.28.

Ms. Orlesia Duren, assistant general counsel, Office of Regulatory Affairs, has determined that for each year of the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Ms. Duren has determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repeal will be the elimination of duplicative rules. There will be no effect on small businesses as a result of repealing these sections. There is no anticipated economic cost to persons as a result of repealing these sections.

Ms. Duren has also determined that for each year of the first five years the repeal is in effect there will be no impact on employment in the geographic area affected by the repeal of these sections.

Comments on the proposed repeal (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 N. Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 30 days after publication. All comments should refer to Project Number 17709, repeal of §§23.24 - 23.28.

This repeal is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002.

*§23.24. Form and Filing of Tariffs.*

*§23.25. Procedures Applicable to Chapter 58-Electing Incumbent Local Exchange Companies (ILECS).*

*§23.26. New and Experimental Services.*

*§23.27. Rate Setting Flexibility for Services Subject to Significant Competitive Challenges.*

*§23.28. Promotional Rates for LEC Services.*

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

Filed with the Office of the Secretary of State on December 16, 1998.

TRD-9818411
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: January 31, 1999
For further information, please call: (512) 936-7308

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## Subchapter E. Customer Service and Protection

### 16 TAC §23.40

*(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 Public Utility Commission of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Public Utility Commission of Texas (commission) proposes the repeal of §23.40 relating to Prepaid Local Telephone Service. Project Number 17709 has been assigned to this proceeding. The Appropriation Act of 1997, HB 1, Article IX, Section 167 (Section 167) requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Such reviews shall include, at a minimum, an assessment by the agency as to whether the reason for adopting or readopting the rule continues to exist. The commission held three workshops to conduct a preliminary review of its rules. As a result of these workshops, the commission is reorganizing its current substantive rules located in 16 Texas Administrative Code (TAC) Chapter 23 to (1)satisfy the requirements of Section 167; (2) repeal rules no longer needed; (3) update existing rules to reflect changes in the industries regulated by the commission; (4) do clean-up amendments made

necessary by changes in law and commission organizational structure and practices; (5) reorganize rules into new chapters to facilitate future amendments and provide room for expansion; and (6) reorganize the rules according to the industry to which they apply. As a result of this reorganization, §23.40 will be duplicative of proposed new §26.29 relating to Prepaid Local Telephone Service in Chapter 26, Substantive Rules Applicable to Telecommunications Service Providers.

Ms. Jo Alene Kirkel, assistant director, Office of Customer Protection, has determined that for each year of the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Ms. Kirkel has determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repeal will be the elimination of a duplicative rule. There will be no effect on small businesses as a result of repealing this section. There is no anticipated economic cost to persons as a result of repealing this section.

Ms. Kirkel has also determined that for each year of the first five years the repeal is in effect there will be no impact on employment in the geographic area affected by the repeal of this section.

Comments on the proposed repeal (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 N. Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 30 days after publication. All comments should refer to Project Number 17709, repeal of §23.40.

This repeal is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002.

*§23.40. Prepaid Local Telephone Service.*

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 December 17, 1998.

TRD-9818428
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: January 31, 1999
For further information, please call: (512) 936–7308

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## Chapter 25. Substantive Rules Applicable to Electric Service Providers

## Subchapter J. Costs, Rates and Tariffs

### 16 TAC §25.241

The Public Utility Commission of Texas (commission) proposes new §25.241 relating to Form and Filing of Tariffs. The proposed new section will replace §23.24 of this title (relating to Form and Filing of Tariffs) as it relates to electric service providers. The proposed new section is necessary to clarify the commission's requirements relating to the filing of tariffs. Project Number 20074 has been assigned to this proceeding.

The Appropriations Act of 1997, HB 1, Article IX, Section 167 (Section 167) requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Such reviews shall include, at a minimum, an assessment by the agency as to whether the reason for adopting or readopting the rule continues to exist. The commission held three workshops to conduct a preliminary review of its rules. As a result of these workshops, the commission is reorganizing its current substantive rules located in 16 Texas Administrative Code (TAC) Chapter 23 to (1) satisfy the requirements of Section 167; (2) repeal rules no longer needed; (3) update existing rules to reflect changes in the industries regulated by the commission; (4) do clean-up amendments made necessary by changes in law and commission organizational structure and practices; (5) reorganize rules into new chapters to facilitate future amendments and provide room for expansion; and (6) reorganize the rules according to the industry to which they apply. Chapter 25 has been established for all commission substantive rules applicable to electric service providers. The duplicative sections of Chapter 23 will be proposed for repeal as each new section is proposed for publication in the new chapter.

*General changes to rule language:*

The proposed new section reflects different section, subsection, and paragraph designations due to the reorganization of the rules. Some text has been proposed for deletion as unnecessary in the new section, as a result of making the new chapters industry specific; or because the dates and requirements in the text no longer apply due to the passage of time and/or fulfillment of the requirements. The *Texas Register* will publish this section as all new text. Persons who desire a copy of the proposed new section as it reflects changes to the existing section in Chapter 23 may obtain a redlined version from the commission's Central Records under Project Number 20074.

Thomas F. Best, assistant general counsel, Office of Regulatory Affairs, has determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Best has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be uniform filing requirements for tariffs. There will be no effect on small businesses as a result of enforcing this section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Mr. Best has also determined that for each year of the first five years the proposed section is in effect there will be no impact on employment in the geographic area affected by implementing the requirements of the section.

Comments on the proposed new section (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 N. Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 30 days after publication. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the pro-

posed section. The commission will consider the costs and benefits in deciding whether to adopt the section. The commission also invites specific comments regarding the Section 167 requirement as to whether the reason for adopting §23.24 continues to exist in the proposed new section. All comments should refer to Project Number 20074.

This new section is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, PURA §32.101 which requires electric utilities to file a tariff, §35.007 which requires electric utilities which own or operate a transmission facility to file a tariff, §36.102 which requires the filing of a tariff with a statement of intent to change rates, §36.108 which relates to suspension of a rate change, §36.305 which requires electric cooperatives to file tariffs, and §36.351 which requires electric utilities to file tariffs reflecting discounted rates for institutions of higher education.

Cross Index to Statutes: Public Utility Regulatory Act §§14.002, 32.101, 35.007, 36.102, 36.108, 36.305 and 36.351.

*§25.241. Form and Filing of Tariffs.*

(a) Application. This section applies to all electric utilities.

(b) Effective tariff. No utility shall directly or indirectly offer any service, collect any rate or charge, give any compensation or discount to a customer, or impose any classification, practice, or regulation different from that which is prescribed in its effective tariff filed with the commission. The tariff may include mathematical formulas that express the pricing terms for service. Every contract for electric service between an electric utility and a customer shall be deemed to be part of the effective tariff, and shall be filed with the commission upon request.

(c) Requirements as to size, form, identification and filing of tariffs.

(1) Every public utility shall file with the commission filing clerk five copies of its tariff containing schedules of all its rates, tolls, charges, rules, and regulations pertaining to all of its utility service . It shall also file five copies of each subsequent revision. Each revision shall be accompanied by a cover page which contains a list of pages being revised, a statement describing each change, its effect if it is a change in an existing rate, and a statement as to impact on rates of the change by customer class, if any. If a proposed tariff revision constitutes an increase in existing rates of a particular customer class or classes, then the commission may require that notice be given.

(2) All tariffs shall be in loose-leaf form of size 8 1/2 inches by 11 inches and shall be plainly printed or reproduced on paper of good quality. The front page of the tariff shall contain the name of the utility and location of its principal office and the type of service rendered (telephone, electric, etc.).

(3) Each rate schedule must clearly state the territory, city, county, or exchange wherein said schedule is applicable.

(4) Tariff sheets are to be numbered consecutively per schedule. Each sheet shall show an effective date, a revision number, section number, sheet number, page number, name of the utility, the name of the tariff, and title of the section in a consistent manner. Sheets issued under new numbers are to be designated as original sheets. Sheets being revised should show the number of the revision, and the sheet numbers shall be the same.

(d) Composition of tariffs. The tariff shall contain sections and subsections setting forth:

(1) a table of contents;

(2) a list of the cities and counties in which service is provided;

(3) a brief description of the utility's operations;

(4) the rate schedules; and

(5) the service regulations, including the service agreement forms.

(e) Tariff filings in response to commission orders. Tariff filings made in response to an order issued by the commission shall include a transmittal letter stating that the tariffs attached are in compliance with the order, giving the docket number, date of the order, a list of tariff sheets filed, and any other necessary information. The tariff sheets shall comply with all other rules in this chapter and shall include only changes ordered. The effective date and/or wording of said tariffs shall comply with the provisions of the order.

(f) Symbols for changes. Each proposed tariff sheet shall contain notations in the right- hand margin indicating each change made on these sheets. Notations to be used are: (C) to denote a change in regulations; (D) to denote discontinued rates or regulations; (E) to denote the correction of an error made during a revision (the revision which resulted in the error must be one connected to some material contained in the tariff prior to the revision); (I) to denote a rate increase; (N) to denote a new rate or regulation; (R) to denote a rate reduction; and (T) to denote a change in text, but no change in rate or regulation. In addition to symbols for changes, each changed provision in the tariff shall contain a vertical line in the right-hand margin of the page which clearly shows the exact number of lines being changed.

(g) Availability of tariffs. Each utility shall make available to the public at each of its business offices or designated sales offices within Texas all of its tariffs currently on file with the commission, and its employees shall lend assistance to persons seeking information on its tariffs and afford inquirers an opportunity to examine any tariff upon request. The utility also shall provide copies of any portion of its tariffs at a reasonable cost.

(h) Effective date of tariff change. No jurisdictional tariff change may take effect prior to 35 days after filing without commission approval. The requested date will be assumed to be 35 days after filing unless a different date is requested in the application. The commission may suspend the effective date of the tariff change for 120 days after the requested effective date and may extend that suspension another 30 days if required for final determination. In the case of an actual hearing on the merits of a case that exceeds 15 days, the suspension date is extended two days for each one day of actual hearing in excess of 15 actual hearing days.

(i) Compliance. Electric utilities that file new tariffs or tariff revisions shall comply with the 1998 amendments to this section with respect to the new or revised tariffs.

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 December 16, 1998.

TRD-9818410
Rhonda Dempsey

Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: January 31, 1999
For further information, please call: (512) 936-7308

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## Chapter 26. Substantive Rules Applicable to Telecommunications Service Providers

## Subchapter J. Costs, Rates and Tariffs

**16 TAC §§26.207-26.212**

The Public Utility Commission of Texas (commission) proposes new §§26.207 relating to Form and Filing of Tariffs, 26.208 relating to General Tariff Procedures, 26.209 relating to New and Experimental Services, 26.210 relating to Promotional Rates for Local Exchange Company Services, 26.211 relating to Rate-Setting Flexibility for Services Subject to Significant Competitive Challenges, and 26.212 relating to Procedures Applicable to Chapter 58 Electing Incumbent Local Exchange Companies. Project Number 20075 has been assigned to this proceeding. The proposed new sections will replace §23.24 of this title (relating to Form and Filing of Tariffs); §23.25 of this title (relating to Procedures Applicable to Chapter 58 Electing Incumbent Local Exchange Companies (ILECs)); §23.26 of this title (relating to New and Experimental Services); §23.27 of this title (relating to Rate-Setting Flexibility for Services Subject to Significant Competitive Challenges); and §23.28 of this title (relating to Promotional Rates for LEC Services). The proposed new sections are necessary to clarify the commission's requirements relating to the filing of tariffs.

The Appropriations Act of 1997, HB 1, Article IX, Section 167 (Section 167) requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Such reviews shall include, at a minimum, an assessment by the agency as to whether the reason for adopting or readopting the rule continues to exist. The commission held three workshops to conduct a preliminary review of its rules. As a result of these workshops, the commission is reorganizing its current substantive rules located in 16 Texas Administrative Code (TAC) Chapter 23 to (1) satisfy the requirements of Section 167; (2) repeal rules no longer needed; (3) update existing rules to reflect changes in the industries regulated by the commission; (4) do clean-up amendments made necessary by changes in law and commission organizational structure and practices; (5) reorganize rules into new chapters to facilitate future amendments and provide room for expansion; and (6) reorganize the rules according to the industry to which they apply. Chapter 26 has been established for all commission substantive rules applicable to telecommunications service providers. The duplicative sections of Chapter 23 will be proposed for repeal as each new section is proposed for publication in the new chapter.

*General changes to rule language:*

The proposed new sections reflect different section, subsection, and paragraph designations due to the reorganization of the rules. Citations to the Public Utility Regulatory Act have been updated to conform to the Texas Utilities Code throughout the sections and citations to other sections of the commission's rules have been updated to reflect the new section designations. Some text has been proposed for deletion as unnecessary in the new sections, as a result of making the new chapters industry specific; or because the dates and requirements in the text no longer apply due to the passage of time and/or fulfillment of the requirements. The *Texas Register* will publish these sections as all new text. Persons who desire a copy of the proposed new sections as they reflect changes to existing sections in Chapter 23 may obtain a redlined version from the commission's Central Records under Project Number 20075.

*Other changes specific to each section:*

Proposed new §26.207 will replace §23.24. The commission proposes to delete all references to electric utilities as this new section only applies to telecommunications utilities. Section 23.24 (h) and (i) have not been included in §26.207, as these sections have been proposed for deletion.

Proposed new §26.208 will replace §23.26(e) and §23.28(f) pertaining to notice; §23.26(g) and §23.28(h) pertaining to administrative review; §23.26(h) and §23.28(i) pertaining to approval or denial of applications; §23.26(i) and §23.28(j) pertaining to review of applications after docketing; §23.26(k) and §23.28(l) pertaining to reporting requirements; §23.27(e) and §23.28(o) pertaining to review of cost standards; and §23.26(m) and §23.28(p) pertaining to provisions for small local exchange companies. In order to incorporate the similar provisions in §23.26(e) and §23.28(f) pertaining to notice, the commission proposes new subsection (c) which details the general requirements of notice. Those provisions in §23.26(e) and §23.28(f) which specifically pertain to new and experimental services or promotional services have been included in either §26.209 or 26.210. The commission proposes to add a new subsection (h) pertaining to withdrawal of a service. The addition of §26.208(h) is intended to incorporate existing commission practice regarding withdrawal of a service.

Proposed new §26.209 will replace §23.26(a), (c), (d), (j), and (l). Section 23.26(b) has not been included in §26.209, as these definitions have been moved to §26.5 of this title (relating to Definitions).

Proposed new §26.210 will replace §23.28(a), (b), (d), (e), (k), (m), and (n). Section 23.28(c) has not been included in §26.210, as these definitions have been moved to §26.5 of this title (relating to Definitions). In existing §23.28(b) and (e) part of a sentence was inadvertently deleted in the last amendment to §23.28. In subsection (b), this omitted wording, "may obtain authorization for offering promotional rates for the purpose of increasing long term demand for a service and/or utilizing unused capacity of the DCTU's" has been inserted back into the subsection between "...by which DCTUs" and "network". In subsection (e) (proposed §26.210(d)) the omitted wording, "which has inadequate resources to produce the required cost information to meet the standard and if the presiding officer" has been inserted back into the second sentence between "...an unreasonable burden on a DCTU" and "determines that an appropriate alternative cost standard is available."

Proposed new §26.211 will replace §23.27(a) - (d), and (f).

Proposed new §26.212 will replace §23.25. The commission proposes to delete some definitions from §23.25, as these definitions have been moved to §26.5 of this title (relating to Definitions). The changes to §26.212(h)(4), (i)(3), and (k)(3), which delay the staff recommendation filing date until five days after the intervention deadline, will allow staff time to

consider interventions before issuing a recommendation, as well as ensure that customers of the service being proposed for withdrawal have sufficient time to respond.

Ms. Janis Ervin, telecommunications analyst, Office of Regulatory Affairs, has determined that for each year of the first five-year period the proposed section are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Ervin has determined that for each year of the first five years proposed §26.207 is in effect the public benefit anticipated as a result of enforcing the section will be the establishment of consistent procedures and standards for the filing of tariffs. The public benefit anticipated as a result of enforcing proposed §26.208 will be the establishment of consistent, minimum standards for commission review of telephone service offerings. The public benefit anticipated as a result of enforcing §26.209 will be the establishment of consistent, minimum procedures for obtaining approval to offer new and experimental services. The public benefit anticipated as a result of enforcing §26.210 will be the establishment of consistent, minimum procedures for obtaining approval to offer promotional rates and increased competition in the provision of telecommunication service. The public benefit anticipated as a result of enforcing §26.211 includes increased competition in the provision of telecommunication service and enhanced customer awareness. The public benefit anticipated as a result of enforcing §26.212 will be to facilitate the rapid introduction of new and modified services by electing ILECs under the Public Utility Regulatory Act (PURA). There will be no effect on small businesses as a result of enforcing these sections. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Ms. Ervin has also determined that for each year of the first five years the proposed sections are in effect there will be no impact on employment in the geographic area affected by implementing the requirements of the sections.

Comments on the proposed new sections (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 N. Congress Avenue, PO Box 13326, Austin, Texas 78711-3326, within 30 days after publication. Reply comments may be submitted within 45 days after publication. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. The commission also invites specific comments regarding the Section 167 requirement as to whether the reason for adopting §§23.24 - 23.28 continues to exist in the proposed new sections. All comments should refer to Project Number 20075.

These new sections are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, PURA §52.058, relating to new or experimental services or promotional rates; and §58.051-§58.152, relating to basic network services, discretionary services and competitive services.

Cross Index to Statutes: Public Utility Regulatory Act §§14.002, 14.052, 52.057, 52.058, 52.251, 53.102, 53.103, 58.051-58.152.

*§26.207. Form and Filing of Tariffs.*

(a) Application. Unless the context clearly indicates otherwise, in this section the term "utility" insofar as it relates to telecommunications utilities, shall refer to dominant carriers.

(b) Purpose. The purpose of this section is to establish procedures and standards for the form, filing and review of dominant certificated telecommunications utilities' (DCTUs) tariffs.

(c) Effective tariff. No utility shall directly or indirectly demand, charge, or collect any rate or charge, or impose any classifications, practices, rules, or regulations different from those prescribed in its effective tariff filed with the commission.

(d) Requirements as to size, form, identification and filing of tariffs.

(1) Every public utility shall file with the commission filing clerk five copies of its tariff containing schedules of all its rates, tolls, charges, rules, and regulations pertaining to all of its utility service when it applies for a certificate of convenience and necessity to operate as a public utility. It shall also file five copies of each subsequent revision. Each revision shall be accompanied by a cover page which contains a list of pages being revised, a statement describing each change, its effect if it is a change in an existing rate, and a statement as to impact on rates of the change by customer class, if any. If a proposed tariff revision constitutes an increase in existing rates of a particular customer class or classes, then the commission may require that notice be given.

(2) All tariffs shall be in loose-leaf form of size 8 1/2 inches by 11 inches and shall be plainly printed or reproduced on paper of good quality. The front page of the tariff shall contain the name of the utility and location of its principal office and the type of service rendered (telephone, electric, etc.).

(3) Each rate schedule must clearly state the territory, city, county, or exchange wherein said schedule is applicable.

(4) Tariff sheets are to be numbered consecutively per schedule. Each sheet shall show an effective date, a revision number, section number, sheet number, name of the utility, the name of the tariff, and title of the section in a consistent manner. Sheets issued under new numbers are to be designated as original sheets. Sheets being revised should show the number of the revision, and the sheet numbers shall be the same.

(5) Any telecommunications utility, after a declaration by the commission that it is a dominant carrier, shall file tariffs complying with the above requirements. These tariffs shall be filed within the time specified in the commission order finding the telecommunications utility a dominant carrier, or within 60 days in the absence of such a specification.

(e) Composition of tariffs. The tariff shall contain sections setting forth:

(1) a table of contents;

(2) a preliminary statement containing a brief description of the utility's operations;

(3) a list of the cities, exchanges, and counties in which service is provided;

(4) the rate schedules; and

(5) the service rules and regulations, including forms of the service agreements.

(f) Tariff filings in response to commission orders. Tariff filings made in response to an order issued by the commission shall include a transmittal letter stating that the tariffs attached are in compliance with the order, giving the docket number, date of the order, a list of tariff sheets filed, and any other necessary information. The tariff sheets shall comply with all other rules in this chapter and shall include only changes ordered. The effective date and/or wording of the tariffs shall comply with the provisions of the order.

(g) Symbols for changes. Each proposed tariff sheet shall contain notations in the right-hand margin indicating each change made on these sheets. Notations to be used are: (C) to denote a change in regulations; (D) to denote discontinued rates or regulations; (E) to denote the correction of an error made during a revision (the revision which resulted in the error must be one connected to some material contained in the tariff prior to the revision); (I) to denote a rate increase; (N) to denote a new rate or regulation; (R) to denote a rate reduction; and (T) to denote a change in text, but no change in rate or regulation. In addition to symbols for changes, each changed provision in the tariff shall contain a vertical line in the right-hand margin of the page which clearly shows the exact number of lines being changed.

(h) Availability of tariffs. Each utility shall make available to the public at each of its business offices or designated sales offices within Texas all of its tariffs currently on file with the commission, and its employees shall lend assistance to persons seeking information on its tariffs and afford inquirers an opportunity to examine any tariff upon request. The utility also shall provide copies of any portion of its tariffs at a reasonable cost.

(i) Effective date of tariff change. No jurisdictional tariff change may take effect prior to 35 days after filing without commission approval. The requested date will be assumed to be 35 days after filing unless a different date is requested in the application. The commission may suspend the effective date of the tariff change for 120 days after the requested effective date and may extend that suspension another 30 days if required for final determination. In the case of an actual hearing on the merits of a case that exceeds 15 days, the suspension date is extended two days for each one day of actual hearing in excess of 15 actual hearing days.

*§26.208. General Tariff Procedures.*

(a) Application. This section applies to dominant certificated telecommunications utilities (DCTUs) as defined by §26.5 of this title (relating to Definitions).

(b) Purpose. The procedures outlined in this section establish a process for the review of DCTU tariff applications.

(c) Content of Public Notice. The DCTU shall include public notice plans in its application to the commission. Notices shall be written in plain language and shall contain sufficient detail to give customers and affected parties adequate notice of the filing. The presiding officer may require notice to be provided to the public in addition to that proposed by the DCTU. Public notice of the application shall include at a minimum:

(1) a description of the proposed service and rates;

(2) the proposed effective date of the service or, if the service is promotional or experimental, the time period during which the promotional rates are proposed to be in effect;

(3) the types of customers likely to be affected if the application is approved;

(4) the probable effect on the DCTU's revenues if the service is approved;

(5) and the following language: "Persons with questions or who want more information on this application may contact (DCTU name) at (DCTU address) or call (DCTU toll-free telephone number) during normal business hours. A complete copy of the application is available for inspection at the address listed above. The commission has assigned Control Number (provided by DCTU) to this application. Persons who wish to formally participate in the commission's proceedings concerning this application, or who wish to express their comments concerning this application should contact the Public Utility Commission of Texas, Office of Customer Protection, PO Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission's Office of Customer Protection at (512) 936-7120 or, toll free, at (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936- 7136 or reach the commission's toll free number through Relay Texas at (800) 735-2988. Requests to participate in the proceedings and comments should reach the commission no later than (date, ten days before the effective date of the proposed filing)."

(d) Proof of Notice. Not less than ten days before the effective date of the application, the DCTU shall file a statement indicating the date on which all notice provided to the public was completed and proof of such notice.

(e) Administrative review. An application filed pursuant to §§26.207 of this title (relating to Form and Filing of Tariffs), 26.209 of this title (relating to New and Experimental Services), 26.210 of this title (relating to Promotional Rates for Local Exchange Company Services), 26.211 of this title (relating to Rate Setting Flexibility for Services Subject to Significant Competitive Challenges), or 26.212 of this title (relating to Procedures Applicable to Chapter 58-Electing Incumbent Local Exchange Companies) shall be reviewed administratively unless the presiding officer, for good cause, determines at any point during the review that the application should be docketed. The operation of the proposed rate schedule may be suspended for 35 days after the effective date of the application. The effective date shall be no earlier than 30 days after the filing date of the application or 30 days after public notice is completed, whichever is later. The application shall be examined for sufficiency. If the presiding officer concludes that material deficiencies exist in the application, the applicant shall be notified within ten working days of the filing date of the specific deficiency in its application, and the earliest possible effective date of the application shall be no less than 30 days after the filing of a sufficient application with substantially complete information as required by the presiding officer. Thereafter, any time deadlines shall be determined from the 30th day after the filing of the sufficient application and information or from the effective date if the presiding officer extends that date. While the application is being administratively reviewed, the commission staff and the staff of the Office of Public Utility Counsel may submit requests for information to the DCTU. Three copies of all answers to such requests for information shall be provided to the commission staff and the Office of Public Utility Counsel within ten days after receipt of the request by the DCTU. No later than 20 days after the filing date of the application, interested persons may provide to the commission staff written comments or recommendations concerning the application. The commission staff shall and the Office of Public Utility Counsel may file with the presiding officer written comments or recommendations concerning the application. No later than 35 days after the effective date of the application, the presiding officer shall complete an administrative review to determine whether the DCTU's application meets the following requirements:

(1) The proposed service meets all requirements pursuant to the applicable section under which it is filed;

(2) Notice was provided as required by the presiding officer;

(3) The proposed rates and terms of the service are not unreasonably preferential, prejudicial, or discriminatory, subsidized directly or indirectly by regulated monopoly services, or predatory or anticompetitive; and

(4) Provision of the service is consistent with the public interest in a technologically advanced telecommunications system, the preservation of universal service, and the prevention of anticompetitive practices and of subsidization of new and experimental services with revenues from regulated monopoly services.

(f) Approval or denial of applications. For its application to be approved, the DCTU must meet all of the requirements in the applicable section pursuant to which the application is made, unless such requirements are modified or waived by the presiding officer as provided under provisions of that section. If, based on the administrative review, the presiding officer determines that all requirements not waived have been met, the DCTU shall be permitted to offer the service at the rates and terms approved by the presiding officer. If, based on the administrative review, the presiding officer determines that one or more of the requirements not waived have not been met, the presiding officer may dismiss or, upon prior request of the DCTU, shall docket the application.

(g) Review of the applications after docketing. If the application is docketed, the operation of the proposed rate schedule shall be automatically suspended to a date 120 days after the applicant has filed all of its direct testimony and exhibits, or 155 days after the effective date, whichever is later. Three copies of all answers to requests for information shall be filed with the commission within ten days after receipt of the request. Affected persons may move to intervene in the docket, and a hearing on the merits shall be scheduled. The application shall be processed in accordance with the commission's rules applicable to docketed proceedings.

(h) Withdrawal of a service. When a DCTU seeks to withdraw a tariffed service, the application shall be filed pursuant to this subsection and shall be docketed to allow adequate time for review, and completion of notice. The DCTU shall provide direct mail notice to all current customers of the service and shall issue such notice only after the commission has reviewed and approved the notice. The DCTU shall provide the following information in its application:

(1) The number of current subscribers in each exchange;

(2) The reason for withdrawing the service;

(3) Provisions for grandfathering current customers or competitive alternatives available within the exchange locations, including incumbent local exchange carrier provided alternatives;

(4) Annual revenues for the last three years for the service; and

(5) If the service has no current subscriber, the DCTU shall provide an affidavit to this effect.

*§26.209. New and Experimental Services*

(a) Application. This section applies to dominant certificated telecommunications utilities (DCTUs), as that term is defined by §26.5 of this title (relating to Definitions). In addition, the services to which this section applies are those that are a subset of a service for which the utility is dominant.

(b) Purpose. The procedures in this section establish the process by which DCTUs obtain approval to offer new and experimental services.

(c) Filings requesting approval of new and experimental services. A DCTU may request approval of a new or experimental service by following the procedures outlined in this section. In addition to copies required by other commission rules, one copy of the application shall be delivered to the Office of Regulatory Affairs and one copy to the Office of Public Utility Counsel. Nothing in this section precludes a DCTU from utilizing other provisions of this title to seek approval to offer such services, however, the commission or the presiding officer, in its discretion, may require any application for a new or experimental service to comply with the requirements of this section. Not later than 30 days prior to the proposed effective date of the new or experimental service, the DCTU shall file with the commission and the Office of Public Utility Counsel an application containing the following information:

(1) a statement of intent by the DCTU to use the procedures established in this section;

(2) a description of the proposed service and the rates, terms and conditions under which the service is proposed to be offered;

(3) the proposed effective date of the service;

(4) a statement detailing the type of notice, if any, the utility has provided or intends to provide to the public regarding the application and a brief statement explaining why the DCTU's notice proposal is reasonable and in compliance with §26.208(c) of this title (relating to General Tariff Procedures);

(5) a copy of the text of the notice, if any;

(6) detailed documentation showing that the proposed service is priced above the long run incremental cost of such service. The commission shall allow an incumbent local exchange carrier (LEC) that is not a Tier 1 LEC as of September 1, 1995, at that company's option, to adopt the cost studies approved by the commission for a Tier 1 LEC. The application shall also include projections of revenues, demand, and expenses demonstrating that in the second year after the service is first offered, the proposed rates will generate sufficient annual revenues to recover the annual long run incremental costs of providing the service, as well as a contribution for joint and/or common costs. Capital costs related to providing the service shall be separately identified in these projections. The application shall also include all workpapers and supporting documentation relating to computations or assumptions contained in the application.

(7) If the application concerns a service which will not initially be offered system-wide, the application shall separately explain for each exchange in which the service will not be offered why the DCTU's facilities in that exchange do not have the technical capability to handle the service. The application shall also include an implementation plan which shall specify the DCTU's plans for making the service available in such exchanges within a reasonable time after receipt by the LEC of a bona fide request for the service. The DCTU shall also specify in its plan what requirements must be met for a request for service to be considered bona fide. This requirement does not apply to experimental services, but the DCTU shall specify the exchanges in which it proposes to offer the experimental service.

(8) If the application concerns an experimental service for which a range of rates is proposed, the application shall state the range

of rates requested and show in detail how the upper and lower rates in that range relate to the long run incremental cost of the service.

(9) Any other information which the DCTU wants considered in connection with the commission's review of its application.

(d) Modifications and waivers of requirements. In its application a DCTU may request and the commission or the presiding officer may grant for good cause the modification or waiver of requirements set forth in this section concerning system-wide rates; system- wide provision of service; the one-year maximum period for offering an experimental service; the one-year, cost-related prove-in period; or long run incremental cost support. Subsequent to the introduction of an experimental service, a DCTU may also apply for modification of the period initially approved for offering the service. However, no experimental service shall be approved for more than two years, no prove-in period shall be extended beyond two years and, in lieu of incremental cost information, the DCTU must provide other cost support demonstrating that the proposed rates for the service will recover its costs plus a contribution within the required period. A waiver of the incremental cost standard shall only be granted if the presiding officer determines that such a standard imposes an unreasonable burden on a DCTU which has inadequate resources to produce the required cost information to meet that standard and if the presiding officer determines that an appropriate alternative cost standard is available. Any request for modification or waiver of these requirements shall include a complete statement of the DCTU's arguments supporting that request. The presiding officer shall rule on the waiver request within 15 days of the filing of the request. A copy of the presiding officer's ruling shall be provided to the commission, and the commission may overrule any waiver granted by a presiding officer within 15 days of the presiding officer's ruling.

(e) Requirements for proposed new and experimental services. Unless waived or modified by the presiding officer as provided under subsection (d) of this section, the following requirements shall apply to any new service approved under this section:

(1) Such new service shall be offered at the same price throughout the DCTU's system.

(2) The service shall also be offered in every exchange served by the DCTU, except exchanges in which the DCTU's facilities do not have the technical capability to handle the service.

(3) The rates for a new service shall be designed to generate sufficient annual revenues to recover the annual long run incremental cost of the service, including a contribution for joint and/or common costs, in the second year after it is first offered. Requirements related to system-wide pricing and system-wide provision of service do not apply to a proposed experimental service.

(4) An experimental service approved under this section may be flexibly priced provided that the minimum rate in the range of rates shall be above the long run incremental cost of providing the service. The DCTU may make a change in rates within an approved range of rates upon such notice to customers and the commission as the presiding officer may require. In addition, before discontinuing provision of an experimental service, the DCTU shall give such notice of the discontinuation as the presiding officer may require.

(f) Interim rates. For good cause, interim rates may be approved after docketing. However, interim rates shall not be approved if the new service requires substantial initial investment by customers before they may receive the service unless the commission requires the DCTU to notify every customer prior to purchasing the service that this investment is at risk due to the interim nature of the service and the rates for the service and unless the DCTU makes appropriate provisions to protect its customers from the risks of the DCTU's failure to notify.

(g) Reporting requirements. If a new service is approved based on either an administrative review or a docketed proceeding, the DCTU shall file with the commission tracking reports showing the actual revenues; demand and related expenses for the service; its progress on the implementation plan, if any such plan was approved by the commission; and such other information as may be required by the commission (or, in connection with an administrative review, by the presiding officer) or requested by the commission staff. One such report shall be due nine months after the service is first offered and shall contain information for at least the first six months the service was offered. The second such report shall be filed 12 months after the service is first offered and shall contain information for at least the first nine months the service was offered. The third such report shall be filed no later than 15 months after the service is first offered and shall contain information for at least the first 12 months the service was offered. Such reporting requirements shall be waived for experimental services of one year's duration or less, but the DCTU shall retain in its record such information related to revenues, demand and expenses and shall submit such information with any subsequent request to make a formerly experimental service a permanent new service.

(h) Subsequent review of the service. Except as prohibited by the Public Utility Regulatory Act Chapters 58 or 59, if a new or experimental service is approved under the procedures set forth in this section, the commission staff or any affected person may file with the commission a petition seeking modification of the rates or terms under which the service is offered or withdrawal of the service.

(i) Provisions for SLECs. Notwithstanding §26.208(e) of this title (relating to General Tariff Procedures) and subsections (c), (d), and (e) of this section, the provisions of this subsection apply to a small local exchange company (SLEC) as defined in §26.5 of this title (relating to Definitions). If the presiding examiner determines that the SLEC is seeking to adopt as its rates for its new or experimental services the rates for the same or substantially similar services offered by a incumbent local exchange company:

(1) the SLEC's proposed rates and terms of the service will be deemed not to be unreasonably preferential, prejudicial, or discriminatory, subsidized directly or indirectly by regulated monopoly services, or predatory or anticompetitive; and

(2) a waiver of the incremental cost standard shall be granted.

*§26.210. Promotional Rates for Local Exchange Company Services.*

(a) Application. This section applies to dominant certificated telecommunications utilities (DCTUs) as that term is defined by §26.5 of this title (relating to Definitions) which are subject to the ratemaking jurisdiction of the commission for any service or market.

(b) Purpose. The procedures outlined in this section are intended to establish a process by which DCTUs may obtain authorization for offering promotional rates for the purpose of increasing long term demand for a service and/or utilizing unused capacity of the DCTU's network.

(c) Filings requesting approval of promotional rates. After the effective date of this section, a DCTU may request approval of promotional rates for a service by following the procedures outlined in this section. In addition to copies required by other commission rules, one copy of the application shall be delivered to the Regulatory Division. Nothing in this section precludes a DCTU from utilizing

other provisions of this title to offer such promotional rates. Not later than 30 days prior to the proposed effective date of the promotional rate, the DCTU shall file with the commission and the Office of Public Utility Counsel an application containing the following information:

(1) a statement of intent by the DCTU to use the procedures established in this section;

(2) a description of the specific proposed or tariffed service for which promotional rates are proposed and a description of the temporary rates for such service proposed by the DCTU;

(3) if the promotional rates are proposed to be offered on less than a system-wide basis as provided in subsection (d) of this section, a description of the locations for which the promotional rates are proposed:

(4) the starting date and ending date of the period over which the promotional rates are proposed to be offered;

(5) a description of all time periods during the five years preceding the filing of this application for which promotional rates were offered for the service as authorized under this section;

(6) a statement detailing the type of notice, if any, the DCTU has provided or intends to provide to the public regarding the application and a brief statement explaining why the DCTU's notice proposal is reasonable and in compliance with §26.208(c) of this title (relating to General Tariff Procedures);

(7) a copy of the text of the notice, if any;

(8) detailed documentation showing the long run incremental cost of the service for which promotional rates are requested, including projections of revenues, demand and expenses of the service for the period during which the promotional rates are proposed to be offered. The commission shall allow an incumbent local exchange company (LEC) that is not a Tier 1 LEC as of September 1, 1995, at that company's option, to adopt the cost studies approved by the commission for a Tier 1 LEC. The application shall include projections of the effect of the promotional rate on the service's revenues and cost and its impact on the service's contribution during the promotional period and over the remaining life of the service. The application shall also include all workpapers and supporting documentation relating to computations or assumptions contained in the application; and

(9) any other information which the DCTU wants considered in connection with the commission's review of its application.

(d) Modification and waivers of requirements. In its application a DCTU may request the waiver of the long run incremental cost requirements set forth in this section. Such a waiver shall only be granted if the presiding officer determines that the long run incremental cost standard imposes an unreasonable burden on a DCTU which has inadequate resources to produce the required cost information to meet the standard and if the presiding officer determines that an appropriate alternative cost standard is available. If the long run incremental cost standard is waived, the DCTU must provide other cost information showing the relationship between its proposed promotional rates and the costs of providing the service. A DCTU may also request a waiver of the requirement that promotional rates be offered in every exchange when such rates are proposed to be offered for a tariffed service which is being expanded into central offices which previously did not provide the service. Any request for waiver of the long run incremental cost information requirement or the system-wide application of the promotional rates requirement shall include a complete statement of the DCTU' arguments supporting that request.

(e) Notice of intent to file. At least ten days before any application under this section may be filed by a DCTU, the DCTU shall file a statement of intent to file such an application and the expected filing date. Such notice shall also include a statement of the DCTU's intent to use the expedited procedures of this section, a description of the service, and a description of the proposed promotional rates and the proposed promotional period. The commission shall then publish notice of the DCTU's intent to file such application in the *Texas Register.*

(f) Requirements for promotional rates. Unless waived or modified by the presiding officer as provided in subsection (d) of this section, the following requirements shall apply to promotional rates approved under this section:

(1) the promotional rates shall be offered in every exchange in which the service is offered throughout the DCTU's system;

(2) promotional rates for any particular service in any specific exchange shall not be offered for more than six months during any five-year period, and no customer shall be charged promotional rates for more than three consecutive months;

(3) promotional rates shall be offered only to new customers of a service or to new and existing customers, provided that, for existing customers, the promotional rates shall only apply to additional units of service ordered during the promotional rate period; and

(4) the promotional rate shall be designed to generate sufficient revenue to recover the long run incremental cost of providing the service (or, if the long run incremental cost standard is waived, such other costs as are approved by the commission) within one year of introduction of the promotional rate. If the proposed promotional rate is for the reduction or elimination of an installation charge or service connection charge, the revenue and costs related to provision of the entire service shall be used in determining whether the cost standard for the service is met. If the proposed promotional rate is for a service whose tariffed rate does not recover the costs of providing the service, a promotional rate may be approved if the DCTU can demonstrate that the promotional rate will move the service closer to full cost recovery. However, no promotional rate shall be approved for a service whose tariffed rate does not recover the cost of the service if such service has been found to be subject to significant competition under §26.211 of this title (related to Rate-Setting Flexibility for Services Subject to Significant Competitive Challenges) or if the service is enumerated in the Public Utility Regulatory Act §52.057. The commission may approve a promotional rate even if it does not provide a contribution to joint and common costs.

(g) Notification to the public of services to be offered at promotional rates. If promotional rates for a service are approved under this section, all advertising related to such service and its promotional rates shall clearly describe the temporary nature of the rate, the date on which the promotional rate will expire, and the rate which will apply after expiration of the promotional rate. The DCTU shall provide the same information to all customers requesting rate information for such service or ordering the service during the period the promotional rates are in effect.

(h) Reporting requirements. If promotional rates are approved based on either an administrative review or a docketed proceeding, the DCTU shall file with the commission a report showing the actual revenues, demand and related expenses and investment for the service over each period promotional rates are in effect. This

report shall be filed with the commission within three months after each authorized period for offering promotional rates has expired.

(i) Treatment of revenues and expenses related to promotional rates in subsequent rate cases. In any subsequent rate case in which a service was offered at promotional rates during the test year, the revenues attributed to such service shall be adjusted upward to reflect the revenues which would have been collected if all customers who were charged the promotional rate had been charged the permanent tariffed rate over the promotional period.

(j) Subsequent review of the promotional rates. If promotional rates for a service are approved under the procedures set forth in this section, the commission's Office of Regulatory Affairs, the Office of Public Utility Counsel, or any affected person may file with the commission a petition seeking modification of the rates or terms under which the promotional rate is offered or withdrawal of the promotional rate. If multiple promotional rate periods are approved for a service under the provisions of this section and if the reports filed in accordance with subsection (h) of this section indicate that the rates for the service did not recover the costs of the service as required in subsection (f) of this section, the commission shall initiate an inquiry into the reasonableness of such promotional rates and shall suspend those rates pending the completion of the inquiry.

(k) Provisions for SLECs. Notwithstanding §26.208(e) of this title (relating to General Tariff Procedures) and subsections (c), (d), and (f) of this section, the provisions of this subsection apply to a small local exchange company (SLEC) as defined in §26.5 of this title (relating to definitions). If the presiding examiner determines that the SLEC is seeking to adopt as its promotional rates for its services the rates for the same or similar services offered by an incumbent local exchange carrier:

(1) the SLEC's proposed rates and terms of the service will be deemed not to be unreasonably preferential, prejudicial, or discriminatory, subsidized directly or indirectly by regulated monopoly services, or predatory or anticompetitive; and

(2) a waiver of the incremental cost standard shall be granted.

*§26.211. Rate-Setting Flexibility for Services Subject to Significant Competitive Challenges.*

(a) Application. The provisions of this section apply to incumbent local exchange companies (ILECs), as defined by §26.5 of this title (relating to Definitions).

(b) Purpose. The purpose of this section is to establish procedures for pricing flexibility for services subject to competition and a process for the review of pricing flexibility applications and customer specific contracts.

(c) Pricing flexibility.

(1) The types of pricing flexibility that a local exchange company (LEC) may request are set forth in subparagraphs (A)-(D) of this paragraph.

(A) Banded rates. If a LEC is granted the authority to charge banded rates, the minimum rates shall yield revenues that are equal to or greater than 105% of the long run incremental cost of the service in the geographic market in which the service will be provided. When an LEC is granted the authority to charge banded rates, the LEC shall file a tariff showing the minimum and maximum rates and specifying its current rate. The current rate, as specified in the LEC's tariff, shall be applied uniformly to all customers of the service in each exchange for which the commission has approved banded rates. If the LEC desires to charge a rate different from its current rate, but between the minimum and maximum rates, it shall file a revised tariff on or before the effective date of the rate change. The minimum and maximum rates may only be changed as provided for in the Public Utility Regulatory Act, Chapter 53, Subchapters C and D, or G.

(B) Customer-specific contracts. If a LEC is granted the authority to enter into customer-specific contracts, the contract shall be filed and approved pursuant to subsection (d) of this section. Customer-specific contracts filed pursuant to subsection (d) of this section may include services in addition to the service for which the LEC has been granted authority to price on a flexible basis only if each such adjunct service is clearly specified in the contract and provided pursuant to a tariff approved by the commission.

(C) Detariffing. If a LEC is granted the authority to detariff a service, the LEC shall maintain at the commission a current price list for the service, and the commission shall retain authority to regulate the quality, terms and conditions of the detariffed service, other than rates. The commission may determine the appropriate ratemaking treatment of any revenues from or costs of providing a detariffed service in a proceeding under the Public Utility Regulatory Act, Chapter 53, Subchapters C and D, or G.

(D) Other types of pricing flexibility. If a LEC is granted the authority to engage in a type of pricing flexibility that the commission finds to be in the public interest other than those specified in subparagraphs (A)-(C) of this paragraph, that pricing flexibility shall be offered under such terms and conditions as the commission orders.

(2) LECs have the authority to enter into customer-specific contracts for those services specified in subsection (d) of this section. For those services, LECs may apply to the commission pursuant to this subsection to obtain a type of pricing flexibility specified in paragraph (1) of this subsection other than customer-specific contracts. For other services, LECs may apply to the commission pursuant to this subsection to obtain any type of pricing flexibility specified in paragraph (1) of this subsection. However, nothing in this subsection shall permit a LEC to obtain pricing flexibility for basic local telecommunications service, including local measured service, or for any service that includes as a component a service not subject to significant competitive challenge. Additionally, nothing in this subsection shall permit an LEC to enter into customer-specific contracts or to obtain detariffing with respect to message telecommunications services, switched access services, or wide area telecommunications service.

(3) An application for pricing flexibility filed under this paragraph shall:

(A) include a statement of the LEC's intention to use the procedures established in this subsection;

(B) specify the type of pricing flexibility requested and, if the type of pricing flexibility requested is either banded rates or some other type of pricing flexibility pursuant to paragraph (1)(D) of this subsection that involves rate-setting:

*(i)* state the proposed rates, and if the type of pricing flexibility is banded rates, state the maximum and minimum rates;

*(ii)* include detailed documentation demonstrating that the minimum rates yield revenues that are equal to or greater than 105% of the long run incremental cost of the service in the geographic market in which the service will be provided;

*(iii)* demonstrate that the rates are not unreasonably preferential, prejudicial or discriminatory;

*(iv)* demonstrate that the rates are such that the service identified pursuant to subparagraph (C) of this paragraph will not be subsidized directly or indirectly by regulated monopoly services; and

*(v)* demonstrate that the rates are not predatory or anticompetitive;

(C) identify the service for which the LEC is requesting pricing flexibility, including each component thereof, and provide functional and technical descriptions of the service, including:

*(i)* the functions that the service is intended to perform for the customer;

*(ii)* the types of equipment used to provide the service (including, but not limited to, transmission facilities, switching facilities, customer equipment, software functions, and protocol);

*(iii)* the network configurations used to provide the service; and

*(iv)* schematics;

(D) identify each service that is not subject to significant competitive challenge but that, at the time the LEC files its application for pricing flexibility, the LEC intends to provide as a tariffed adjunct to the service identified in subparagraph (C) of this paragraph and, for each such service, provide:

*(i)* functional and technical descriptions; and

*(ii)* citations to the tariff provisions pursuant to which each such service will be provided;

(E) designate the exchange(s) as to which the LEC is seeking pricing flexibility;

(F) include a map or maps of the exchange(s) designated pursuant to subparagraph (E) of this paragraph that can be coordinated with the official commission boundary maps;

(G) describe the products or services known to the LEC that are currently available in the exchange(s) designated pursuant to subparagraph (E) of this paragraph, and that are the same, equivalent, or substitutable for the service identified pursuant to subparagraph (C) of this paragraph, and identify the providers of those products or services;

(H) with respect to the products or services described pursuant to subparagraph (G) of this paragraph, discuss:

*(i)* the number and size of telecommunications utilities or other persons providing such products or services;

*(ii)* the extent to which such products or services are available;

*(iii)* the ability of customers to obtain such products or services at rates, terms, and conditions comparable to those that the LEC will offer;

*(iv)* the ability of telecommunications utilities or other persons to make such products or services readily available at rates, terms, and conditions comparable to those that the LEC will offer; and

*(v)* the existence of any significant barrier to the entry or exit of a provider of such products or services;

(I) demonstrate that the level of competition with respect to all components of the LEC's service identified pursuant to subparagraph (C) of this paragraph represents a significant competitive challenge within the exchange(s) designated pursuant to subparagraph (E) of this paragraph that warrants the pricing flexibility specified pursuant to subparagraph (B) of this paragraph;

(J) demonstrate that the service identified pursuant to subparagraph (C) of this paragraph is not basic local telecommunications service, including local measured service;

(K) if the type of pricing flexibility requested pursuant to subparagraph (B) of this paragraph is customer-specific pricing or detariffing, demonstrate that the service identified pursuant to subparagraph (C) of this paragraph is not message telecommunications service, switched access service, or wide area telecommunications service;

(L) to prevent the subsidization of the service identified pursuant to subparagraph (C) of this paragraph with revenues from regulated monopoly services, propose mechanisms to recover costs that may not be identified and recovered in a long run incremental cost study, including but not limited to costs associated with advertising, unsuccessful bids, and all items of plant used in the provision of the service;

(M) identify and address the impact that approval of the application for pricing flexibility may have on universal service;

(N) for any type of pricing flexibility other than detariffing, include proposed tariffs and identify any tariff language that restricts the resale, sharing, or joint use of the service identified pursuant to subparagraph (C) of this paragraph and any component thereof and demonstrate why such restrictive tariff language is consistent with the policy established in the Public Utility Regulatory Act §52.001; and

(O) include any other information that the LEC wants considered in connection with the review of its application.

(4) The commission shall allow an incumbent LEC that is not a Tier 1 LEC as of September 1, 1995, at that company's option, to adopt the cost studies approved by the commission for a Tier 1 LEC.

(5) An application for pricing flexibility shall be docketed and assigned to a presiding officer. No later than ten working days after the filing of an application for pricing flexibility, the presiding officer shall issue an order scheduling a prehearing conference for the purposes of determining notice requirements, establishing a procedural schedule, and addressing other matters as may be appropriate. The commission shall make a final decision no later than 180 days after the completion of notice, as ordered by the presiding officer. However, this 180-day period shall be extended two days for each one day of actual hearing on the merits of the case that exceeds 15 days. The presiding officer or commission, upon a showing of good cause relating to the applicant's failure or refusal to prosecute, including but not limited to the applicant's unreasonable resistance to discovery, may further extend the timeline, provided that the order shall specifically identify the facts found to constitute good cause. This deadline may be expressly waived by the applicant.

(6) For LECs with less than 31,000 access lines, the commission shall not be limited under paragraph (7)(D)(i)-(x) of this subsection to considering only competition within the exchange(s) where the LEC will provide the service. Pursuant to paragraph (3)(O) of this subsection, a LEC with less than 31,000 access lines may provide information that addresses the criteria of paragraph (3)(G)-(I) of this subsection with respect to products or services available outside the exchange(s) designated in paragraph (3)(E) of this subsection.

(7) An application for pricing flexibility shall be approved if, after an evidentiary hearing, the commission finds, based on the evidence, that:

(A) no service for which pricing flexibility is sought is basic local telecommunications service, including local measured service;

(B) no service for which the LEC requests detariffing of rates or authority to enter into customer-specific contracts is message telecommunications service, switched access service, or wide area telecommunications service;

(C) no service for which pricing flexibility is sought includes a component that is not subject to significant competitive challenge;

(D) the grant of pricing flexibility for the service identified pursuant to paragraph (3)(C) of this subsection within the exchange(s) designated pursuant to paragraph (3)(E) of this subsection is appropriate to allow the LEC to respond to a significant competitive challenge, based upon consideration of the following:

*(i)* the number and size of telecommunications utilities or other persons providing the same, equivalent, or substitutable service within the exchange(s) designated pursuant to paragraph (3)(E) of this subsection;

*(ii)* the extent to which the same, equivalent, or substitutable service is available within the exchange(s) designated pursuant to paragraph (3)(E) of this subsection;

*(iii)* the ability of customers to obtain the same, equivalent, or substitutable services at comparable rates, terms, and conditions within the exchange(s) designated pursuant to paragraph (3)(E) of this subsection;

*(iv)* the ability of telecommunications utilities or other persons to make the same, equivalent, or substitutable service readily available at comparable rates, terms, and conditions within the exchange(s) designated pursuant to paragraph (3)(E) of this subsection;

*(v)* the existence of any significant barrier to the entry or exit of a provider of the same, equivalent or substitutable services within the exchange(s) designated pursuant to paragraph (3)(E) of this subsection;

*(vi)* whether there are mechanisms to minimize potential anti-competitive practices, to the extent that any such practice has been identified in the record;

*(vii)* whether there are mechanisms to prevent the subsidization of the service with revenues from regulated monopoly services;

*(viii)* whether the ability of the LEC to flexibly price the service within the designated exchange(s) would have any significant impact on universal service;

*(ix)* whether the type of pricing flexibility requested is appropriate in light of the level and nature of competition within the exchange(s) where the LEC will provide the service; and

*(x)* any other relevant information contained in the record;

(E) the rates, if the type of pricing flexibility granted is either banded rates or some other type of pricing flexibility pursuant to paragraph (1)(D) of this subsection that involves rate-setting, are just and reasonable and:

*(i)* yield revenues that are equal to or greater than 105% of the long run incremental cost of the service in the geographic market in which the service will be provided;

*(ii)* are not unreasonably preferential, prejudicial or discriminatory;

*(iii)* are such that the service will not be subsidized directly or indirectly by regulated monopoly services; and

*(iv)* are not predatory or anticompetitive.

(8) Nothing in this subsection is intended to prevent the presiding officer from recommending, or the commission from approving based on the record evidence, relief other than that requested in the application.

(d) Customer-specific contracts.

(1) A LEC shall have the authority to enter into customer-specific contracts for:

(A) central office based PBX-type services for systems of 200 stations or more, as those services compete with customer premises equipment provided by PBX vendors;

(B) billing and collection services;

(C) high-speed private line services of 1.544 megabits or greater;

(D) customized services that are unique because of size or configuration, provided that such customized services shall not include basic local telecommunications service, including local measured service, or message telecommunications services, switched access services, or wide area telecommunications service; and

(E) any other service for which the commission has authorized the LEC to enter into customer-specific contracts pursuant to this section.

(2) A LEC will file quarterly reports to the commission which provide the following information regarding all customer specific contracts for services pursuant to paragraph (1)(A)-(E) of this subsection:

(A) customer name, location and contact;

(B) type of services, exchange location and quantities;

(C) terms and rates for services;

(D) affidavit of the customer attesting to the fact that the customer was aware of the possibility of purchasing of such services from other providers; and

(E) affidavit of the LEC attesting that the rates:

*(i)* are set at 105% or more of the long run incremental costs of the services;

*(ii)* are not unreasonably preferential, prejudicial or discriminatory;

*(iii)* are such that the contracted services will not be subsidized directly or indirectly by regulated monopoly services; and

*(iv)* are not predatory or anticompetitive.

(e) Subsequent review. The commission may modify, or revoke, upon notice and hearing, the authorization of any type or types of pricing flexibility granted pursuant to this section.

(f) Severability. If any provision of this section or the application thereof to any person or any circumstances is held invalid, such invalidity shall not affect other provisions or applications of this section that can be given effect without the invalid provision or application. It is the intent of the commission that the provisions of this section are severable.

*§26.212. Procedures Applicable to Chapter 58-Electing Incumbent Local Exchange Companies (ILECs).*

(a) Application. This section applies to an incumbent local exchange company that is regulated pursuant to the Public Utility Regulatory Act (PURA) Chapter 58.

(b) Purpose. The purpose of this section is to establish expedited procedures for a Chapter 58 electing ILEC to introduce a new service or to modify the rates or tariff terms for an existing service.

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

(1) Basic network service - This term has the meaning assigned in PURA §58.

(2) Competitive service - This term has the meaning assigned in PURA §58.

(3) Electing incumbent local exchange company (ILEC) - An ILEC that has filed the election referenced in PURA §58.

(4) Existing discretionary service - This term has the meaning assigned in PURA §58. An existing discretionary service had a commission-approved rate in existence on September 1, 1995.

(5) New service - This term has the meaning assigned in §26.5 of this title (relating to Definitions). The term new service shall include a discretionary service for which no rate was in effect on September 1, 1995.

(d) General provisions.

(1) Tariffs and notices shall be written in plain language, shall contain sufficient detail to give customers and affected parties adequate notice of the filing, and shall conform to the requirements of and in compliance with §26.207 of this title (relating to Form and Filing of Tariffs) and §26.208 of this title (relating to General Tariff Procedures). If an application contains material deficiencies, all time frames set forth in the rule shall be adjusted day-for-day until such deficiencies are cured.

(2) Rates and terms for a package of services that contains a basic network service shall be governed by the procedures found in subsection (k) and (l) of this section.

(3) Rates and terms for a package containing discretionary services and competitive services but no basic network service shall be governed by the procedures found in subsections (i) and (j) of this section.

(4) A local exchange company that does not elect to be regulated pursuant to PURA Chapter 58 may not exercise the pricing flexibility available to an electing ILEC even if the local exchange company concurs in a tariff of an electing ILEC.

(5) If commission staff recommends rejection of an application, an electing ILEC may request docketing.

(6) The commission may suspend the effective date of a tariff change proposed under this section for 120 days after the proposed effective date. If an application is docketed, the operation of the proposed tariff shall be automatically suspended to a date 120 days after the applicant has filed all of its direct testimony and exhibits, or 155 days after the proposed effective date, whichever is later.

(e) Notice. Semi-annually, an electing ILEC shall notify affected persons, either by bill insert, bill message, or direct mail, that proposed changes in the rates or terms of service are regularly published in the *Texas Register* through the Office of the Secretary of State. Such notification shall also appear in the public information pages of all telephone directories published in Texas. The notification shall identify the Internet address for the *Texas Register* (www.sos.state.tx.us) and shall provide a toll-free phone number for affected persons to request direct notice from an electing ILEC of proposed changes in the rates or terms of service. For purposes of notice, affected persons include the applicant's Texas customers, persons registered with the commission to offer long distance service, and persons certified by the commission to provide local exchange telephone service.

(f) Proprietary or confidential information.

(1) Information filed pursuant to this rule is presumed to be public information. An electing ILEC shall have the burden of establishing that information filed pursuant to this rule is proprietary or confidential.

(2) Nothing in this subsection shall be construed to change the presumption that information filed pursuant to this rule is public information. An electing ILEC that intends to rely upon data it purports is proprietary or confidential in support of an application made pursuant to this section shall submit one copy of the proprietary or confidential data to the Office of Regulatory Affairs subject to a commission-approved protection agreement. An electing ILEC that intends to rely upon proprietary or confidential data has the burden of providing such data on the same date the associated tariff sheets are filed. In the event an electing ILEC's proprietary or confidential data is not provided with the associated tariff sheets, the procedural schedule shall be adjusted day-for-day to reflect the number of days the proprietary or confidential data is delayed.

(g) Establishment of a long run incremental cost floor. Establishment of a LRIC floor requires commission approval of a cost study prepared by an electing ILEC pursuant to the standards in §23.91 of this title (relating to Long Run Incremental Cost Methodology for Dominant Certificated Telecommunications Utility Services). After commission approval of a LRIC floor for a particular service, an electing ILEC may change the rates of that service in accordance with the procedures in this section. The procedures in this section may not be available to an electing ILEC for a service that does not have a LRIC floor. An electing ILEC that has 5.0% or fewer of the total access lines in this state may adopt the cost, if determined through a LRIC study based on §23.91 of this title, for the same or substantially similar services offered by a large ILEC without the requirement of presenting LRIC studies of its own.

(h) Price changes for competitive services.

(1) After commission approval of a LRIC floor, an electing ILEC may exercise pricing flexibility or may change the price of a competitive service. An electing ILEC may set the price for a competitive service at any level above the long run incremental cost of the service, except that the price of the service may not be increased by an electing ILEC in a geographic area in which the service or a functionally equivalent service is not readily available from another provider.

(2) An electing ILEC may file one or more revised tariff sheets to introduce new or modified rates or terms for competitive services. The tariff sheets shall be accompanied by a commission-approved application. The tariff sheets shall be received and effective on an interim basis, subject to refund, the day following the filing or on a later date designated by the electing ILEC.

(3) The commission shall cause notice of the application to be published in the *Texas Register.* The notice shall state the intervention deadline, which shall be no earlier than five days following publication.

(4) On or before five days after the intervention deadline of the application, commission staff may file a recommendation to suspend, docket, or reject the electing ILEC's application. If either a request for intervention or a recommendation to docket is filed, the expedited administrative procedures in this subsection shall no longer apply. The tariff sheets shall remain effective, on an interim basis, unless an order is issued to change the status.

(5) If neither an intervention request nor a commission staff recommendation to suspend, docket, or reject is timely filed, the commission shall issue an order approving the tariff sheets.

(i) Price changes for existing discretionary services.

(1) After commission approval of a LRIC floor, an electing ILEC may exercise pricing flexibility or may change the price of an existing discretionary service within the range of the LRIC floor and the price in effect on September 1, 1995, by following the procedures in this subsection.

(2) An electing ILEC shall file a commission-approved application to introduce new or modified rates or terms for an existing discretionary service. On the same date, an electing ILEC shall file one or more tariff sheets to introduce new or modified rates or terms for services with the commission-approved application and all data necessary to support the application shall accompany the tariff sheets.

(3) The commission shall cause the notice of the application to be published in the *Texas Register.* The published notice shall state the intervention deadline, which shall be no earlier than five days following publication of notice. On or before five days after the intervention deadline of the application, commission staff may file a recommendation to suspend, docket, or reject the electing ILEC's application. If either a request for intervention or a recommendation to docket is filed, the expedited administrative procedures in this subsection shall no longer apply. If neither an intervention request nor a staff recommendation to suspend, docket, or reject the application is filed, the tariff sheets shall be approved by the commission effective ten days following the intervention deadline.

(j) Establishment of prices for new discretionary services. An application to establish a price for a new discretionary service shall be administered in the same manner as price changes for existing discretionary services, except that in addition to establishing the long run incremental cost of a new service, an electing ILEC shall file information which complies with the commission's requirements for establishment of a price ceiling. After commission approvals of both a LRIC floor and a price ceiling are obtained, an electing ILEC may flexibly price a new service within the range of the LRIC floor and the price ceiling by following the procedures in subsection (i) of this section.

(k) Price decreases for basic network services.

(1) After commission approval of a LRIC floor, an electing ILEC shall follow the procedures in this subsection to decrease a rate for a basic network service or to change the tariff terms of a basic network service.

(2) An electing ILEC shall file a commission-approved application to decrease the rate for or change the tariff terms of a basic network service. On the same date, an electing ILEC shall file one or more tariff sheets to decrease a rate for or change the terms of a basic network service with the commission-approved application and all data necessary to support the application shall accompany the tariff sheets.

(3) The commission shall cause a notice of the application to be published in the *Texas Register.* The published notice shall state the intervention deadline, which shall be no earlier than 15 days following publication of notice. On or before five days after the intervention deadline of the application, commission staff may file a recommendation to suspend, docket, or reject the application. If either a request for intervention or a recommendation to docket is filed, the expedited administrative procedures in this subsection shall no longer apply. If neither an intervention request nor a staff recommendation to suspend, docket, or reject the application is filed, the tariff sheets shall be approved by the commission effective ten days following the intervention deadline.

(l) Price increases for basic network services.

(1) For a four-year period following Chapter 58 election, an increase in the rate for a basic network service is permitted only after commission approval and only within the parameters set forth in PURA §§58.054 - 58.057 and this section. Changes to tariff terms require commission approval as set forth in PURA §58.052(b).

(2) An electing ILEC shall file an application on the commission-approved form to increase the rate for a basic network service. The application shall refer to this section, shall be accompanied with sufficient documentary support to demonstrate that the rate adjustment meets the criteria prescribed in PURA Chapter 58, shall describe the increase, and shall identify, with specificity, the customers and competitors to be affected by the electing ILEC's application. The application shall include a copy of the text of any proposed notice to customers. The proposed notice to customers shall comply with §26.208 of this title and shall meet the criteria prescribed in PURA §58.059 and §53.103. The application shall also state the electing ILEC's preferred effective date, which shall be no earlier than 90 days after completion of notice.

(3) On the same date that the application is filed, an electing ILEC shall file one or more tariff sheets to increase the rate for a basic network service with the commission- approved application. All data necessary to support the application shall accompany the tariff sheets.

(4) The commission shall cause notice of the application to be published in the *Texas Register.* The published notice shall state the intervention deadline, which shall be no earlier than 40 days following publication of notice. After publication of notice in the *Texas Register,* the presiding officer shall establish a deadline for the filing of a staff recommendation, which shall be no earlier than five days following the intervention deadline.

(5) Within 20 days of filing of the application and revised tariff sheets, the presiding officer shall notify the applicant if material deficiencies exist in the application and if the proposed notice is inadequate.

(6) Within 50 days of filing of the application and revised tariff sheets, the applicant shall file an affidavit attesting to the fact that notice to customers was published in accordance with the

requirements of PURA §58.059 and §53.103. The affidavit shall contain a copy of all notice given.

(7) Following receipt of a request for intervention filed by an affected party, or on the recommendation of commission staff, or on the commission's own motion, the commission may suspend the effective date of the rate adjustment and may hold a hearing. After a review, the commission shall issue an order approving, modifying, or rejecting the rate adjustment if it is not in compliance with this rule and PURA §§58.056, 58.057 or 58.058. Any order modifying or rejecting the proposed rate adjustment shall specify why the proposed adjustment is not in compliance with the applicable provisions of PURA §§58.056, 58.057 or 58.058 and the means by which the proposed adjustment may be brought into compliance.

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 December 16, 1998.

TRD-9818409
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: January 31, 1999
For further information, please call: (512) 936-7308

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# TITLE 19. EDUCATION

## Part I. Texas Higher Education Coordinating Board

### Chapter 12. Proprietary Schools

### Subchapter C. Operational Provisions

**19 TAC §12.83**

The Texas Higher Education Coordinating Board proposes new §12.83, concerning the Assessment of Annual Fees for Proprietary Schools. This new section to the rules replaces old §12.22(4) which was deleted and is being transferred to this new section for clarity.

Glenda Barron, Assistant Commissioner for Community and Technical Colleges has determined that for the first five-year period the rule is in effect there will be no fiscal implications as a result of enforcing or administering the rule.

Dr. Barron also has determined that for the first five years the rule is in effect the public benefit will be that minimum standards for the approval of applied associate degree programs at proprietary schools will be enforced. There will be no effect on state or local government or small businesses. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the new section to the rules may be submitted to Dr. Don W. Brown, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P.O. Box 12788, Capitol Station, Austin, Texas 78711.

The new section to the rules is proposed under Texas Education Code, Chapter 61 and Section 132.001, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning the Assessment of Annual Fees for Proprietary Schools.

There were no other sections or articles affected by the proposed amendments. Subchapter A. Purpose and Authority

*§12.83. Assessment of Annual Fees.*

The Texas Higher Education Coordinating Board shall charge fees for initial application, revision, evaluation, and reinstatement of proprietary school applied associate degree programs. The Commissioner of Higher Education shall set these fees in an amount not to exceed the cost of initial program application review, program revision review, review of petition for reinstatement of authorization to grant degrees, and program evaluation of proprietary school associate degree programs including the cost of necessary consultants.

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 December 15, 1998.

TRD-9818355
James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board
Earliest possible date of adoption: January 31, 1999
For further information, please call: (512) 483–6162

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# TITLE 22. EXAMINING BOARDS

## Part VIII. Texas Appraiser Licensing and Certification Board

### Chapter 153. Provisions of the Texas Appraiser Licensing and Certification Act

**22 TAC §153.9**

The Texas Appraiser Licensing and Certification Board proposes an amendment to §153.9 relating to Applications. Specifically §153.9(b)(1) is being amended to revise the Application for Appraiser Certification or Licensing form to reorder a number of questions, to add questions regarding complaints or disciplinary actions pending against professional licenses, unpaid judgements, and default on Texas Guaranteed Student Loan Corporation (TGSLC) loans, and to clarify the wording for some instructions.

Renil C. Liner, Commissioner, Texas Appraiser Licensing and Certification Board, has determined that for the first five-year period the proposed amendment is in effect there will be no fiscal implications for state or local government.

Mr. Liner also has determined that for each year of the first five years the proposed amendment is in effect the public benefit anticipated as a result of enforcing the sections will be to increase efficiency of application processing, to clarify the application process and requirements, and to better determine applicant backgrounds for meeting licensure requirements. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted Renil C. Liner, Commissioner, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas, 78711-2188.

The amendment is proposed under the Powers and Duties of the Board, Texas Appraiser Licensing and Certification Act, §5 (Texas Civil Statutes, Article 6573a.2). Section 9, Licensing and Certification Requirements, Texas Civil Statutes, Article 6573a.2, is affected by the proposal.

*§153.9. Applications.*

(a) (No change.)

(b) The Texas Appraiser Licensing and Certification Board adopts by reference the following forms approved by the board and published and available from the board, P.O. Box 12188, Austin, Texas 78711-2188:

(1) TALCB Form 1.5 [~~1.4~~], Application for Appraiser Certification or Licensing;

(2)-(9) (No change.)

(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 December 14, 1998.

TRD-9818339
Renil C. Liner
Commissioner
Texas Appraiser Licensing and Certification Board
Earliest possible date of adoption: January 31, 1999
For further information, please call: (512) 465–3950

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# Part IX. Texas State Board of Medical Examiners

## Chapter 163. Licensure

**22 TAC §163.1**

The Texas State Board of Medical Examiners proposes an amendment to §163.1, concerning definitions. The amendment will outline combinations of examinations that are acceptable for licensure.

Tony Cobos, general counsel, has determined that for the first five-year period the section is in effect there will be no fiscal implications to state or local government as a result of enforcing or administering the section as proposed.

Mr. Cobos also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be outlined combinations of examinations that are acceptable for licensure. 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.

Comments on the proposal may be submitted to Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018. A public hearing will be held at a later date.

The amendment is proposed under the Medical Practice Act, Texas Civil Statutes, Article 4495b, §2.09(a), which provides the Texas State Board of Medical Examiners with the authority to make rules, regulations and bylaws not inconsistent with this Act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this Act.

The Medical Practice Act, Texas Civil Statutes, Article 4495b, §3.05 is affected by the proposed amendment.

*§163.1. Definitions.*

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

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

(8) Examinations accepted by the board for licensure by endorsement -

(A)-(G) (No change.)

(H) one of the following examination combinations, passed within three attempts with a score of 75 or better on each part, level, component, or step, all parts, levels, components, or steps must be passed within seven years:

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

~~*f(iii)* NBME I and NBME II, plus USMLE 3;]~~

*(iii)* [~~(iv)~~] NBME I or USMLE 1, plus NBME II or USMLE 2, plus NBME III or USMLE 3;

*(iv)* [~~(v)~~] NBME I or USMLE 1, plus NBME II or USMLE 2, plus FLEX II;

*(v)* NBOME I, plus NBOME II, plus FLEX II;

*(vi)* (No change.)

(9)-(18) (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 December 21, 1998.

TRD-9818489
Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of Medical Examiners
Earliest possible date of adoption: January 31, 1999
For further information, please call: (512) 305–7016

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# Part XXIX. Texas Board of Professional Land Surveying

## Chapter 661. General Rules of Procedures and Practices

### Subchapter C. Definitions of Terms

**22 TAC §661.33**

The Texas Board of Professional Land Surveying proposes new §661.33, concerning the easements and construction estimates.

The new section is being proposed to clarify which easements must be done by a registered professional land surveyor and will define a construction estimate as used in Article 5282c, §3A.

Sandy Smith, executive director, has determined that for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government.

Ms. Smith also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the section will be the clarification of which easements must be done by a registered professional land surveyor and a defined construction estimate as used in Article 5282c, §3A. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Sandy Smith, Texas Board of Professional Land Surveying, 7701 North Lamar, Suite 400, Austin, Texas 78752.

The new rule is proposed under Texas Civil Statutes, Article 5282c, §9, which provides the Texas Board of Professional Land Surveying with the authority to make and enforce all reasonable and necessary rules, regulations and bylaws not inconsistent with the Texas Constitution, the laws of this state, and this Act.

No other statute, article, or code is affected by this proposal.

*§661.33. Easements and Construction Estimates.*

(a) An easement legal description or plat depiction which is used in a real property conveyance or filed for recording in the real property records or plats records of this State must be prepared by a Registrant, except when:

(1) the easement area can be clearly ascertained by the general public without use of a metes and bounds description of the easement;

(2) monumentation is not placed on the ground; and

(3) the easement does not bisect the tract (leaving non-easement areas on both sides of the easement strip).

(b) An easement legal description or plat depiction meets the requirements of the exception to this rule when the easement;

(1) is a blanket easement; or

(2) is within a tract or lot depicted in a recorded subdivision plat, can be clearly defined and located without a metes and bounds survey, and is adjacent to a platted boundary line.

(c) A "construction estimate", is used in §3A of the Act, means a depiction of a possible easement route for planning purposes.

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 December 21, 1998.

TRD-9818490
Sandy Smith
Executive Director
Texas Board of Professional Land Surveying
Earliest possible date of adoption: January 31, 1999

For further information, please call: (512) 452–9427

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## Chapter 663. Standards of Responsibility and Rules of Conduct

## Subchapter B. Professional and Technical Standards

**22 TAC §§663.13, 663.21, 663.23**

The Texas Board of Professional Land Surveying proposes an amendment to §663.13 and new §663.21 and §663.23, concerning requirements for preparing descriptions for political subdivisions and the signing and sealing of services by professional land surveyors.

Section 663.13 and §663.21 are being proposed to provide the public with a better, more informative, surveying product. The minimum conditions require descriptions to be unambiguous and locatable on the ground.

Section 663.23 is being proposed to establish a regulation that will allow professional land surveyors to sign and seal documents, which are not within the definition of professional land surveying.

Sandy Smith, executive director, has determined that for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government.

Ms. Smith also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be a better, more informative, surveying product and an established regulation that will allow professional land surveyors to sign and seal documents, which are not within the definition of professional land surveying. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to Sandy Smith, Texas Board of Professional Land Surveying, 7701 North Lamar, Suite 400, Austin, Texas 78752.

The amendment and new sections are proposed under Texas Civil Statutes, Article 5282c, §9, which provides the Texas Board of Professional Land Surveying with the authority to make and enforce all reasonable and necessary rules, regulations and bylaws not inconsistent with the Texas Constitution, the laws of this state, and this Act.

No other statute, article, or code is affected by this proposal.

*§663.13. Introduction.*

The Board establishes these minimum standards of practice to better serve the general public in regulating the practice of land surveying in Texas. All surveys, unless otherwise specifically exempted, performed by registered professional land surveyors in Texas shall meet or exceed the requirements of these standards. The Board considers any survey, the purpose of which is to delineate, segregate, separate, or partition any interest in real property of any kind, under these standards. [~~To better serve the general public in regulating the practice of land surveying in Texas, these minimum standards of practice (standards) are established. All surveys performed by registered professional land surveyors in Texas shall adhere to these standards by meeting or exceeding the requirements hereof.~~ ]

*§663.21. Descriptions Prepared for Political Subdivisions.*

A registrant or licensee may prepare, sign and seal a bounds description for any political subdivision of state or local government under the following minimum conditions listed in paragraphs (1)-(4) of this section.

(1) The description must be unambiguous and locatable on the ground by ordinary surveying procedures.

(2) Any record or physical monumentation called for in the description must be in place at the time the surveyor prepares the description and the surveyor must have personal knowledge of such monument sufficient to give a proper current description for the monument and its accessories.

(3) The surveyor signing the work must have performed an on the ground survey to support any course and distance recited in the description.

(4) Any document prepared under this rule shall bear a note as follows: This document was prepared under 22 TAC §663.21 and does not necessarily reflect the results of an on the ground survey.

*§663.23. Signing and Sealing of Services.*

Registered professional land surveyors may sign and seal services which are not within the definition of professional land surveying as defined in the Act, any such signed and sealed document will carry a statement, "this service, as provided, does not constitute professional land surveying as defined in the Act".

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

Filed with the Office of the Secretary of State, on December 21, 1998.

TRD-9818491
Sandy Smith
Executive Director
Texas Board of Professional Land Surveying
Earliest possible date of adoption: January 31, 1999
For further information, please call: (512) 452–9427

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# Part XXXVIII. Texas Midwifery Board

## Chapter 831. Midwifery

The Texas Midwifery Board (board), with the approval of the Texas Board of Health, proposes new §§831.11, 831.31, 831.101, and 831.161 concerning midwives. Specifically, the sections cover annual documentation; education; administration of oxygen; and complaint review.

The Texas Midwifery Board is authorized by the Texas Midwifery Act (the Act), Texas Civil Statutes, Article 4512i, §8A(b), to adopt rules concerning documentation and educational requirements for midwives, processing of complaints concerning midwives, and any additional rules necessary to implement any duty imposed by the Act, subject to the approval of the Texas Board of Health. Effective December 1, 1998, the Midwifery Program and the Midwifery Board were administratively transferred from the Texas Department of Health (department), Women's Health Division, to the Professional Licensing and Certification Division of the department. The rules are currently located in 25 Texas Administrative Code (TAC), and the department proposes the repeal of 25 TAC §§37.175, 37.178, and 37.180 in order that the new sections may be proposed by the Texas Midwifery Board, which will be listed as an independent board under 22 TAC. The repeal of 25 TAC §§37.175, 37.178, and 37.180 can be found in the January 1, 1999, issue of the Texas Register in the Proposed Rules section.

New §831.11 establishes procedures for documentation by reciprocity; prescribes conditions for denial, revocation, suspension or surrender of documentation; and establishes standards for documentation of persons with criminal convictions and for documentation after revocation, suspension or surrender. New §831.31 establishes procedures for approving, denying, or revoking approval of midwifery basic education and continuing education courses; establishes an approved comprehensive midwifery exam and procedures for approval, denial, or revocation of approval for other comprehensive exams; and establishes procedures for the investigation and disposition of complaints concerning currently approved courses or exams. New §831.101 establishes procedures for the intrapartum and postpartum administration of oxygen by midwives. New §831.161 establishes procedures for complaint investigation and disposition; categories of complaints; and disciplinary sanctions, including revocation of documentation and administrative penalties.

Bernie Underwood, C.P.A., Chief of Staff, Associateship for Health Care Quality and Standards, has determined that for the first five-year period the sections are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the sections as proposed.

Ms. Underwood has also determined that for each of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing or administering the sections is standardization of and improvement in the quality of midwifery practice. There will be additional costs to small businesses. Facilities applying for approval of education programs will be assessed an application fee of $150 and a site visit fee prior to a decision by the Midwifery Board on course approval which has been increased from $300 to $400. Facilities or organizations applying for approval of comprehensive exams will be assessed an application fee of $150. There will be no anticipated impact on local employment.

Comments on the proposal may be submitted to Yvonne Feinleib, Midwifery Program Director, Professional Licensing and Certification Division, Texas Department of Health, 1100 West 49th Street, Austin, TX 78756-3199. Comments will be accepted for 30 days following the date of publication of this proposal in the *Texas Register*.

## Subchapter B. Documentation

### 22 TAC §831.11

The new section is proposed under Texas Civil Statutes, Article 4512i, §8A, which authorizes the Midwifery Board to adopt rules, subject to the approval of the Texas Board of Health, necessary for the documentation and regulation of Texas midwives.

The new section affects Texas Civil Statutes, Article 4512i.

*§831.11. Annual Documentation.*

(a) Purpose. This section details requirements for the annual documentation and redocumentation after revocation, suspension, or the surrender of documentation of midwives in Texas.

(b) Provisions. This section establishes:

(1) requirements and procedures for initial documentation;

(2) requirements and procedures for annual redocumentation;

(3) conditions for denial, revocation, suspension, or surrender of documentation;

(4) guidelines for reissuance of documentation after revocation, suspension, or surrender of documentation;

(5) guidelines for documentation of persons with criminal convictions; and

(6) a state midwifery roster.

(c) Applicability. In order for an individual to legally practice midwifery in Texas, she/he must be currently documented with the Midwifery Program. Documentation shall be valid for a period of one year, except for initial documentation. A midwife's initial documentation shall be valid from the date issued until March 1 of the current or following year, whichever occurs first.

(d) Initial documentation. An individual may apply for documentation as a midwife at any time during the year by submitting the following to the Midwifery Program:

(1) a completed documentation application form;

(2) proof of:

(A) satisfactory completion of an approved mandatory basic midwifery education course and the North American Registry of Midwives (NARM) exam, the American College of Nurse Midwifery (ACNM) exam, or any other comprehensive exam approved by the Midwifery Board; or

(B) certified professional midwife (CPM) certification by NARM and satisfactory completion of a continuing education course covering the current Texas Midwifery Basic Information and Instructors Manual;

(3) proof of current cardiopulmonary resuscitation (CPR) certification for health care providers by the American Heart Association (formerly a C certificate) or equivalent certification for the professional rescuer from the Red Cross;

(4) proof of current certification for neonatal resuscitation, §§1-4, from the American Academy of Pediatrics, effective March 1, 1999;

(5) proof of satisfactory completion of training in the collection of newborn screening specimens or an established relationship with another qualified and appropriately credentialed health care provider who has agreed to collect newborn screening specimens on behalf of the applicant; and

(6) a nonrefundable $200 application fee (payable by cashiers check or money order only). The fee for any application for initial documentation received after September 1 shall be $100 plus $10 per month or part thereof remaining in the documentation period.

(e) Annual redocumentation. Documented midwives must apply for redocumentation in January each year. Documentation expires March 1. The Midwifery Program will send renewal applications to all documented midwives in December of each year. However, each midwife is solely responsible for compliance with the requirements for redocumentation, and nonreceipt of the renewal application mailed by the Midwifery Program shall not constitute an acceptable excuse for failure to comply. A midwife's application for redocumentation must include the following:

(1) a completed redocumentation application form;

(2) proof of completion of at least ten contact hours of approved continuing midwifery education since March 1 of the previous year;

(3) proof of current CPR certification for health care providers by the American Heart Association (formerly a C certificate) or equivalent certification for the professional rescuer from the Red Cross;

(4) proof of current certification for neonatal resuscitation, §§1-4, from the American Academy of Pediatrics, effective March 1, 1999; and

(5) a nonrefundable $200 application fee (payable by cashiers check or money order only).

(f) Late redocumentation. A midwife who fails to apply for redocumentation by March 1 of a year in which the midwife is currently documented, as evidenced by a valid U.S. Postal Service or recognized commercial carrier postmark, may apply for late redocumentation on or before March 31 of that year. Applications for late redocumentation must include the following:

(1) each of the items listed in subsection (e) of this section; and

(2) an additional nonrefundable $75 late filing fee (payable by cashiers check or money order only).

(g) Redocumentation after interim of less than four years. A midwife originally documented in Texas on or after January 1, 1995, who since that time has not been documented for a period of less than four years may redocument by:

(1) providing proof of having completed 20 contact hours of approved midwifery continuing education, including a continuing education course covering the current Texas Midwifery Basic Information and Instructor Manual, during the 12 months preceding the application for redocumentation;

(2) paying the annual documentation fee plus a processing fee of $100; and

(3) meeting the initial documentation requirements in subsections (d)(1) and (3)-(5) of this section.

(h) Redocumentation after interim of more than four years. A midwife documented in Texas on or after January 1, 1995, who has not been documented for a period of more than four years may redocument by:

(1) providing proof of having completed at least 40 contact hours of approved continuing midwifery education within the year preceding the application, which shall be based upon a review of:

(A) the current Texas Midwifery Basic Information and Instructor Manual; and

(B) the current Midwives Alliance of North America (MANA) Core Competencies and Standards of Practice;

(2) paying the annual documentation fee plus a processing fee of $100; and

(3) meeting the initial documentation requirements in subsections (d)(1) and (3)-(5) of this section.

(i) Grounds for denial of application for documentation or redocumentation and for disciplinary action. The Midwifery Board may deny an application for initial documentation or redocumentation and may take disciplinary action against any person based upon proof of the following:

(1) violation of the Act or rules adopted under the Act;

(2) submission of false or misleading information to the Midwifery Board, the board, or the department;

(3) conviction of a felony or a misdemeanor involving moral turpitude;

(4) intemperate use of alcohol or drugs while engaged in the practice of midwifery;

(5) unprofessional or dishonorable conduct that may reasonably be determined to deceive or defraud the public;

(6) inability to practice midwifery with reasonable skill and safety because of illness, disability, or psychological impairment;

(7) judgment by a court of competent jurisdiction that the individual is mentally impaired;

(8) disciplinary action taken by another jurisdiction affecting the applicant's legal authority to practice midwifery;

(9) submission of a birth or death certificate known by the individual to be false or fraudulent, or other noncompliance with Health and Safety Code, Chapter 191, or 25 TAC, Chapter 181 (relating to Vital Statistics);

(10) noncompliance with Health and Safety Code, Chapter 244, or 25 TAC, Chapter 137 (relating to Birthing Centers);

(11) failure to practice midwifery in a manner consistent with the public health and safety; or

(12) demonstrated lack of personal or professional character in the practice of midwifery.

(j) Surrender of documentation.

(1) A midwife may surrender his or her documentation prior to its expiration for the current period by mailing the original documentation acknowledgment letter back to the Midwifery Program together with a signed statement of his or her intent to surrender same.

(2) Surrender of documentation by a midwife after receipt of notification from the Midwifery Program that a complaint against the midwife is being investigated shall not deprive the Midwifery Board of jurisdiction in any disciplinary action which may result from said investigation.

(3) The Midwifery Board may enter any disciplinary order authorized by the Act or this subchapter to resolve a complaint against a midwife who has surrendered his or her documentation after receipt of notification from the Midwifery Program that a complaint is being investigated.

(k) Redocumentation after disciplinary action or surrender.

(1) A person whose documentation to practice midwifery in this state has been revoked or suspended by the Midwifery Board or who has surrendered his or her documentation after having received notice that the Midwifery Program is investigating a complaint may not apply for reissuance of documentation until the applicant has complied with all requirements imposed by the Midwifery Board in connection with the revocation, suspension, or surrender. If the Midwifery Board denies the application for reissuance of documentation, an applicant may request a hearing under 25 TAC §§1.51-1.55 (relating to Fair Hearing Procedures). The decision of the hearing examiner shall be final.

(2) The Midwifery Board may reissue documentation to a midwife who surrendered his or her documentation while an investigation or disciplinary action was pending only if the Midwifery Board finds that:

(A) the applicant is competent to resume practice; and

(B) the Midwifery Program has no evidence of current or continuing violations by the applicant of the Act or this subchapter.

(l) Documentation of persons with criminal conviction.

(1) The Midwifery Board may refuse to issue documentation to any individual who has been initially convicted of a felony or a misdemeanor involving moral turpitude, or whose probation imposed pursuant to such conviction has been revoked by the court.

(2) The Midwifery Board shall consider the following factors:

(A) the nature and seriousness of the crime or the reason the applicant's probation was revoked;

(B) any relationship between the crime and the practice of midwifery;

(C) whether documentation might offer the applicant an opportunity to engage in the same or similar criminal activity as that for which the applicant was previously convicted; and

(D) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of midwifery.

(3) the Midwifery Board, in determining the present fitness of a person who has been convicted of a felony or a misdemeanor involving moral turpitude, shall consider:

(A) the age of the applicant when the crime was committed;

(B) the amount of time that has elapsed since the applicant's conviction;

(C) the applicant's conduct and work history prior to and following the conviction;

(D) evidence of the applicant's progress toward rehabilitation while incarcerated, on probation, or following release; and

(E) other evidence of the person's present fitness, including letters of recommendation from:

*(i)* prosecutorial, law enforcement, probation, and correctional officers;

*(ii)* the sheriff or chief of police in the community where the applicant resides; and

*(iii)* other persons.

(m) Midwifery roster. The Midwifery Program shall maintain a roster of all individuals currently documented to practice midwifery in the state. A copy of the roster shall be provided to each county clerk and local registrar of births on request. The Midwifery Program shall provide information on new and/or late documentees to individual county clerks and local registrars of births during the course of a year as needed.

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 December 16, 1998.

TRD-9818387
Edna Dougherty
Chair
Texas Midwifery Board
Earliest possible date of adoption: January 31, 1999
For further information, please call: (512) 458-7236

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## Subchapter C. Education

**22 TAC §831.31**

The new section is proposed under Texas Civil Statutes, Article 4512i, §8A, which authorizes the Midwifery Board to adopt rules, subject to the approval of the Texas Board of Health, necessary for the documentation and regulation of Texas midwives.

The new section affects Texas Civil Statutes, Article 4512i.

*§831.31. Education.*

(a) Purpose. This section defines requirements for mandatory basic midwifery education and continuing midwifery education.

(b) Provisions. This section establishes:

(1) an education committee;

(2) standards for mandatory basic midwifery education;

(3) standards for mandatory continuing midwifery education;

(4) procedures for midwifery education course approval, denial, and revocation of approval;

(5) procedures for midwifery comprehensive exam approval, denial, and revocation of approval;

(6) procedures for appeals of denials of course and comprehensive exam approval applications and revocations of approval; and

(7) procedures for investigation and disposition of complaints concerning education courses and comprehensive exams.

(c) Applicability. All persons subject to the Act must comply with §831.11 of this title (relating to Annual Documentation), including the educational requirements for both initial documentation and redocumentation.

(d) Education committee.

(1) The Chairperson of the Midwifery Board shall appoint an education committee for one year terms, with the approval of the Midwifery Board, to consider all issues related to mandatory basic and continuing midwifery education. The Education Committee shall review all applications submitted by the Midwifery Program staff for approval of mandatory basic midwifery education courses or comprehensive exams, as well as complaints concerning approved courses or exams. The Education Committee will consist of the following persons:

(A) members of the Midwifery Board:

*(i)* two midwives, one of whom shall serve as chairperson;

*(ii)* a physician or the certified nurse midwife; and

*(iii)* a public interest member; and

(B) a documented midwife who is not a member of the Midwifery Board.

(2) The Midwifery Board chairperson may convene ad hoc working groups consisting of committee members, documented midwives, and other interested individuals, as necessary.

(3) Except for informal settlement conferences, all other meetings and proceedings of the Education Committee shall be open to the public.

(e) Basic Education.

(1) The Midwifery Program staff shall consider for approval only courses which have a course supervisor/administrator and site in Texas.

(2) Mandatory basic midwifery education shall:

(A) be offered to ensure that only trained individuals practice midwifery in Texas;

(B) be offered by any individual or organization meeting the requirements for course approval established by this subsection;

(C) include a didactic component which shall:

*(i)* be based upon and completely cover the most current Core Competencies and Standards of Practice of the Midwives Alliance of North America (MANA) and the current Texas Midwifery Basic Information Manual;

*(ii)* prepare the student to apply for certification by North American Registry of Midwives (NARM); and

*(iii)* include a minimum of 250 hours course work.

(D) be supervised and conducted by a course supervisor/administrator who shall:

*(i)* be responsible for all aspects of the course; and

*(ii)* have two years of experience in the independent practice of midwifery or obstetrics; and

*(iii)* have been primary care giver for at least 75 births including provision of prenatal, intrapartum, and postpartum care; and

*(iv)* have met initial documentation requirements; or

*(v)* be a Certified Professional Midwife (CPM); or

*(vi)* be American College of Nurse Midwives (ACNM) certified; or

*(vii)* be a licensed physician in Texas actively engaged in the practice of obstetrics.

(E) include didactic curriculum instructors who:

*(i)* have training and credentials for the course material they will teach; and

*(ii)* are approved by the course supervisor/administrator.

(F) provide clinical experience/preceptorship which prepares the student to become certified by NARM, including successful completion of at least the following activities:

*(i)* serving as an active participant in attending 20 births;

*(ii)* serving as the primary midwife, under supervision, in attending 20 additional births, at least 10 of which shall be out-of-hospital births;

*(iii)* serving as the primary midwife, under supervision, in performing:

*(I)* 75 prenatal exams, including at least 20 initial history and physical exams;

*(II)* 20 newborn exams; and

*(III)* 40 postpartum exams.

(G) include preceptors who are approved by the course supervisor/administrator and shall be:

*(i)* documented midwives;

*(ii)* certified professional midwives;

*(iii)* certified nurse midwives; or

*(iv)* physicians licensed in Texas and actively engaged in the practice of obstetrics.

(3) Individuals enrolled as students in an approved midwifery course must possess:

(A) a high school diploma or the equivalent; and

(B) a current cardiopulmonary resuscitation (CPR) certificate for health care providers from the American Heart Association (formerly a C certificate) or an equivalent CPR certificate for the professional rescuer from the Red Cross.

(4) Course approval.

(A) The course supervisor/administrator shall submit an application form and a nonrefundable initial application fee of $150 to the Midwifery Program with the following supporting documentation:

*(i)* course outline;

*(ii)* course curriculum with specific content references to:

*(I)* MANA Core Competencies;

*(II)* NARM Skills Assessment Test Specifications; and

*(III)* Texas Midwifery Basic Information Manual.

*(iii)* identification of didactic and preceptorship teaching sites;

*(iv)* a financial statement or balance sheet (within the last year) for the course supervisor/administrator or course owner and disclosure of any bankruptcy within the last five years; and

*(v)* written policies to include:

*(I)* tuition schedule, other charges, and cancellation and refund policy, including the right of any prospective student to cancel his/her enrollment agreement within 72 hours after signing the agreement and receive a full refund of any money which may have paid;

*(II)* student attendance, progress, and grievance policies;

*(III)* rules of operation and conduct of school personnel;

*(IV)* requirements for state documentation;

*(V)* disclosure of approval status of course;

*(VI)* maintenance of student files; and

*(VII)* reasonable access for non-English speakers and compliance with Federal and state laws on accessibility.

(B) Student files shall be maintained for a minimum of five years and shall include:

*(i)* evidence that the entrance requirements have been met;

*(ii)* documentation demonstrating completion of didactic and clinical course work; and

*(iii)* copies of any financial agreements between the student and the school.

(C) The Midwifery Program staff and Education Committee chairperson shall review each course application submitted for approval. If an application for initial approval meets all of the requirements specified in this paragraph, a one-year provisional approval will be granted. An on-site evaluation of the course shall be scheduled. The evaluation shall be conducted by a member of the Midwifery Program staff and a documented midwife within the provisional year. The midwife member of the evaluation team shall be appointed by the Chairperson of the Midwifery Board and shall not be the supervisor, didactic instructor, or preceptor of another basic midwifery education course in the same geographic area. The site visit will include the following:

*(i)* an inspection of the course's facilities;

*(ii)* a review of its teaching plan, protocols, and teaching materials;

*(iii)* a review of didactic and preceptorship instruction;

*(iv)* interviews with staff and students; and

*(v)* a review of student files.

(D) A nonrefundable fee of $400 shall be assessed for each course approval site visit.

(E) The review team's written report shall conclude with a recommendation to the Education Committee for approval or denial of the course.

(F) The Education Committee shall evaluate the application and all other pertinent information, including any complaints received and the on-site review team's report and recommendation.

(G) The Midwifery Board shall consider the application and the recommendations of the Education Committee and shall render a final decision during the provisional year. The decisions of the Education Committee and Midwifery Board shall be based upon the criteria specified in this subsection.

(H) Each applicant shall be notified of the Midwifery Board's decision in writing within 10 working days. If an application is denied, the notification shall specify the reason(s) for denial.

(5) Appeal of course denial. An appeal of a notification of a denial must be submitted in writing to the Chairperson of the Midwifery Board through the Midwifery Program within 21 working days of the applicant's receipt of the notice. Upon receipt of the appeal, the appellant will be placed on the agenda of the next scheduled meeting of the Midwifery Board, at which time the appellant may appear and the Board shall render a decision on the appeal.

(6) Course reciprocity. A basic midwifery education course which is currently accredited by the Midwifery Education Accreditation Council (MEAC) shall be deemed approved under this subsection upon submission of evidence of such accreditation.

(7) Duration of course approval.

(A) The Midwifery Board shall approve courses for a three-year period.

(B) Course approvals granted prior to December 31, 1996, shall expire upon the adoption of these rules, and course supervisors/administrators shall apply for initial approval within 60 days.

(C) Course supervisors/administrators shall reapply for approval six months prior to expiration.

(8) Course changes. Any substantive change(s) in the course or its content shall be submitted to the Midwifery Program staff prior to the change(s) if known in advance or within 10 working days after change(s). The Midwifery Program staff shall notify the Education Committee Chairperson. The Midwifery Board may reconsider the status of any course which has undergone substantive changes should the course no longer meet the requirements in subsections (e)(1)-(2) of this section.

(9) Revocation of course approval. The Midwifery Board may revoke the approval of a course after notifying the course supervisor/administrator of its intended action and the opportunity for an appeal, if the Midwifery Board determines that:

(A) the course no longer meets the standards established by this subsection;

(B) the course supervisor, instructor(s), or preceptor(s) do not have the qualifications required by this subsection;

(C) course approval was obtained by fraud or deceit;

(D) the course supervisor has falsified course registration, attendance, and/or completion records; or

(E) continued approval of the course is not in the public interest as defined by the Midwifery Board.

(10) Fair hearing procedures. Notice and hearings required under this subsection will be conducted according to and will be governed by 25 TAC §§1.51-1.55 (relating to Fair Hearing Procedures), except that final decisions on hearings shall be made by the Midwifery Board rather than the commissioner.

(f) Comprehensive exams.

(1) Comprehensive exam approval.

(A) Any approved education course or midwifery association may submit an application form and a nonrefundable initial application fee of $150 to the Midwifery Program with the following supporting documentation:

*(i)* copy of exam;

*(ii)* copy of all exam information and preparation materials, including sample test booklet(s);

*(iii)* evidence that the written portion of the examination has been validated by an independent professional, as required by the Act, §11(b);

*(iv)* references to the MANA Core Competencies included in the exam;

*(v)* identification of proposed test sites;

*(vi)* a financial statement or balance sheet (within the last year) for the course supervisor/administrator or course owner or midwifery association and disclosure of any bankruptcy within the last five years; and

*(vii)* written policies to include:

*(I)* charge for exam administration, other charges, and cancellation and refund policy;

*(II)* confidentiality of individual exam scores;

*(III)* administration and grading of exam;

*(IV)* requirements for test sites and proctors;

*(V)* disclosure of approval status of exam;

*(VI)* complaint procedures;

*(VII)* maintenance of exam files; and

*(VIII)* reasonable access for non-English speakers and compliance with Federal and state laws on accessibility.

(B) Separate exam files for each administration of the exam shall be maintained for a minimum of five years and shall include:

*(i)* evidence of identity of all test takers, and of all proctors;

*(ii)* documentation concerning exam administration procedures;

*(iii)* copies of any financial agreements related to the administration of the exam;

*(iv)* copies of any complaints received;

*(v)* copies of exam(s) administered; and

*(vi)* originals of all scored exams.

(C) The Midwifery Program staff and Education Committee chairperson shall review each exam application submitted for approval. If an application for approval meets all of the requirements specified in this paragraph, it will be forwarded to the Education Committee within 60 days.

(D) The Education Committee shall evaluate the application and recommend either approval or denial of the application to the Midwifery Board.

(E) The Midwifery Board shall consider the application and the recommendations of the Education Committee and shall render a final decision.

(F) Each applicant shall be notified of the Midwifery Board's decision in writing within 10 working days. If an application is denied, the notification shall specify the reason(s) for denial.

(2) Appeal of exam denial. An appeal of a notification of a denial must be submitted in writing to the Chairperson of the Midwifery Board within 21 working days of the applicant's receipt of the notice. The appellant may appear at the next scheduled meeting of the Midwifery Board, at which the Board shall render a decision on the appeal.

(3) Duration of exam approval.

(A) The Midwifery Board shall approve exams for a three-year period;

(B) Any revisions to the exam must be approved according to the requirements of this subsection; and

(C) Course supervisors/administrators or associations of midwifery shall reapply for approval six months prior to expiration.

(4) Exam changes/revisions. Any substantive change(s) in, or revisions to, the exam, its administration, or any of the policies associated with it, shall be submitted to the Midwifery Program staff prior implementation of the change(s), along with a explanation for the proposed change(s). The Midwifery Program staff shall notify the Education Committee Chairperson. The Midwifery Board may reconsider the status of any exam in which substantive changes have been made.

(A) The Education Committee may request and consider any relevant information, including exam files, when reconsidering course approval.

(B) The Education Committee shall forward its recommendations to the Midwifery Board.

(5) Revocation of exam approval.

(A) The Midwifery Board may revoke the approval of a exam after notifying the course supervisor/administrator or course owner or midwifery association of its intended action and the opportunity for an appeal, if the Midwifery Board determines that:

*(i)* the exam or the course/association who submitted it for approval no longer meets the standards established by this subsection; or

*(ii)* exam approval was obtained by fraud or deceit; or

*(iii)* records required by this subsection have been falsified or are incomplete; or

*(iv)* exam files or other relevant information have been withheld from the Midwifery Board or Education Committee despite a written request; or

*(v)* continued approval of the exam is not in the public interest as defined by the Midwifery Board.

(B) Each course supervisor/administrator or midwifery association shall be notified of the Midwifery Board's decision in writing within ten working days. If an application is denied, the notification shall specify the reason(s) for denial.

(C) Notice and hearings required under this subsection will be conducted according to and will be governed by 25 TAC §§1.51-1.55 (relating to Fair Hearing Procedures), except that final hearing decisions will be made by the Midwifery Board rather than the commissioner.

(6) Complaints. If a complaint cannot be resolved by the complaint process associated with the exam, the complainant may file a complaint against the exam or the course supervisor/administrator or course owner or midwifery association with the Education Committee in accordance with the procedures in subsection (h) of this section.

(g) Continuing education.

(1) Mandatory continuing midwifery education courses support the need for midwives practicing in Texas to maintain current knowledge and skills.

(2) Courses may be offered by any individual or organization that meets the requirements for course approval established by this subsection.

(3) Course curriculum must provide an educational experience which:

(A) covers new developments in the fields of midwifery or related disciplines; or

(B) reviews established knowledge in the fields of midwifery or related disciplines; and

(C) shall be presented in standard contact hour increments for continuing health education; and

(D) shall provide reasonable access for non-English speakers and comply with Federal and state laws on accessibility.

(4) Course coordinators and instructors.

(A) Course coordinators shall obtain course approval, register and certify participant attendance, and provide attendance certificates to participants following the course.

(B) Course instructors shall have training and credentials appropriate for the course material they will teach.

(5) Course approval. Continuing education courses attended to fulfill annual documentation requirements shall be accepted when the courses:

(A) satisfy the requirements of subsection (g)(3)(A)-(C) of this section; and

(B) are accredited by one of the following accrediting bodies:

*(i)* a professional midwifery association, nursing, social work, or medicine;

*(ii)* a college or university;

*(iii)* a nursing, medical, or health care organization;

*(iv)* a state board of nursing or medicine;

*(v)* a department of health; or

*(vi)* a hospital.

(h) Complaint procedure, investigation, and disposition.

(1) Purpose. This subsection defines the procedures for filing complaints against approved courses or exams. It further defines valid causes for discipline and procedures to be utilized by the Midwifery Program, the Education Committee, and the Midwifery Board in processing, investigating, and resolving complaints against approved courses or exams.

(2) Provisions. This subsection establishes:

(A) procedures for reporting violations and/or complaints;

(B) procedures for investigating alleged violations and/or complaints;

(C) procedures for informal hearings;

(D) procedures for sanctions; and

(E) procedures for complaint disposition and appeals.

(3) Education Committee. The Education Committee shall consider all complaints filed against approved courses or exams and shall make recommendations to the Midwifery Board.

(A) The Midwifery Board Chairperson may convene ad hoc working groups consisting of committee members, documented midwives, and other interested individuals as necessary.

(B) All meetings of the Education Committee in which a complaint is being discussed shall be closed to the public. The Education Committee shall schedule an informal conference to discuss the investigation and any proposed recommendation. At no time shall the Education Committee or Midwifery Board disclose the identity of the complainant, or the course or exam that is the subject of the complaint.

(4) Report of a complaint. Complaints may be accepted by the Midwifery Program by telephone, in person, or in writing from any person or agency alleging violations of this section.

(A) The Midwifery Program staff shall mail a letter and complaint form to the complainant within 10 working days of being notified of the complaint. The complaint form shall request at least the following information:

*(i)* the name, address, and telephone number of complainant (optional);

*(ii)* the name, address, and telephone number of course supervisor/administrator or course owner or midwifery association that is the subject of the complaint;

*(iii)* a complete statement of the complaint, including date(s), time(s), and location(s) of event(s);

*(iv)* the name, address, and telephone number of any witnesses; and

*(v)* a description of any other reporting, filing, or attempted resolution of the complaint.

(B) The complaint review process begins when the completed complaint form is received by the Midwifery Program and assigned a case number, and the subject of the complaint is determined to be a course or exam approved under this section.

(C) If the complaint form includes the complainant's name and address, the complainant shall be notified in writing of the Midwifery Program's receipt of the complaint form within 10 working days.

(5) Records of complaints. The Midwifery Program shall maintain an information file about each complaint. The information file shall be kept current and shall contain, if applicable:

(A) the written complaint;

(B) a record of all persons contacted in relation to the complaint;

(C) client records;

(D) other requested records;

(E) a summary of findings;

(F) an explanation of the legal basis and the Midwifery Board's reason for dismissing a complaint;

(G) sanctions imposed; and

(H) other relevant information.

(6) Complaint investigation. The Midwifery Program Director shall:

(A) notify the course supervisor/administrator or course owner or midwifery association of the Midwifery Program's receipt of the complaint by certified mail;

(B) request all relevant records necessary to conduct an investigation of the complaint;

(C) interview the complainant, the respondent, and any witnesses;

(D) review and evaluate all information received;

(E) forward the complaint to any other agencies or organizations which may also have jurisdiction and/or refer the complainant to said agencies or organizations;

(F) present each complaint to the Education Committee; and

(G) notify the course supervisor/administrator or course owner or midwifery association by certified mail of the date and time of the Education Committee at which the complaint will be presented, at least 30 days in advance.

(7) Settlement conference. The Education Committee chairperson or, in his/her absence, the vice-chairperson, will preside over and conduct the conference.

(A) On the day and time designated for the conference, the chairperson/vice-chairperson shall:

*(i)* state the purpose of and the legal authority for the conference; and

*(ii)* outline the procedure and order of presentation to be followed.

(B) Order of presentation. After making the necessary introductory and explanatory remarks, the chairperson/vice-chairperson shall state the case number and the nature of the complaint.

*(i)* The Education Committee shall review all available evidence from the investigation, including any statements from the complainant and the course supervisor/administrator or course owner or midwifery association. The Education Committee may question any person present regarding relevant information. Whether or not the complainant or course supervisor/administrator or course owner or midwifery association is present, the settlement conference shall proceed with the information on hand.

*(ii)* Evidence and statements shall be reviewed by the Education Committee and one of the following recommendations made to the Midwifery Board:

*(I)* close the complaint file due to insufficient evidence; or

*(II)* enter an agreed order.

*(iii)* Complaints not resolved by settlement conference shall be referred for a hearing.

(8) Hearings.

(A) All administrative hearings under this section shall be conducted according to 25 TAC §§1.51-1.55 (relating to Fair Hearing Procedures).

(B) All proposals for decision shall be referred to the Midwifery Board for final decision.

(9) Guidelines for sanctions. The Midwifery Board/ Education Committee shall consider the following factors in imposing sanctions:

(A) the severity of the offense;

(B) the damage to the public or to the profession of midwifery;

(C) the number of repetitions of the offense;

(D) the length of time since date of offense;

(E) the number of sanctions imposed upon the course supervisor/administrator or course owner or midwifery association;

(F) the length of time the course or exam has been offered;

(G) the actual injury, financial or otherwise, suffered by the student(s) or person(s) taking the exam;

(H) any efforts at rehabilitation or remediation by the course supervisor/administrator or course owner or midwifery association; and

(I) any other mitigating or aggravating circumstances.

(10) Penalties and Sanctions. If the Midwifery Board finds that a course supervisor/administrator or course owner or midwifery association has violated this subsection, it shall enter an order imposing one or more of the following:

(A) a written warning;

(B) limitation or restriction of course or exam approval for a specified time;

(C) suspension of course or exam approval for a specified time;

(D) revocation of course or exam approval;

(E) probation of any sanction imposed on the course supervisor/administrator or course owner or midwifery association;

(F) acceptance by the Midwifery Board of the voluntary surrender of approval and without the opportunity for reinstatement unless the Midwifery Board determines the course supervisor/ administrator or course owner or midwifery association is competent to resume offering the course or exam; or

(G) imposition of conditions for approval that the course supervisor/administrator or course owner or midwifery association must satisfy before the Midwifery Board issues an unrestricted approval.

(11) Failure to cooperate. Failure to provide records requested by the Midwifery Program, without good cause shown, shall be grounds for additional disciplinary action.

(12) Disposition.

(A) Agreed disposition.

*(i)* The Midwifery Board may, unless precluded by law or this section, make a disposition of any complaint by agreed order.

*(ii)* An agreed disposition is considered a disciplinary order for purposes of reporting under this chapter and of administrative hearings and proceedings by state and federal regulatory agencies regarding the practice and education of documented midwives. An agreed order is a public record. In civil or criminal litigation, an agreed disposition is a settlement agreement under Texas Rules of Civil Evidence, Rule 408, and Texas Rules of Criminal Evidence, Rule 408.

(B) Closed file. The Midwifery Board may close the complaint file due to insufficient evidence.

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 December 16, 1998.

TRD-9818388
Edna Dougherty
Chair
Texas Midwifery Board
Earliest possible date of adoption: January 31, 1999
For further information, please call: (512) 458-7236

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## Subchapter D. Practice of Midwifery

**22 TAC §831.101**

The new section is proposed under Texas Civil Statutes, Article 4512i, §8A, which authorizes the Midwifery Board to adopt rules, subject to the approval of the Texas Board of Health, necessary for the documentation and regulation of Texas midwives.

The new section affects Texas Civil Statutes, Article 4512i.

*§831.101. Administration of Oxygen.*

(a) Purpose. This section outlines procedures for administration of oxygen by midwives. Whether or not a midwife chooses to administer oxygen to the mother and/or newborn, the midwife remains responsible for assessing the client and/or newborn; consultation; referral; and/or recommending transfer or transport of the mother and newborn in compliance with §831.51 of this title (relating to Midwifery Practice Standards and Principles).

(b) Under this section a midwife is not required to use oxygen.

(c) Provisions. This section establishes that:

(1) intrapartum oxygen may be administered to the mother via mask at 8-10 liters/minute for the following:

(A) fetal heart rate irregularities while assessing for consultation and/or possible transfer;

(B) cord prolapse prior to transport;

(C) signs or symptoms of maternal shock or hemorrhage prior to transport; or

(D) as indicated by American Heart Association Cardiopulmonary Resuscitation guidelines;

(2) postpartum oxygen may be administered:

(A) to the newborn via free-flow oxygen, mask, and/ or bag at a rate of 1-2 liters/minute, but not exceeding 5 liters/minute,

during the initial neonatal period concurrent with American Academy of Pediatrics certification in Neonatal Resuscitation guidelines; or

(B) to the mother and/or newborn in other situations not listed above and deemed necessary according to generally accepted standards of midwifery practice to protect the health and well-being of the mother and/or newborn;

(3) indications for administration of oxygen shall be clearly documented in the client's chart.

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 December 16, 1998.

TRD-9818389
Edna Dougherty
Chair
Texas Midwifery Board
Earliest possible date of adoption: January 31, 1999
For further information, please call: (512) 458-7236

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## Subchapter E. Complaint Review

**22 TAC §831.161**

The new section is proposed under Texas Civil Statutes, Article 4512i, §8A, which authorizes the Midwifery Board to adopt rules, subject to the approval of the Texas Board of Health, necessary for the documentation and regulation of Texas midwives.

The new section affects Texas Civil Statutes, Article 4512i.

*§831.161. Complaint Review.*

(a) Purpose. This section defines the procedures for reporting alleged violations of the Act and this subchapter. It further defines grounds for disciplinary action and procedures to be utilized by the Midwifery Program and the Midwifery Board in processing, investigating, and resolving complaints against midwives practicing in Texas.

(b) Provisions. This section establishes:

(1) a Complaint Review Committee;

(2) procedures for reporting violations and/or complaints;

(3) categories of violations;

(4) procedures for investigating alleged violations and/or complaints;

(5) procedures for release of relevant records and/or medical records;

(6) procedures for participation by the complainant;

(7) procedures for informal settlement conferences;

(8) procedures for hearings;

(9) procedures for disciplinary action; and

(10) procedures for complaint disposition and appeals.

(c) Complaint Review Committee. With the approval of the Midwifery Board, the chairperson of the Midwifery Board shall appoint a Complaint Review Committee for one-year terms to consider all complaints filed against documented midwives and to make recommendations to the Midwifery Board.

(1) The Complaint Review Committee shall consist of:

(A) the following Midwifery Board members:

*(i)* one midwife, who shall serve as the chairperson;

*(ii)* a physician or certified nurse midwife; and

*(iii)* a public interest member; and

(B) the following persons who are not members of the Midwifery Board:

*(i)* three midwives in active practice; and

*(ii)* one member of the public.

(2) The Midwifery Board chairperson may appoint ad hoc working groups consisting of committee members, documented midwives, and other persons as necessary.

(3) During the investigation and consideration of a complaint, the Complaint Review Committee shall schedule an informal conference to discuss the investigation and to consider any recommendations for disposition of the complaint. At no time shall the Complaint Review Committee or Midwifery Board disclose the identity of the midwife's client or the complainant.

(d) Report of a complaint. Any person or agency may contact the Midwifery Program by telephone, in person, or in writing, alleging that a documented midwife has violated the Act, any provisions of this subchapter, or any other law or rule relating to the practice of midwifery in Texas.

(1) Midwifery Program staff shall provide a complaint form to the complainant by mail within ten working days of being contacted by the complaint.

(2) The complaint review process begins when:

(A) the complaint form is received by the Midwifery Program;

(B) the Midwifery Program confirms that the subject of the complaint is a midwife documented in Texas and/or practicing midwifery in Texas; and

(C) the Midwifery Program assigns a case number.

(3) If the complainant has provided his or her name and address, the Midwifery Program shall confirm receipt of the complaint form in writing within ten working days.

(e) Records of complaints. The Midwifery Program shall maintain the following information concerning each complaint filed, if applicable:

(1) a copy of the complaint;

(2) record of all persons contacted in relation to the complaint;

(3) client records;

(4) other records requested during the investigation;

(5) a summary of findings;

(6) basis for recommending dismissal of the complaint;

(7) disciplinary action taken; and

(8) other relevant information.

(f) Complaint categories.

(1) The Midwifery Program Director shall assign one of the following categories for each complaint for the initial allocation of investigative resources:

(A) an alleged violation of the Act and/or rules involving actual deception, fraud, or injury to clients or the public;

(B) an alleged violation of the Act and/or rules involving a high probability of deception, fraud, or injury to clients or the public;

(C) an alleged violation of the Act and/or rules involving a potential for deception, fraud, or injury to clients or the public; or

(D) all other complaints.

(2) The final complaint category shall be assigned by the Complaint Review Committee after completion of the investigation.

(g) Disciplinary action and guidelines.

(1) The Midwifery Board and the Complaint Review Committee shall consider the following factors when taking or recommending disciplinary action:

(A) the severity of the offense;

(B) the danger to the public;

(C) the number of repetitions of offenses;

(D) the length of time since date of violation;

(E) any other disciplinary actions taken against the midwife;

(F) the length of time the midwife has practiced;

(G) the extent of the client's injuries, physical or otherwise;

(H) any efforts at rehabilitation or remediation by the midwife;

(I) prior determinations by the Midwifery Board that a midwife has viol9vated the Act and/or rules; and

(J) any other mitigating or aggravating circumstances.

(2) In addition to or in lieu of the penalties and sanctions under subsection (k), the following administrative penalties shall be used in recommending disposition of complaints involving the following violations:

(A) for intentional alteration or falsification of birth or death certificates; revocation of documentation and an administrative penalty not to exceed $1000;

(B) for intentional alteration or falsification of client records or reports, other than birth or death certificates, or misrepresentation of facts:

*(i)* for the first offense, an administrative penalty not to exceed $100;

*(ii)* for a second offense, an administrative penalty not to exceed $200; and

*(iii)* for subsequent offenses, an administrative penalty not to exceed $500 per offense, with each day of a continuing violation constituting a separate violation.

(C) for failure to submit, upon request, to the Midwifery Program any records or reports relating to the practice of midwifery required under the Act:

*(i)* for the first offense, an administrative penalty not to exceed $100;

*(ii)* for a second offense, an administrative penalty not to exceed $200; and

*(iii)* for subsequent offenses, an administrative penalty not to exceed $500 per offense, with each day of a continuing violation constituting a separate violation;

(D) for violations of §831.51 of this title (related to Midwifery Practice Standards and Principles):

*(i)* for the first offense, an administrative penalty not to exceed $200;

*(ii)* for a second offense, an administrative penalty not to exceed $400; and

*(iii)* for a subsequent offense:

*(I)* an administrative penalty not to exceed $1,000 per offense, with each day of a continuing violation constituting a separate violation; and

*(II)* revocation of documentation;

(E) for practicing midwifery without documentation, with lapsed documentation, or while documentation has been suspended or revoked, the Midwifery Board may request that the attorney general or a district, county, or city attorney institute a civil action in district court to collect a civil penalty not to exceed $250 per offense, with each day of a continuing violation constituting a separate violation;

(F) for procuring or renewing documentation through fraud:

*(i)* denial of documentation; and

*(ii)* an administrative penalty not to exceed $1000 per offense, with each day of a continuing violation constituting a separate violation;

(G) for failure to practice midwifery in a manner consistent with public health and safety:

*(i)* denial of documentation;

*(ii)* suspension of documentation; or

*(iii)* revocation of documentation;

(H) for all other violations of the Act and/or rules not covered by this subsection: disciplinary sanctions determined on a case by case basis.

(3) Failure by a midwife to practice midwifery in a manner consistent with public health and safety shall include, but shall not be limited to:

(A) making deceptive or fraudulent representations in the practice of midwifery, including, but not limited to false claims of proficiency in any field;

(B) mistreating a client, including, but not limited to:

*(i)* verbal or physical abuse of client;

*(ii)* abandonment immediately before or during labor; or

*(iii)* repeated failure to appear at scheduled appointments without canceling, except in an emergency situation;

(C) exploiting the client and/or her family by engaging in a sexual relationship or misconduct during the provision of midwifery care;

(D) using or maintaining a work area, equipment, or clothing that is unsanitary, except in an emergency situation;

(E) failing to supervise midwifery students or apprentices in his/her charge effectively;

(F) using fraud in the practice of midwifery, practicing midwifery with gross incompetence, with gross negligence on a particular occasion, or with a pattern of fraud, negligence, or incompetence;

(G) willfully failing to inform or misleading a client who requests the name, mailing address, or telephone number of the Midwifery Program for the purpose of filing a complaint; or

(H) failing to provide a written explanation of charges previously made on a bill or statement in response to the client's written request.

(h) Complaint investigation. The Midwifery Program Director or director's designee shall:

(1) notify the midwife of the complaint by certified mail within ten working days of reading the complaint;

(2) obtain all relevant midwifery records and medical records necessary to conduct an investigation of a complaint without the necessity of consent of the midwife's client;

(3) interview the complainant, the respondent, and any witnesses;

(4) obtain any available peer review reports;

(5) review and evaluate all information received;

(6) forward complaint(s) not within the Midwifery Board's jurisdiction to other agencies and/or refer complainants to appropriate agencies;

(7) present each complaint to the Complaint Review Committee; and

(8) notify the midwife by certified mail of the category initially assigned to the complaint and the date and time of the Complaint Review Committee meeting at which the complaint will be considered, at least 30 days in advance. The midwife shall be afforded an opportunity to present relevant evidence and to show compliance with all requirements of law for the retention of documentation.

(i) Settlement conference. The Complaint Review Committee chairperson shall conduct the conference. If the chairperson is absent, the vice-chairperson shall preside.

(1) The chairperson/vice-chairperson shall:

(A) state the legal authority for and the purpose of the conference; and

(B) outline the procedure to be followed.

(2) Order of presentation. After explaining the purpose of the conference and other related matters, the chairperson/vice-chairperson shall state the case number and the nature of the complaint.

(A) The Complaint Review Committee shall review all information obtained during the investigation and any statements from the complainant and/or the midwife. The Complaint Review Committee may question any person present regarding relevant information. Unless the midwife requests and is granted a continuance, the settlement conference shall proceed with the information available, whether or not the complainant or the midwife is present.

(B) The midwife shall be afforded an opportunity to present relevant evidence and to show compliance with all requirements of law for the retention of documentation.

(C) Following review of all evidence and statements, the Complaint Review Committee shall make one of the following recommendations to the Midwifery Board:

*(i)* closure of the complaint due to insufficient evidence; or

*(ii)* entry of an agreed order.

(D) Matters not resolved by settlement conference shall be referred for a hearing.

(j) Hearings.

(1) All administrative hearings under this subchapter shall be conducted according to 25 TAC §§1.51-1.55 (relating to Fair Hearing Procedures) unless the midwifery board seeks to assess an administrative penalty under the Act, §18E.

(2) If the midwifery board seeks to assess an administrative penalty, as either the sole sanction or in combination with other penalties and sanctions authorized by this subchapter, said administrative hearing shall be conducted according to 25 TAC §§1.21-1.32 (relating to Formal Hearing Procedures).

(3) All proposals for decision will be referred to the Midwifery Board for final decision.

(k) Penalties and Sanctions. If the Midwifery Board finds a person has violated the Act and/or rules adopted under the Act or any other law or rule relating to the practice of midwifery in Texas, it shall enter an order imposing one or more of the following:

(1) denial of the person's application for documentation;

(2) issuance of a written warning;

(3) limitation or restriction of the midwife's practice for a specified time;

(4) suspension of the midwife's documentation for a specified time;

(5) revocation of the midwife's documentation;

(6) required participation by the midwife in counseling and treatment for psychological impairment, or intemperate use of alcohol or drugs;

(7) required participation by the midwife in one or more education programs;

(8) required practice by the midwife under the direction of a preceptor for a specified period;

(9) probation of any penalty imposed;

(10) acceptance of the voluntary surrender of a midwife's documentation, but without reissuance of documentation unless the Midwifery Board determines the midwife is competent to resume practice;

(11) imposition of conditions for reinstatement that the midwife must satisfy before the Midwifery Board reissues documentation following suspension, revocation, or voluntary surrender; or

(12) assessment of an administrative penalty against not to exceed $1,000 for each violation, with each day of a continuing violation constituting a separate violation.

(l) Failure to cooperate. Failure to provide records requested by the Midwifery Program in the course of a complaint investigation, without good cause shown, shall constitute grounds for additional disciplinary action.

(m) Disposition.

(1) The Midwifery Board may, unless precluded by law or this section, make a disposition of any complaint by agreed order.

(2) An agreed disposition is considered a disciplinary order for purposes of reporting under this chapter and of administrative hearings and proceedings by state and federal regulatory agencies regarding the practice of documented midwives. An agreed order is a public record. In civil or criminal litigation, an agreed disposition is a settlement agreement under Texas Rules of Civil Evidence, Rule 408, and Texas Rules of Criminal Evidence, Rule 408.

(3) The Midwifery Board may close the complaint due to insufficient evidence.

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 December 16, 1998.

TRD-9818390
Edna Dougherty
Chair
Texas Midwifery Board
Earliest possible date of adoption: January 31, 1999
For further information, please call: (512) 458-7236

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# TITLE 25. HEALTH SERVICES

## Part I. Texas Department of Health

### Chapter 37. Maternal and Child Health Services

### Subchapter H. Midwives

**25 TAC §§37.175, 37.178, 37.180**

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

The Texas Department of Health (department) proposes the repeal of §§37.175, 37.178, and 37.180 concerning midwives. Specifically, the sections cover annual documentation; complaint procedure, investigation, and disposition; and education.

The department proposes repeal of the sections in 25 Texas Administrative Code (TAC) in order that new sections may be proposed by the Texas Midwifery Board for adoption at 22 TAC, Examining Boards, Chapter 831, Midwives. The Texas Midwifery Board is authorized by the Texas Midwifery Act (the Act), Texas Civil Statutes, Article 4512i, §8A(b), to adopt rules concerning documentation and educational requirements for midwives, processing of complaints concerning midwives, and any additional rules necessary to implement any duty imposed by the Act, subject to the approval of the Texas Board of Health. Effective December 1, 1998, the Midwifery Program and the Midwifery Board were administratively transferred from the department's Women's Health Division to the Professional Licensing and Certification Division of the department. The new rules proposed in 22 TAC, Chapter 831, can be found in the January 1, 1999, Texas Register issue in the Proposed Rule section.

Jack Baum, D.D.S., Acting Associate Commissioner for Community Relations and Development, has determined that for the first five-year period the repeals are in effect, there will be no fiscal implications for state or local government as a result of the repeals.

Dr. Baum has also determined that for each of the first five years the repeals are in effect, the public benefit anticipated is more effective regulation of midwifery practice. There are no anticipated economic costs to small or large businesses or to persons who will be affected by the repeals. No effect on local employment is anticipated.

Written comments on the proposed repeals may be submitted to Yvonne Feinleib, Midwifery Program Director, Professional Licensing and Certification Division, Texas Department of Health, 1100 West 49th Street, Austin, TX 78756-3199. Comments will be accepted for 30 days following the date of publication of the proposed repeals in the Texas Register.

The repeals are proposed under Health and Safety Code, §12.001(b), which provides the board with authority to adopt rules for the performance of every duty imposed by law upon the board, the department, and the commissioner of health.

The repeals affect Texas Civil Statutes, Article 4512i.

*§37.175. Annual Documentation.*
*§37.178. Complaint Procedure, Investigation, and Disposition.*
*§37.180. Education.*

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

Filed with the Office of the Secretary of State on December 16, 1998.

TRD-9818386
Susan K. Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: January 31, 1999
For further information, please call: (512) 458-7236

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# TITLE 30. ENVIRONMENTAL QUALITY

## Part I. Texas Natural Resource Conservation Commission

### Chapter 1. Purpose of Rules, General Provisions

**30 TAC §1.5**

The Texas Natural Resource Conservation Commission (commission) proposes an amendment to §1.5, concerning Records

of the Agency. This proposed action is necessary to correct statutory references; to clarify the rule; and to make the rule more accurately reflect the requirements of the Public Information Act, records retention laws, and agency practice.

In addition, the commission is concurrently proposing the repeal of 30 TAC §305.46, concerning confidentiality of certain material. The repeal would remove requirements that essentially duplicate those in §1.5. This action is published in this edition of the *Texas Register.*

The commission has also conducted its review of the rules in 30 TAC Chapter 1, as required by the General Appropriations Act, Article IX, §167. The results of that review are concurrently published in the Rules Review section of this edition of the *Texas Register.*

EXPLANATION OF PROPOSED RULE

The proposed amendments to §1.5 result from the commission's review of Chapter 1. That review showed the need to delete an inaccurate statutory reference from the current rules and to clarify them. In addition, the commission determined that it was necessary to update the rules to more accurately reflect the Texas Public Information Act, records retention laws, and commission practices.

The proposed changes are made to subsection (d), concerning the confidentiality of information. The subsection provides requirements governing the designation of confidential information. The commission proposes to amend subsection (d)(1) to clarify that the provisions concerning marking of information claimed to be confidential apply only to permit applicants and persons submitting information to the commission in response to a bid solicitation; to delete language concerning availability of the information, as other subsections of the rule address handling of open records requests; and to delete an unnecessary reference to 18 United States Code, §1905. In addition, language concerning the handling of open records requests is added to subsection (d)(2) and (3). The new language lays out conditions under which the executive director would request disclosure determinations from the attorney general. Language concerning the return or withdrawal of information is deleted to make the rule more clearly consistent with state records retention laws (Texas Government Code, Chapter 441, Subchapter L). Other changes are to clarify the language of the rule.

FISCAL NOTE

Jeff Grymkoski, Director of the Strategic Planning and Appropriations Division, has determined that for the first five-year period the section is in effect there will be no significant fiscal implications for state or local government as a result of enforcing or administering the section.

PUBLIC BENEFIT

Mr. Grymkoski has also determined that for the first five years the section is in effect, the public benefit that is anticipated to result from administering and enforcing the rule will be enhanced clarity in general commission processes. There is no anticipated economic cost to persons who are required to comply with the proposed section.

SMALL BUSINESS ANALYSIS

There are no anticipated adverse effects on small businesses as a result of this rulemaking. The primary purpose of this action is to clarify the commission's procedural rules by correcting statutory references and making the rule more consistent with commission practice and state records laws. Small businesses should benefit from the enhanced clarity of the rules.

DRAFT REGULATORY IMPACT ANALYSIS

The commission has reviewed the proposed rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and has determined that it is not subject to that statute because it does not meet the definition of major environmental rule as defined in that statute, and it does not meet any of the four applicability requirements listed in §2001.0225(a). The rule is not a major environmental rule because it concerns internal commission practices. In addition, the adoption of such rules is expressly required by the Administrative Procedure Act, Texas Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. In addition, Texas Water Code, §5.103, requires the commission to adopt rules to carry out its powers, and §5.105 requires the commission to adopt policy by rule.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment of this rule under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of this rule is to make minor corrections to statutory references, to add provisions that reflect agency practice concerning certain open records requests, and to make the rule more clearly consistent with state records laws. Adoption of this rule will substantially advance these purposes by providing specific provisions on these matters. Promulgation and enforcement of this rule will not burden private real property which is the subject of the rule because it concerns only procedural requirements.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed the rulemaking and found that the rule is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Coastal Management Program, nor will it affect any action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. This action concerns only the procedural rules of the commission and general agency operations. Therefore, the proposed rule is not subject to the Coastal Management Program.

PUBLIC HEARING

A public hearing on this proposal will be held February 1, 1999, at 10:30 a.m., in Room 2210 of Texas Natural Resource Conservation Commission Building F, located at 12100 Park 35 Circle, Austin. 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 occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes before the hearing and will answer questions before and after the hearing.

SUBMITTAL OF COMMENTS

Comments may be submitted to Lisa Martin, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas, 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 98049-001-AD. Comments

must be received by 5:00 p.m., February 1, 1999. For further information, please contact Brian Christian, Policy Research Division, (512) 239- 1760.

Persons with disabilities who have special communication or accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

STATUTORY AUTHORITY

The amendment is proposed under the following sections of Texas Water Code (TWC): §5.103, which establishes the commission's general authority to adopt rules; and §5.105, which establishes the commission's authority to set policy by rule. Texas Government Code (TGC), §2001.004, which requires state agencies to adopt rules of practice, also applies to this rulemaking.

The proposed amendment implements TWC, §5.103 and §5.105 and TGC, §2001.004.

*§1.5. Records of the Agency.*

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

(d) Confidentiality of information.

(1) A person submitting information to the agency may request that the information be designated as classified data of the federal government, or as confidential. When an applicant or a person submitting a response to a bid solicitation submits classified data or confidential information, each [~~Each~~] claim of classified data or confidentiality must be made upon submission, and each page must be stamped "confidential." [~~, or the material will be considered available for public review.~~] Confidential information may include [~~is~~] information relating to trade secrets, secret processes, or economics of operation, or information that if made public would give any advantage to competitors or bidders . It may also include [~~, and includes~~] confidential information under 5 United States Code, §552(b)(4), [~~18 United States Code, §1905,~~] and special rules cited in 40 Code of Federal Regulations, §§2.301-2.309; provided, however, that the composition of any defined waste subject to the jurisdiction of the commission may not be regarded as confidential information.

(2) If the commission or executive director agrees with the designation, the agency will not provide the information for public inspection. If the agency receives an open records request for the information, the executive director will submit a request to the Texas attorney general as provided in subsection (b) of this section for a determination as to whether the information must be disclosed [~~The agency may return classified or confidential information to the person providing it if the person so requests and the information has served the purpose for which it was submitted~~].

(3) If the executive director does not agree with a claim of classified data or confidentiality [~~is not approved~~], the person submitting the information will be notified. If the agency receives an open records request for the information, and the person submitting the information continues to assert a claim of confidentiality, the executive director may submit a request to the Texas attorney general as provided in subsection (b) of this section for a determination as to whether the information must be disclosed [~~If the person elects to withdraw the information, it will be withheld from public review until withdrawn. If the person who submitted the information is an applicant, the executive director shall not consider the information upon preparing the draft permit, and the commission and executive director shall not consider the information upon determining to grant or deny the application~~].

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

(7) For Texas pollutant discharge elimination system applications, information required for the permit [~~relating to the contents of the~~] application [~~for permit~~] will not be considered confidential. This includes information submitted on the forms themselves and any attachments used to supply information required by the forms.

(8) (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 December 18, 1998.

TRD-9818458
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: April 8, 1999
For further information, please call: (512) 239–1966

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## Chapter 3. Definitions

**30 TAC §3.2**

The Texas Natural Resource Conservation Commission (commission) proposes an amendment to §3.2, concerning Definitions. The purpose of this action is to correct and update statutory references within some of the commission's existing definitions.

The commission has also conducted its review of the rules in 30 TAC Chapter 3 as required by the General Appropriations Act, Article IX, §167. The results of that review are concurrently published in the Rules Review section of this edition of the *Texas Register.*

EXPLANATION OF PROPOSED RULE

The commission's review of the rules in Chapter 3 showed the necessity of correcting statutory references. The proposed amendments to §3.2, concerning Definitions, correct statutory references in the definitions of "EPCRA," "NEPA," and "SDWA." In addition, the commission is making minor formatting changes to conform with *Texas Register* requirements.

FISCAL NOTE

Jeff Grymkoski, Director of the Strategic Planning and Appropriations Division, has determined that for the first five-year period the section is in effect there will be no significant fiscal implications for state or local government as a result of enforcing or administering the section.

PUBLIC BENEFIT

Mr. Grymkoski also has determined that for the first five years the section is in effect, the public benefit that is anticipated as a result of administering or enforcing the rule will be correct statutory references in certain rules. There is no anticipated economic cost to persons who are required to comply with the proposed section.

SMALL BUSINESS ANALYSIS

There are no economic costs to small businesses as a result of this rulemaking. The primary purpose of this action is to amend

the commission's procedural rules to correct certain statutory references.

DRAFT REGULATORY IMPACT ANALYSIS

The commission has reviewed the proposed rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and has determined that it is not subject to that statute because it does not meet the definition of major environmental rule as defined in that statute, and it does not meet any of the four applicability requirements listed in §2001.0225(a). The rule is not a major environmental rule because it concerns commission definitions with agency- wide application. In addition, the adoption of such rules is expressly required by Texas Water Code, §5.103, which requires the commission to adopt rules to carry out its powers, and §5.105, which requires the commission to adopt policy by rule.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment of this rule under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of this rule is to make minor corrections to statutory references. Adoption of this rule will substantially advance these purposes by providing specific provisions on these matters. Promulgation and enforcement of this rule will not burden private real property which is the subject of this rule because it concerns the commission's procedural rules.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed the rulemaking and found that the rule is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Coastal Management Program, nor will it affect any action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. This action concerns only the procedural rules of the commission and general agency definitions. Therefore, the proposed rule is not subject to the Coastal Management Program.

PUBLIC HEARING

A public hearing on this proposal will be held February 1, 1999, at 10:30 a.m., in Room 2210 of Texas Natural Resource Conservation Commission Building F, located at 12100 Park 35 Circle, Austin. 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 occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes before the hearing and will answer questions before and after the hearing.

SUBMITTAL OF COMMENTS

Comments may be submitted to Lisa Martin, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas, 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 98049-001-AD. Comments must be received by 5:00 p.m., February 1, 1999. For further information, please contact Brian Christian, Policy Research Division, (512) 239- 1760.

Persons with disabilities who have special communication or accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

STATUTORY AUTHORITY

The amendment is proposed under the following sections of Texas Water Code (TWC): §5.103, which establishes the commission's general authority to adopt rules; and §5.105, which establishes the commission's authority to set policy by rule. Texas Government Code (TGC), §2001.004, which requires state agencies to adopt rules of practice, also applies to this rulemaking.

The proposed amendment implements TWC, §5.103 and §5.105 and TGC, §2001.004.

*§3.2. Definitions.*

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

(1) Agency-The commission, executive director, and their staffs.

(2) APA-The Texas Administrative Procedure Act, Texas Government Code, Chapter 2001.

(3) Applicant-A person who submits an application to the commission.

(4) Application-A petition or written request to the commission for an order, permit, license, registration, standard exemption, or other approval.

(5) CERCLA (Superfund)-Comprehensive Environmental Response, Compensation, and Liability Act, 42 United States Code §§9601-9675 (1980, as amended).

(6) Chairman-The chairman of the commission.

(7) Chief clerk-The chief clerk of the commission or any authorized individual designated by the chief clerk to act in his or her place.

(8) Commission-The Texas Natural Resource Conservation Commission. In these rules, the term "commission" means the commissioners acting in their official capacity.

(9) Commissioner-A member of the commission.

(10) Contested case-A proceeding subject to the contested case requirements of the APA.

(11) CWA-Clean Water Act, Federal Water Pollution Control Act, 33 United States Code §§1251-1387 (1977, as amended).

(12) Enforcement action-An action, initiated by the executive director, seeking an enforcement order.

(13) Enforcement order-Any commission order enforcing or directing compliance with any provisions; whether of statutes, rules, regulations, permits or licenses, or orders; which the commission is entitled by law to enforce or with which the commission is entitled by law to compel compliance.

(14) EPA-The United States Environmental Protection Agency, the Administrator of the EPA, or his/her designee.

(15) EPCRA-The Emergency Planning and Community Right-To-Know Act, 42 United States Code §§11001 [~~11011~~]-11050 (1986).

(16) Executive director-The executive director of the commission, or any authorized individual designated to act for the executive director.

(17) FCAA-The Federal Clean Air Act, 42 United States Code §§7401-7671q (1970, as amended).

(18) FIFRA-The Federal Insecticide, Fungicide, and Rodenticide Act, 7 United States Code §§135-136y (1972, as amended).

(19) General counsel-The general counsel of the commission, or any authorized individual designated by the general counsel to act in his or her place.

(20) Judge-A SOAH administrative law judge.

(21) NEPA-The National Environmental Policy Act, 42 United States Code §§4321-4370 e [d] (1969, as amended).

(22) Open Meetings Act-Texas Open Meetings Act, Texas Government Code, Chapter 551.

(23) Party-Each person named or admitted as a party in a contested case.

(24) Permit-Written permission from the commission, including a license or other authorization, to engage in a business or occupation, to perform an act (such as to build, install, modify, or operate a facility), or to engage in a transaction, which would be unlawful absent such permission.

(25) Person-An individual, corporation, organization, government or governmental subdivision or agency, business trust, partnership, association, or any other legal entity.

(26) Pleadings-Written allegations filed by parties concerning their respective claims, such as applications, protests, complaints, claims, petitions, executive director preliminary reports, answers, motions, and other similar documents, including those submitted by the executive director and the public interest counsel.

(27) PPA-Pollution Prevention Act, 42 United States Code §§13101-13109 (1990).

(28) Protestant-Any person opposing, in whole or in part, an application.

(29) Public Information Act-Texas Public Information Act, Texas Government Code, Chapter 552.

(30) Public interest counsel-The public interest counsel of the commission, or any authorized individual designated by the public interest counsel to act in his or her place.

(31) RCRA-The Resource Conservation and Recovery Act, 42 United States Code §§6901-6991i (1976, as amended).

(32) SARA-Superfund Amendments and Reauthorization Act, Public Law Number 99-499, 100 Stat. 1613 (codified as amended in scattered sections of 10 United States Code, 26 United States Code, and 42 United States Code) (1986).

(33) SDWA-Safe Drinking Water Act, 42 [43] United States Code §§300f-300j-26 (1974, as amended).

(34) SOAH-The State Office of Administrative Hearings.

(35) TCAA-The Texas Clean Air Act, Texas Health and Safety Code, Chapter 382.

(36) TRCA-The Texas Radiation Control Act, Texas Health and Safety Code, Chapter 401.

(37) TSCA-Toxic Substances Control Act, 15 United States Code §§2601-2692 (1976, as amended).

(38) TSWDA-The Texas Solid Waste Disposal Act, Texas Health and Safety Code, Chapter 361.

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 December 18, 1998.

TRD-9818459
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: April 8, 1999
For further information, please call: (512) 239–1966

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## Chapter 5. Advisory Committees

### 30 TAC §5.5

The Texas Natural Resource Conservation Commission (commission) proposes an amendment to §5.5, concerning Composition of Advisory Committees. This action is necessary to correct a statutory reference in the commission's rules.

The commission has also conducted its review of the rules in 30 TAC Chapter 5, as required by the General Appropriations Act, Article IX, §167. The results of that review are concurrently published in the Rules Review section of this edition of the *Texas Register.*

EXPLANATION OF PROPOSED RULE

The proposed amendment to §5.5 changes the statutory reference to reflect the recodification of Vernon's Texas Civil Statutes, Article 6252-33, as Texas Government Code, Chapter 2110, by Senate Bill 898, 75th Legislature, 1997. The need for this minor modification was identified during the course of the commission's review of Chapter 5.

FISCAL NOTE

Jeff Grymkoski, Director of the Strategic Planning and Appropriations Division, has determined that for the first five-year period the section is in effect there will be no significant fiscal implications for state or local government as a result of enforcing or administering the section.

PUBLIC BENEFIT

Mr. Grymkoski has also determined that for the first five years the section is in effect, the anticipated public benefit will be accurate statutory references in certain procedural rules. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

SMALL BUSINESS ANALYSIS

There are no anticipated economic costs to small businesses as a result of this rulemaking. The primary purpose of this action is to clarify the commission's procedural rules by correcting statutory references.

DRAFT REGULATORY IMPACT ANALYSIS

The commission has reviewed the proposed rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and has determined that it is not subject to that statute because it does not meet the

definition of major environmental rule as defined in that statute, and it does not meet any of the four applicability requirements listed in §2001.0225(a). The rule is not a major environmental rule because it concerns commission procedural rules. In addition, the adoption of such rules is expressly required by Texas Government Code, Chapter 2110, which prescribes requirements for state agency advisory committees; and Texas Water Code, §5.103 and §5.105, which require the commission to adopt rules to carry out its powers and to adopt policy by rule, respectively.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment of this rule under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of this rule is to make a minor correction to a statutory reference. Adoption of this rule will substantially advance these purposes by providing specific provisions on these matters. Promulgation and enforcement of this rule will not burden private real property which is the subject of these rules because it concerns the commission's procedural rules.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed the rulemaking and found that the rule is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Coastal Management Program, nor will it affect any action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. This action concerns only the procedural rules of the commission and the composition of agency advisory committees. Therefore, the proposed rule is not subject to the CMP.

PUBLIC HEARING

A public hearing on this proposal will be held February 1, 1999, at 10:30 a.m., in Room 2210 of Texas Natural Resource Conservation Commission Building F, located at 12100 Park 35 Circle, Austin. 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 occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes before the hearing and will answer questions before and after the hearing.

SUBMITTAL OF COMMENTS

Comments may be submitted to Lisa Martin, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas, 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 98049-001-AD. Comments must be received by 5:00 p.m., February 1, 1999. For further information, please contact Brian Christian, Policy Research Division, (512) 239- 1760.

Persons with disabilities who have special communication or accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

STATUTORY AUTHORITY

The amendment is proposed under the following sections of Texas Water Code (TWC): §5.103, which establishes the commission's general authority to adopt rules; and §5.105, which establishes the commission's authority to set policy by rule. Texas Government Code (TGC), §2001.004, which requires state agencies to adopt rules of practice, also applies to this rulemaking. Finally, TGC, Chapter 2110, prescribes requirements governing advisory committees and also applies.

The proposed amendment implements TWC, §5.103 and §5.105 and TGC, §2001.004 and Chapter 2110.

*§5.5. Composition of Advisory Committees.*

The composition of advisory committees shall comply [~~be in accordance~~] with the requirements of Texas Government Code, Chapter 2110 [~~Texas Civil Statutes, Article 6252-33~~].

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 December 18, 1998.

TRD-9818460
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: April 8, 1999
For further information, please call: (512) 239–1966

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## Chapter 10. Commission Meetings

### 30 TAC §10.4

The Texas Natural Resource Conservation Commission (commission) proposes an amendment to §10.4, concerning Continuance of Matter Set for a Commission Meeting. The proposed amendment is recommended as a result of the commission's review of Chapter 10, as required by the General Appropriations Act, Article IX, §167. The proposed notice of review for this chapter is concurrently published in the Rules Review section of this edition of the *Texas Register.*

EXPLANATION OF PROPOSED RULE

The proposed amendment to §10.4 authorizes the commission's general counsel to remand a matter from a commission public meeting to the executive director at the request of the executive director or the public interest counsel. This modification would set out in rule certain provisions of a commission resolution from November 25, 1997, which authorized a remand of an item scheduled for a commission public meeting. The resolution is not well known or easily available to the public. Therefore, the commission determined the need to put this provision in its rules. A conforming change is also proposed to the section's title.

FISCAL NOTE

Jeff Grymkoski, Director of the Strategic Planning and Appropriations Division, has determined that for the first five-year period the section is in effect there will be no significant fiscal implications for state or local government as a result of enforcing or administering the section.

PUBLIC BENEFIT

Mr. Grymkoski has also determined that for the first five years the section is in effect, the public benefit that is anticipated to result from administering and enforcing the rule will be a more streamlined procedure for remanding certain matters to

the executive director. This rule would set out by rule certain requirements of a resolution adopted by the commission on November 25, 1997, which authorized a remand of an item scheduled for a commission public meeting. As a result, there is no anticipated economic cost to persons who are required to comply with the section as proposed.

SMALL BUSINESS ANALYSIS

There are no anticipated adverse effects on small businesses as a result of this rulemaking. The primary purpose of this action is to set out by rule certain requirements of a resolution adopted by the commission.

DRAFT REGULATORY IMPACT ANALYSIS

The commission has reviewed the proposed rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and has determined that it is not subject to that statute because it does not meet the definition of major environmental rule as defined in that statute, and it does not meet any of the four applicability requirements listed in §2001.0225(a). The rule is not a major environmental rule because it concerns commission procedural rules. In addition, the adoption of such rules is expressly required by the Administrative Procedure Act, Texas Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; and Texas Water Code, §5.103 and §5.105, which require the commission to adopt rules to carry out its powers and to adopt policy by rule, respectively.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment of this rule under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of this rule is to streamline agency processes. Adoption of this rule will substantially advance these purposes by providing specific provisions on these matters. Promulgation and enforcement of this rule will not burden private real property which is the subject of this rule because it concerns the commission's procedural rules.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed the rulemaking and found that the rule is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Coastal Management Program, nor will it affect any action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. This action concerns only the procedural rules of the commission and the conduct of certain actions. Therefore, the proposed rule is not subject to the Coastal Management Program.

PUBLIC HEARING

A public hearing on this proposal will be held February 1, 1999, at 10:30 a.m., in Room 2210 of Texas Natural Resource Conservation Commission Building F, located at 12100 Park 35 Circle, Austin. 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 occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes before the hearing and will answer questions before and after the hearing.

SUBMITTAL OF COMMENTS

Comments may be submitted to Lisa Martin, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas, 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 98049-001-AD. Comments must be received by 5:00 p.m., February 1, 1999. For further information, please contact Brian Christian, Policy Research Division, (512) 239- 1760.

Persons with disabilities who have special communication or accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

STATUTORY AUTHORITY

The amendment is proposed under the following sections of Texas Water Code (TWC): §5.103, which establishes the commission's general authority to adopt rules; and §5.105, which establishes the commission's authority to set policy by rule. Texas Government Code (TGC), §2001.004, which requires state agencies to adopt rules of practice, also applies to this rulemaking.

The proposed amendment implements TWC, §5.103 and §5.105 and TGC, §2001.004.

*§10.4. Continuance or Remand of Matter Set for a Commission Meeting.*

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

(d) The general counsel may remand a matter from the commission's agenda to the executive director if the executive director or the public interest counsel requests a remand.

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 December 18, 1998.

TRD-9818461
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: April 8, 1999
For further information, please call: (512) 239–1966

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## Chapter 114. Control of Air Pollution from Motor Vehicles

The commission proposes amendments to §114.1, concerning Definitions; and new §§114.301, 114.302, 114.305-114.307, and 114.309, concerning Requirements for Gasoline Volatility and Sulfur Content. The commission proposes these revisions to Chapter 114, concerning Control of Air Pollution from Motor Vehicles, and to the State Implementation Plan (SIP) in order to control ground-level ozone in attainment and near-nonattainment areas and ozone nonattainment areas.

The proposed revisions are one element of the new Texas Clean Air Strategy (TCAS), which includes a variety of options in order to meet the national ambient air quality standards (NAAQS) for ground-level ozone. The purpose of the strategy is to help keep attainment and near-nonattainment areas, such as Austin, Corpus Christi, Longview/Tyler/Marshall, San Antonio, and Vic-

toria in compliance with the federal eight-hour ozone standard of 80 parts per billion (ppb). The new strategy is also designed to help the Beaumont/Port Arthur, Dallas/Fort Worth, and Houston/ Galveston ozone nonattainment areas reach attainment. The TCAS takes into account recent science which shows that regional approaches may provide improved control of ozone air pollution. In particular, staff has conducted photochemical grid modeling which indicates that implementation of cleaner burning gasoline, Stage I vapor recovery, and national low-emitting vehicles (NLEV) will result in ozone reductions (peak 8-hour average) of 1 to 4 ppb in much of east and southeast Texas. Additional details concerning the need for a regional strategy are given in the Background section of this preamble.

The proposed revisions would implement the cleaner burning gasoline option of the TCAS. The proposed cleaner burning gasoline will lower the evaporative emissions of volatile organic compounds (VOC), as well as improve the catalytic converter performance through reductions in gasoline sulfur which in turn results in reduced emissions of VOC and oxides of nitrogen ($NO_x$) from fuel combustion. Because $NO_x$ and VOC are precursors to ground-level ozone formation, reduced emissions of $NO_x$ and VOC will result in ground-level ozone reductions. To comply with the proposed state cleaner burning gasoline regulations, refiners will need to ensure gasoline distributed to the cleaner burning gasoline zone meets the specifications set forth in these rules. The proposed rules require that gasoline produced for delivery and ultimate sale to the consumer in the affected area does not exceed 7.8 pounds per square inch absolute (psia) Reid vapor pressure (RVP) for the seasonal control period of May 1 through October 31 of each year, beginning May 1, 2000. The commission specifically seeks comment on the length of the seasonal control period. The proposed rules further require that gasoline sulfur levels do not exceed 150 parts per million (ppm) year-round, beginning May 1, 2003. The rules would further provide for counties or large cities to opt into these regulations earlier than proposed here provided certain conditions are met.

The proposed new rules will require cleaner gasoline in the following 95 counties in the eastern half of Texas: Anderson, Angelina, Aransas, Atascosa, Austin, Bastrop, Bee, Bell, Bexar, Bosque, Bowie, Brazos, Burleson, Caldwell, Calhoun, Camp, Cass, Cherokee, Colorado, Comal, Cooke, Coryell, De Witt, Delta, Ellis, Falls, Fannin, Fayette, Franklin, Freestone, Goliad, Gonzales, Grayson, Gregg, Grimes, Guadalupe, Harrison, Hays, Henderson, Hill, Hood, Hopkins, Houston, Hunt, Jackson, Jasper, Johnson, Karnes, Kaufman, Lamar, Lavaca, Lee, Leon, Limestone, Live Oak, Madison, Marion, Matagorda, McLennan, Milam, Morris, Nacogdoches, Navarro, Newton, Nueces, Panola, Parker, Polk, Rains, Red River, Refugio, Robertson, Rockwall, Rusk, Sabine, San Jacinto, San Patricio, San Augustine, Shelby, Smith, Somervell, Titus, Travis, Trinity, Tyler, Upshur, Van Zandt, Victoria, Walker, Washington, Wharton, Williamson, Wilson, Wise, and Wood.

The proposed new rules would also apply in the 15 counties of the Beaumont/Port Arthur, Dallas/Fort Worth, and Houston/ Galveston ozone nonattainment areas: Brazoria, Chambers, Collin, Dallas, Denton, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, Tarrant, and Waller Counties. Currently, the Houston/Galveston and Dallas/Fort Worth ozone nonattainment areas have their own cleaner burning gasoline, federal reformulated gasoline (RFG). In these areas, federal rules prohibit the sale of gasoline which is not certified by the U.S. Environmental Protection Agency (EPA) as federal RFG. Consequently, gasoline in these areas will have to continue to meet the federal RFG requirements in addition to the proposed cleaner gasoline rules.

The commission solicits comments regarding possible city, county, or state incentives for the early implementation of the RVP and/or sulfur requirements proposed by this rule. The commission further solicits comments on the feasibility and benefit of requiring a 150 part per million sulfur average instead of the proposed 150 ppm cap, and input on an appropriate level to set a corresponding sulfur cap to ensure a 150 ppm average sulfur level.

The commission is also soliciting comment on the timing and level of the federal gasoline sulfur regulations and their impact on these rules. Specifically: 1) if the EPA promulgates by May 1, 2001, regulations to limit sulfur in gasoline, and 2) these federal regulations are for a sulfur level equal to or below what is proposed by this rule, and 3) the federal rules are finalized to require implementation within one year of the implementation date proposed in these rules today, and 4) the federal rules cover an area equal to or greater than the coverage area proposed in today's rules; then should the commission modify, withdraw, or repeal these sulfur rules or should the rules be revised upon adoption to automatically expire.

The commission solicits comments on the separation of the RVP and sulfur requirements of this rule proposal into two separate rule packages for adoption. The advantage of separation is the commission's ability to have the two elements, RVP and sulfur, move forward at different speed if necessary. The disadvantage of separation would be the need to request separate waivers under the Federal Clean Air Act (FCAA) §211(c)(4)(C) for each rule thus losing the ability to claim the combined air quality benefits in the waiver request.

The commission's proposed rules do not address the use of the controversial gasoline additive methyl tertiary butyl ether (MTBE). MTBE has beneficial gasoline blending characteristics which allow some gasoline refiners to meet these requirements more readily, however, it also has some negative water quality impacts if gasoline with MTBE is spilled and contaminates the groundwater. Therefore, the commission solicits comments on the prohibition of the use of MTBE in gasoline for the 110 counties affected by these rules.

BACKGROUND At the time the 1990 FCAA Amendments were enacted, the focus on controlling ozone pollution was centered on local controls. However, for many years an ever increasing number of air quality professionals have felt that ozone is a regional problem requiring regional strategies in addition to local control programs. As nonattainment areas across the United States prepared attainment demonstration SIPs in response to the 1990 FCAA Amendments, several areas found that modeling attainment was made much more difficult, if not impossible, because of high ozone and ozone precursor levels entering from the boundaries of their respective modeling domains, commonly called transport.

The commission has conducted air quality modeling and upper air monitoring that found regional air pollution should be considered when studying air quality in Texas' ozone nonattainment areas. This work is supported by research conducted by the Ozone Transport Assessment Group (OTAG), the most comprehensive attempt ever undertaken to understand and quantify the transport of ozone. Both the commission and OTAG study

results point to the need to take a regional approach, such as that proposed in the TCAS, to controlling air pollutants.

As part of the Coastal Oxidant Assessment for Southeast Texas (COAST) project, the commission and its contractor Environ, Inc., conducted regional-scale modeling to develop future-year boundary conditions for the COAST modeling domain. The emissions inventory used in this modeling was based on the OTAG emission inventory and the modeling was conducted for a domain covering most of Texas as well as several southern states.

During the OTAG process, the commission's modeling staff ran several sensitivity analyses using this regional modeling setup to assess the impact of potential OTAG reductions on Texas. Applying the OTAG reductions across the domain (clean gasoline (federal reformulated gasoline) stationary source controls, the NLEV program, ozone action days, and a series of national rules to be promulgated by the EPA among others), compared to the case of no reductions, indicated that modeled reductions would significantly reduce ozone throughout most of the eastern half of Texas. Overall the modeling indicated that a regional reduction strategy would be beneficial across the wide area of the state.

During modeling for the Houston/Galveston attainment demonstration SIP, the commission's modeling staff conducted sensitivity analyses to determine the benefits regional reductions might have on Houston/Galveston, when applied simultaneously with local reductions. Unlike the commission's regional modeling exercises discussed above, these model runs offer an opportunity to assess separately the benefits of reductions made within and outside a region, since model runs with and without the regional reductions scenarios in Houston/Galveston were run. Modeling runs were completed to evaluate the 8-hour average ozone concentrations in the COAST modeling domain for September 8, 1993 with 2007 projected emissions and assuming a reduction of 70% $NO_x$ and 15% VOC in the 8-county Houston/Galveston area. Even with the large reductions in Houston/Galveston much of the upper Texas Coast is well above the 8-hour standard. Also, Austin, Victoria, and Corpus Christi show 8-hour average concentrations above 80 ppb. The benefit of applying OTAG reductions outside the Houston/Galveston 8-county area clearly showed additional ozone benefits of between 5 and 10 ppb in Houston/Galveston.

Additional modeling has been completed by commission staff assessing the potential benefits of the TCAS. This modeling indicates that mobile source reductions (cleaner gasoline, NLEVs, and Stage I vapor recovery) have a potential to reduce peak 8-hour ozone averages of between 1 and 4 ppb in much of east and southeast Texas, with the greatest reductions seen in the Austin and San Antonio areas. Modeling of the combined point source and mobile source strategies shows a large area, including near-nonattainment and attainment areas, of reductions in peak 8-hour average ozone above 3 ppb.

This modeling provides part of the evidence of the benefit of regional reductions on Texas' nonattainment areas and further provides justification that a regional strategy will help maintain air quality in attainment and near-nonattainment areas. Conclusions from the commission's work are supported by OTAG studies that also illustrate the importance of implementing a regional air quality control strategy.

EXPLANATION OF PROPOSED RULES The proposed changes to §114.1, concerning Definitions, add a new definition of reformulated gasoline.

The proposed new §114.301, concerning Control Requirements for Reid Vapor Pressure, limits gasoline to an RVP of 7.8 psia in 95 counties in the eastern half of Texas and in the 15 counties of the Beaumont/Port Arthur, Dallas/Fort Worth, and Houston/Galveston ozone nonattainment areas. This proposed RVP limit is seasonal (May 1 through September 16 of each year), beginning May 1, 2000. In addition, the proposed new §114.301 specifies that requirements such as federal RFG will also continue to apply in the 4-county Dallas/Fort Worth ozone nonattainment area (Collin, Dallas, Denton, and Tarrant Counties) and the 8-county Houston/Galveston ozone nonattainment area (Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties).

The proposed new §114.302, concerning Control Requirements for Sulfur, limits gasoline to a sulfur content of 150 ppm in 95 counties in the eastern half of Texas and in the 15 counties of the Beaumont/Port Arthur, Dallas/Fort Worth, and Houston/Galveston ozone nonattainment areas. This sulfur limit would apply year-round, beginning on May 1, 2003. In addition, the proposed new §114.302 specifies that requirements such as federal RFG will also continue to apply in the 4- county Dallas/Fort Worth ozone nonattainment area and the 8-county Houston/Galveston ozone nonattainment area.

The proposed new §114.305, concerning Approved Test Methods, establishes American Society for Testing and Materials (ASTM) Test Method D5191, 40 Code of Federal Regulations (CFR) Part 80, Appendix D (Sampling Procedures for Fuel Volatility), and 40 CFR Part 80, Appendix E (Test For Determining Reid Vapor Pressure of Gasoline and Gasoline-Oxygenate Blends) as the approved test methods for determining gasoline volatility, and establishes ASTM Test Methods D2622 and D5453 as the approved test methods for determining sulfur content. The proposed new §114.305 also includes a paragraph which authorizes the use of test methods other than those specifically listed in §114.305, provided that any new test method is validated using the procedures in 40 CFR 63, Appendix A, Test Method 301, with the executive director acting as the administrator. This new paragraph is being proposed because in some unique situations the listed test methods may be inappropriate. The new paragraph increases flexibility by allowing the use of additional test methods which may be more cost-effective and more appropriate in certain unique situations.

The proposed new §114.306, concerning Recordkeeping Requirements, requires the owner or operator of any gasoline storage vessel, gasoline terminal, or gasoline bulk plant subject to the provisions of §114.301 and §114.302 to maintain records of the RVP and sulfur content of gasoline.

The proposed new §114.307, concerning Exemptions, establishes exemptions for gasoline used in agriculture, aviation, and any tank, reservoir, storage vessel, or other stationary container with a nominal capacity of 500 gallons (1,893 liters) or less. The exemption for aviation gasoline ("av- gas") is proposed because aircraft have fuel performance requirements which can not be met by gasoline for land-based motor vehicles. The exemptions for agricultural and small capacity gasoline storage tanks are proposed because these tanks often have such a low throughput that they might still contain higher RVP gasoline at the start of the seasonal control period. In addition, the proposed new

§114.307 establishes an exemption from the recordkeeping requirements for the owner or operator of motor vehicle fuel dispensing facilities.

The proposed new §114.308, concerning Alternative Early Implementation, allows a county, or a city with a population of 200,000 or more, according to the most recent federal census, in a covered county to request the early implementation of RVP and/or sulfur controls for the area under their jurisdiction. The commission has proposed to limit this ability to cities of 200,000 or more due to gasoline distribution concerns. Early controls, or phased in controls, for RVP and/or sulfur are available to these areas as long as the levels are not more stringent than those proposed by this rule. The proposed new §114.308 further provides that the commission may enter an order adopting some or all of the provisions of an area's request for accelerated RVP and/or sulfur controls upon a finding that the requested controls are practicable and needed to improve air quality.

The commission has received final resolutions from the cities of San Antonio and Austin, and the Alamo Area Council of Governments requesting RVP and/or sulfur controls early. The commission is soliciting comments on these requests. If additional final resolutions are received prior to the close of comments (February 1, 1999, 5 p.m.), the commission will act on these requests concurrent with the final adoption of this rulemaking and SIP revision. If the commission adopts some or all of the timely requests, the commission order would become effective upon the effective date of the rules, and would be codified in the adopted rule language.

The proposed new §114.309, concerning Affected Counties, specifies the counties which are subject to the new requirements.

FISCAL NOTE Jeff Grymkoski, Director, Strategic Planning and Appropriations Division, has determined that for the first five-year period the sections are in effect there will be insignificant fiscal implications for state and local governments as a result of enforcing or administering the proposed rules. Enforcement of the proposed rules would primarily occur through inspection of on-site records at gasoline distribution facilities which are currently routinely inspected. Specifically, local air pollution control programs and the Field Operations and Enforcement Divisions of the Office of Compliance and Enforcement are responsible for enforcing the Chapter 115 gasoline terminal rules in the regional affected area. (These rules are anticipated to be proposed in concurrent rulemaking.) Most of the gasoline terminals which will have to comply with the Chapter 115 gasoline terminal rules are currently subject to air permits and/or to similar requirements under 40 CFR 63, Subpart R (the Gasoline Distribution National Emission Standard for Hazardous Air Pollutants), and therefore are already being inspected for compliance. The remainder will be inspected for compliance as a result of the proposed Chapter 115 gasoline terminal rules. Consequently, no additional gasoline terminals in the affected area will need to be inspected for compliance as a result of the proposed cleaner gasoline rules. Therefore, if the field inspectors enforce the gasoline requirements when conducting their routine inspections at gasoline terminals, the fiscal implications for state and local governments as a result of enforcing or administering the proposed cleaner gasoline rules will be insignificant.

PUBLIC BENEFIT Mr. Grymkoski has also determined that for each year of the first five years the proposed revisions are in effect, the public benefit anticipated as a result of implementing the sections will be satisfaction of requirements of the FCAA, and reductions of ground-level ozone in the 110 counties for which the cleaner gasoline rules are proposed. The costs to small businesses, persons, or businesses who are required to comply with the rules as proposed are as follows.

EPA has estimated the cost of limiting the sulfur content in gasoline to 150 ppm to be approximately 1.1 to 1.8 cents per gallon for Gulf Coast and East Coast refiners. (See *EPA Staff Paper on Gasoline Sulfur Issues, EPA420-R-98-005* (May 1, 1998), Tables E2 and 6.) EPA's cost estimates include the cost of potential decreases in fuel economy due to the use of oxygenates for reducing sulfur content for those refiners who may choose to use oxygenates to reduce sulfur. The costs are based upon estimates of summer production costs, since the summer season is a refiner's most severe sulfur control period. Since the proposed sulfur limitations are year-round requirements, the costs were projected over the entire year. A separate cost estimate performed by MathPro, a contractor for the American Petroleum Institute, estimated the cost of limiting the sulfur content in gasoline to 150 ppm to be approximately 2.7 cents per gallon. (See *EPA Staff Paper on Gasoline Sulfur Issues, EPA420-R-98-005* (May 1, 1998), Tables E2 and 7.) The MathPro study resulted in higher estimated costs due to different inputs. For example, the MathPro study included the cost of sulfur control at refiners in the Upper Midwest, which are expected to be higher than those of the Gulf Coast and East Coast refiners. According to the calculations for EPA's *Final Regulatory Impact Analysis for Reformulated Gasoline* (December 13, 1993) found in Table VI-A5: Cost-Effectiveness Analysis for VOC Control Region 1, the estimated cost-effectiveness of limiting the sulfur content in gasoline to 150 ppm is approximately $1297 per ton of VOC and $NO_x$ reduced. (The area identified as VOC Control Region 1 includes Texas.) OTAG estimated the costs and effectiveness of 150 ppm sulfur. OTAG estimated the cost to be between 1.2 and 3.0 cents per gallon and the cost-effectiveness to range between $2,200 - $8,500 per ton of VOC and $NO_x$ reduced. (See: *Mobile Source Assessment: $NO_x$ and VOC Reduction Technologies for Application by the Ozone Transport Assessment Group.)*

A number of cost estimates for limiting the RVP of gasoline to 7.8 psia were completed by EPA and other groups in the late 1980's and early 1990's. Since that time, most low RVP fuel cost estimates have been analyzed for lowering RVP from 9.0 to around 7.0 psia. Up-to-date cost estimates for 7.8 psia fuel are therefore unavailable. However, there are several recent cost estimates for 7.2 to 6.5 psia fuels. It is logical to assume that cost estimates for 7.2 to 6.5 psia fuel will be overestimated for 7.8 psia fuel. Therefore, the following OTAG and EPA cost estimates for low RVP gasoline are likely to be higher than for the 7.8 psia gasoline proposed. OTAG estimated that lowering the RVP of gasoline from 9.0 psia to 7.1 psia would cost between 0.7 and 1.6 cents per gallon and have a cost- effectiveness of between $710 and $1,600 dollars per ton of VOC reduced. (See: *Mobile Source Assessment: $NO_x$ and VOC Reduction Technologies for Application by the Ozone Transport Assessment Group)* . According to the calculations for EPA's *Final Regulatory Impact Analysis for Reformulated Gasoline* (December 13, 1993) found in Table VI- A5, the incremental cost increase for 7.2 psia RVP fuel was 0.12 cents per gallon. EPA estimated the cost-effectiveness for VOC Control Region 1 to be approximately $270 per ton of VOC reduced. By comparison, the EPA estimated the cost-

effectiveness of recently promulgated motor vehicle control programs in EPA's *Tier 2 Study, EPA420-R-98-008* (July 31, 1998) as follows: 1) $6000 per ton of VOC reduced and $1380 to $1800 per ton of $NO_x$ reduced for Tier 1 standards for light-duty vehicles and light-duty trucks; 2) $457 to $552 per ton of VOC reduced and $150 to $172 per ton of $NO_x$ reduced for supplemental federal test procedure (SFTP) standards for aggressive driving; 3) $2050 to $2574 per ton of $NO_x$ reduced for SFTP standards for emissions with the air conditioner on; and 4) $1974 per ton of VOC reduced and $1974 per ton of $NO_x$ reduced for on-board diagnostics requirements.

The commission's analysis revealed that the smallest refiner affected by the proposed sulfur and RVP limits has well over $1 million in annual gross receipts. Consequently, the refiners which would have to comply with the proposed sulfur and RVP limits do not meet the definition of "small business" as defined in Texas Government Code, §2006.001, concerning Definitions. Using EPA cost estimates and assuming a retail gasoline price of $1.00 per gallon and a throughput of 5000 gallons per month, the smallest gasoline stations affected by the proposed sulfur limits would incur a cost of approximately $1.10 to $1.80 per $100 of annual gasoline sales. By comparison, the largest gasoline station affected by the proposed sulfur limits (those with a throughput of at least 200,000 gallons per month) would likewise incur a cost of approximately $1.10 to $1.80 per $100 of annual gasoline sales. Using EPA cost estimates and assuming a retail gasoline price of $1.00 per gallon and a throughput of 5000 gallons per month, the smallest gasoline stations affected by the proposed RVP limits would incur a cost of approximately $.12 per $100 of annual gasoline sales. By comparison, the largest gasoline station affected by the proposed RVP limits (those with a throughput of at least 200,000 gallons per month) would also incur a cost of approximately $.12 per $100 of annual gasoline sales. In fact, the cost of the proposed sulfur and RVP limits per $100 of annual gasoline sales for all gasoline stations will be the same, regardless of the estimated increase in the price of gasoline. A similar analysis for other businesses in the gasoline distribution network, such as gasoline bulk plants and gasoline terminals, and businesses which must purchase retail gasoline as part of their operations likewise revealed that the cost per $100 of annual sales for large and small businesses will be the same, again regardless of the estimated increase in the price of gasoline.

DRAFT REGULATORY IMPACT ANALYSIS The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking is not subject to §2001.0225 because although it meets the definition of a "major environmental rule" as defined in the act, it does not meet any of the four applicability requirements listed in §2001.0225(a). Specifically, the emission limitations and control requirements within this proposal were developed in order to meet the NAAQS for ozone set by EPA under §109 of the 1990 FCAA, and therefore meet a federal requirement. States are primarily responsible for ensuring attainment and maintenance of NAAQS once EPA has established them. Under §110 of the FCAA and related provisions, states must submit, for approval by EPA, SIPs that provide for the attainment and maintenance of NAAQS through control programs directed to sources of the pollutants involved. This proposal is not an express requirement of state law, but was developed specifically in order to meet the air quality standards established under federal law as NAAQS. Specifically, this proposal is intended to help bring ozone nonattainment areas into compliance, and help keep attainment and near-nonattainment areas from going into nonattainment. This proposal does not involve an agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program, and was not developed solely under the general powers of the agency. The commission invites public comment on the draft regulatory impact analysis.

TAKINGS IMPACT ASSESSMENT The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code Annotated, §2007.043. The following is a summary of that assessment. The specific purpose of the rulemaking is to establish gasoline RVP and sulfur content limits in 95 counties in the eastern half of Texas and in the 15 counties of the Beaumont/Port Arthur, Dallas/Fort Worth, and Houston/Galveston ozone nonattainment areas. This rulemaking is part of the new TCAS which includes a variety of options to control ground-level ozone to achieve the NAAQS for ozone. The purpose is to help keep ozone attainment and near-nonattainment areas, such as Austin, Corpus Christi, Longview/Tyler/Marshall, San Antonio, and Victoria in compliance with the federal ozone standard, and to help the Beaumont/Port Arthur, Dallas/Fort Worth, and Houston/Galveston ozone nonattainment areas reach attainment. Promulgation and enforcement of the rules may possibly burden private real property because this rulemaking action may result in investment in the permanent installation of new refinery processing equipment. Although the rule revisions do not directly prevent a nuisance, prevent an immediate threat to life or property, or prevent a real and substantial threat to public health and safety, the rule revisions fulfill a federal mandate under §110 of the 1990 Amendments to the FCAA. Specifically, the emission limitations and control requirements within this proposal were developed in order to meet the NAAQS for ozone set by EPA under §109 of the FCAA. States are primarily responsible for ensuring attainment and maintenance of the NAAQS once EPA has established them. Under §110 of the FCAA and related provisions, states must submit, for approval by EPA, SIPs that provide for the attainment and maintenance of the NAAQS through control programs directed to sources of the pollutants involved. Therefore, the purpose of the rule proposal is to implement cleaner burning gasoline which is necessary for the state to meet the air quality standards established under federal law as NAAQS. Consequently, the following exemption applies to these rules: an action reasonably taken to fulfill an obligation mandated by federal law.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW The commission has determined that this rulemaking action is 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.), the rules of the Coastal Coordination Council (31 TAC Chapters 501-506), and the commission's rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. As required by 31 TAC §505.11(b)(2) and 30 TAC §281.45(a)(3) relating to actions and rules subject to the CMP, agency rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission has reviewed this action for consistency, and has determined that this rulemaking is consistent with the applicable CMP goals and policies. The primary CMP policy applicable to this rulemaking action is the policy that commission rules comply with regulations at 40 CFR, to protect

and enhance air quality in the coastal area. No new sources of air contaminants will be authorized by the rule amendments, and the amendments are expected to result in a reduction in VOC and $NO_x$ emissions by reducing emissions resulting from the fueling and operation of motor vehicles. Therefore, in compliance with 31 TAC §505.22(e), the commission affirms that this rulemaking 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.

PUBLIC HEARINGS Public hearings on this proposal will be held in Austin on January 25, 1999 at 11:00 a.m. in Building F, Room 2210 at the Texas Natural Resource Conservation Commission Complex, located at 12100 Park 35 Circle; in San Antonio on January 25, 1999 at 7:00 p.m. at the San Antonio City Council Chambers located at 103 Main Plaza; in Lufkin on January 26, 1999 at 2:00 p.m. at the Lufkin City Council Chambers located at 300 East Shepherd, Room 102; and in Tyler on January 26, 1999 at 7:00 p.m. at the Tyler Junior College Regional Training and Development Complex located at 1530 South Southwest Loop 323, Room 104. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearings; however, an agency staff member will be available to discuss the proposal 30 minutes before each hearing 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 hearing should contact the Office of Policy and Regulatory Development at (512) 239-4900. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS Written comments may be mailed to Heather Evans, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 98058-114-AI. Comments must be received by 5:00 p.m., February 1, 1999. For further information, please contact Bill Jordan, Air Policy and Regulations Division, at (512) 239-2583, or Eddie Mack, Air Policy and Regulations Division, at (512) 239-1488.

## Subchapter A. Definitions

### 30 TAC §114.1

STATUTORY AUTHORITY The amendments are proposed under the Texas Health and Safety Code (Vernon 1992), the Texas Clean Air Act (TCAA), §382.011, which provides the commission with the authority to establish the level of quality to be maintained in the state's air and the authority to control the quality of the state's air; §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.012, which requires the commission to develop plans for protection of the state's air; and §382.019, which provides the commission with the authority to regulate emissions from motor vehicles.

The proposed amendments implement the Health and Safety Code, §382.017.

*§114.1. Definitions.*

Unless specifically defined in the 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 words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1)-(13) (No change.)

(14) Reformulated gasoline - Gasoline that has been certified as a reformulated gasoline under the federal certification regulations adopted in accordance with §211 (k) of the Federal Clean Air Act (42 USC §7545 (k)).

(15) [~~(14)~~] Revised Texas I/M State Implementation Plan (SIP) - The portion of the Texas SIP which includes the procedures and requirements of the vehicle emissions inspection and maintenance program as adopted by the commission May 29, 1996, in accordance with the 40 CFR Part 51, Subpart S, issued November 5, 1992; the EPA flexibility amendments dated September 18, 1995; and the National Highway Systems Designation Act of 1995. A copy of the revised Texas I/M SIP is available at the Texas Natural Resource Conservation Commission, 12100 Park 35 Circle, Austin, Texas, 78753; mailing address: P.O. Box 13087, MC 166, Austin, Texas 78711-3087.

(16) [~~(15)~~] Tier I federal emission standards - The standards are defined in the FCAA as amended in Section 202, USC Title 42 Section 7521, and in 40 CFR, Part 86. The phase-in of these standards began in model year 1994.

(17) [~~(16)~~] Ultra low emission vehicle - A vehicle as defined by 40 CFR, Part 88.

(18) [~~(17)~~] Zero emission vehicle - A vehicle as defined by 40 CFR, Part 88.

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 December 18, 1998.

TRD-9818442
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: May 26, 1999
For further information, please call: (512) 239–1970

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## Subchapter H. Gasoline Volatility and Sulfur Content

### 30 TAC §§114.301, 114.302, 114.305–114.309

STATUTORY AUTHORITY

The new sections are proposed under the Texas Health and Safety Code (Vernon 1992), the Texas Clean Air Act (TCAA), §382.011, which provides the commission with the authority to establish the level of quality to be maintained in the state's air and the authority to control the quality of the state's air; §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.012, which requires the commission to develop plans for protection of the state's air; and §382.019, which provides the commission with the authority to regulate emissions from motor vehicles.

The proposed new sections implement the Health and Safety Code, §382.017.

*§114.301. Control Requirements for Reid Vapor Pressure.*

(a) In the counties listed in §114.309 of this title (relating to Affected Counties), no person shall sell, offer for sale, transfer, store, or hold in any stationary tank, reservoir, or other container any gasoline which may ultimately be used to power any gasoline engine in the affected counties which exceeds 7.8 pounds per square inch Reid vapor pressure from May 1 through October 31 of each year, beginning May 1, 2000.

(b) The requirements in subsection (a) of this section are in addition to and do not override any other requirements for fuel content in these counties, such as the requirements for federal reformulated gasoline.

*§114.302. Control Requirements for Sulfur.*

(a) In the counties listed in §114.309 of this title (relating to Affected Counties), no person shall sell, offer for sale, transfer, store, or hold in any stationary tank, reservoir, or other container any gasoline which may ultimately be used to power any gasoline engine in the affected counties which exceeds 150 parts per million sulfur, beginning May 1, 2003 and continuing year-round.

(b) The requirements in subsection (a) of this section are in addition to and do not override any other requirements for fuel content in these counties, such as the requirements for federal reformulated gasoline.

*§114.305. Approved Test Methods.*

Compliance with the Reid vapor pressure and sulfur content limitations of §114.301 and §114.302 of this title (relating to Control Requirements for Reid Vapor Pressure; and Control Requirements for Sulfur) shall be determined by applying one or more of the following test methods and procedures, as appropriate.

(1) Use the following test methods for determining gasoline volatility:

(A) American Society for Testing and Materials (ASTM) Test Method D5191 for the measurement of Reid vapor pressure;

(B) Sampling Procedures for Fuel Volatility (40 Code of Federal Regulations (CFR) Part 80, Appendix D); and

(C) Test For Determining Reid Vapor Pressure of Gasoline and Gasoline-Oxygenate Blends (40 CFR Part 80, Appendix E).

(2) Use ASTM Test Methods D2622 or D5453 for determining sulfur content.

(3) Minor modifications to these test methods may be used, if approved by the executive director.

(4) Test methods other than those specified in paragraphs (1) and (2) of this section, may be used if validated by 40 CFR 63, Appendix A, Test Method 301 (effective December 29, 1992). For the purposes of this paragraph, substitute "executive director" each place that Test Method 301 references "administrator."

*§114.306. Recordkeeping Requirements.*

The owner or operator of any gasoline storage vessel, gasoline terminal, or gasoline bulk plant subject to the provisions of §114.301 and §114.302 of this title (relating to Control Requirements for Reid Vapor Pressure; and Control Requirements for Sulfur) shall maintain records of the Reid vapor pressure and sulfur content of all gasoline stored or transferred during the compliance period. All records shall be maintained for two years and be made available for review by the executive director, U.S. Environmental Protection Agency, and local air pollution control agencies.

*§114.307. Exemptions.*

The following exemptions apply in the counties listed in §114.309 of this title (relating to Affected Counties).

(1) The following uses are exempt from §§114.301, 114.302, 114.305, and 114.306 of this title (relating to Control Requirements for Reid Vapor Pressure; Control Requirements for Sulfur; Approved Test Methods; and Recordkeeping Requirements):

(A) any stationary tank, reservoir, or other container:

*(i)* used exclusively for the fueling of implements of agriculture; or

*(ii)* with a nominal capacity of 500 gallons (1,893 liters) or less; and

(B) all gasoline intended for use as aviation gasoline ("av-gas").

(2) The owner or operator of a motor vehicle fuel dispensing facility is exempt from the recordkeeping requirements of §114.306 of this title.

*§114.308. Alternative Early Implementation.*

(a) A county, or a city with a population of 200,000 or more according to the most recent federal census located in a county, specified in §114.309 of this title (relating to Affected Counties) may request early implementation of Reid Vapor Pressure (RVP) requirements so long as they are not more stringent than the requirements of §114.301 of this title (relating to Control Requirements for Reid Vapor Pressure), through one of the following:

(1) resolution by the City Council requesting that a specific geographic area under their jurisdiction be included. The resolution must include the level of RVP control requested, and a schedule for which the City Council is requesting that RVP control be made mandatory; or

(2) resolution by a County Commissioners Court requesting that the county under their jurisdiction be included. The resolution must include the level of RVP control requested, and a schedule for which the County Commissioners are requesting that RVP control be made mandatory.

(b) A county, or a city with a population of 200,000 or more according to the most recent federal census located in a county, specified in §114.309 of this title (relating to Affected Counties) may request early implementation of lower sulfur requirements, so long as they are not more stringent than the requirements of §114.302 of this title (relating to Control Requirements for Sulfur), through one of the following:

(1) resolution by the City Council requesting that a specific geographic area under their jurisdiction be included. The resolution must include the level of sulfur control requested, and a schedule for which the City Council is requesting that sulfur control be made mandatory; or

(2) resolution by a County Commissioners Court requesting that the county under their jurisdiction be included. The resolution must include the level of sulfur control requested, and a schedule for which the County Commissioners are requesting that sulfur control be made mandatory.

(c) The commission may enter an order adopting some or all the provisions of a resolution submitted under this section requesting RVP and/or sulfur controls upon a finding that the requested controls are practicable and needed to improve air quality.

*§114.309. Affected Counties.*

(a) All affected persons in the following counties shall be in compliance with §§114.301, 114.302, 114.305, 114.306, and 114.307 of this title (relating to Control Requirements for Reid Vapor Pressure; Control Requirements for Sulfur; Approved Test Methods; Recordkeeping Requirements; and Exemptions) as soon as practicable, but no later than the dates specified in §114.301(a) and §114.302(a) of this title: Anderson, Angelina, Aransas, Atascosa, Austin, Bastrop, Bee, Bell, Bexar, Bosque, Bowie, Brazos, Burleson, Caldwell, Calhoun, Camp, Cass, Cherokee, Colorado, Comal, Cooke, Coryell, De Witt, Delta, Ellis, Falls, Fannin, Fayette, Franklin, Freestone, Goliad, Gonzales, Grayson, Gregg, Grimes, Guadalupe, Harrison, Hays, Henderson, Hill, Hood, Hopkins, Houston, Hunt, Jackson, Jasper, Johnson, Karnes, Kaufman, Lamar, Lavaca, Lee, Leon, Limestone, Live Oak, Madison, Marion, Matagorda, McLennan, Milam, Morris, Nacogdoches, Navarro, Newton, Nueces, Panola, Parker, Polk, Rains, Red River, Refugio, Robertson, Rockwall, Rusk, Sabine, San Jacinto, San Patricio, San Augustine, Shelby, Smith, Somervell, Titus, Travis, Trinity, Tyler, Upshur, Van Zandt, Victoria, Walker, Washington, Wharton, Williamson, Wilson, Wise, and Wood.

(b) All affected persons in Brazoria, Chambers, Collin, Dallas, Denton, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, Tarrant, and Waller Counties shall be in compliance with §§114.301, 114.302, 114.305, 114.306, and 114.307 of this title as soon as practicable, but no later than the dates specified in §114.301(a) and §114.302(a) of this title.

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

Filed with the Office of the Secretary of State, on December 18, 1998.

TRD-9818441
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: May 26, 1999
For further information, please call: (512) 239–1970

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## Chapter 115. Control of Air Pollution from Volatile Organic Compounds

The commission proposes amendments to §115.10, concerning Definitions; §§115.211- 115.217 and 115.219, concerning Loading and Unloading of Volatile Organic Compounds (VOC); §§115.221-115.227, and 115.229, concerning Filling of Gasoline Storage Vessels (Stage I) for Motor Vehicle Fuel Dispensing Facilities; and §§115.234-115.237 and 115.239, concerning Control of VOC Leaks from Transport Vessels. The commission proposes these revisions to Chapter 115, concerning Control of Air Pollution from VOCs, and to the State Implementation Plan (SIP) in order to control ground-level ozone in ozone near-nonattainment areas and ozone nonattainment areas.

The proposed revisions are one element of the new Texas Clean Air Strategy (TCAS), which includes a variety of options in order to meet the National Ambient Air Quality Standard (NAAQS) for ground-level ozone. The purpose of the strategy is to help keep ozone attainment areas and near- nonattainment areas, such as Austin, Corpus Christi, Longview/Tyler/Marshall, and San Antonio, in compliance with the federal 8-hour ozone standard of 80 parts per billion (ppb). The new strategy also is designed to help the Beaumont/Port Arthur, Dallas/Fort Worth, and Houston/Galveston ozone nonattainment areas reach attainment. The TCAS takes into account recent science which shows that regional approaches may provide improved control of air pollution. In particular, staff has conducted photochemical grid modeling which indicates that implementation of Stage I vapor recovery, cleaner burning gasoline, and national low-emitting vehicles (NLEV) will result in ozone reductions (peak 8- hour average) of 1 to 4 ppb in much of east and southeast Texas. Additional details concerning the need for a regional strategy are as follows.

BACKGROUND At the time the 1990 Federal Clean Air Act (FCAA) Amendments were enacted, the focus on controlling ozone pollution was centered on local controls. However, for many years an ever increasing number of air quality professionals have felt that ozone is a regional problem requiring regional strategies in addition to local control programs. As nonattainment areas across the United States prepared attainment demonstration SIPs in response to the 1990 FCAA Amendments, several areas found that modeling attainment was made much more difficult, if not impossible, because of high ozone and ozone precursor levels entering from the boundaries of their respective modeling domains, commonly called transport.

The commission has conducted air quality modeling and upper air monitoring that found regional air pollution should be considered when studying air quality in Texas' ozone nonattainment areas. This work is supported by research conducted by the Ozone Transport Assessment Group (OTAG), the most comprehensive attempt ever undertaken to understand and quantify the transport of ozone. Both the commission and OTAG study results point to the need to take a regional approach, such as that proposed in the TCAS, to controlling air pollutants.

As part of the Coastal Oxidant Assessment for Southeast Texas (COAST) project, the commission and its contractor Environ, Inc., conducted regional-scale modeling to develop future-year boundary conditions for the COAST modeling domain. The emissions inventory used in this modeling was based on the OTAG emission inventory and the modeling was conducted for a domain covering most of Texas as well as several southern states.

During the OTAG process, the commission's modeling staff ran several sensitivity analyses using this regional modeling setup to assess the impact of potential OTAG reductions on Texas. Applying the OTAG reductions across the domain (clean gasoline (federal reformulated gasoline) stationary source controls, the NLEV program, ozone action days, and a series of national rules to be promulgated by the EPA among others), compared to the case of no reductions, indicated that modeled reductions would significantly reduce ozone throughout most of the eastern half of Texas. Overall the modeling indicated that a regional reduction strategy would be beneficial across the wide area of the state.

During modeling for the Houston/Galveston attainment demonstration SIP, the commission's modeling staff conducted sensitivity analyses to determine the benefits regional reductions might have on Houston/Galveston, when applied simultaneously with local reductions. Unlike the commission's regional modeling exercises discussed above, these model runs offer an opportunity to assess separately the benefits of reductions made within and outside a region, since model runs with and without the regional reductions scenarios in Houston/Galveston were run. Modeling runs were completed to evaluate the 8-hour av-

erage ozone concentrations in the COAST modeling domain for September 8, 1993 with 2007 projected emissions and assuming a 70% reduction of oxides of nitrogen ($NO_x$) and a 15% reduction of VOC in the 8-county Houston/Galveston area. Even with the large reductions in Houston/Galveston much of the upper Texas Coast is well above the 8- hour standard. Also, Austin, Victoria, and Corpus Christi show 8-hour average concentrations above 80 ppb. The benefit of applying OTAG reductions outside the Houston/Galveston 8-county area clearly showed additional ozone benefits of between 5 and 10 ppb in Houston/Galveston.

Additional modeling has been completed by commission staff assessing the potential benefits of the TCAS. This modeling indicates that mobile source reductions (cleaner gasoline, NLEVs, and Stage I vapor recovery) have a potential to reduce peak 8-hour ozone averages of between 1 and 4 ppb in much of east and southeast Texas, with the greatest reductions seen in the Austin and San Antonio areas. Modeling of the combined point source and mobile source strategies shows a large area, including near-nonattainment and attainment areas, of reductions in peak 8-hour average ozone above 3 ppb.

This modeling provides part of the evidence of the benefit of regional reductions on Texas' nonattainment areas and further provides justification that a regional strategy will help maintain air quality in near-nonattainment and attainment areas. Conclusions from the commission's work are supported by OTAG studies that also illustrate the importance of implementing a regional air quality control strategy.

The proposed revisions would implement the Stage I vapor recovery option of the Texas Clean Air Strategy. The Stage I vapor recovery rules currently apply to approximately 7000 gasoline stations in the Beaumont/Port Arthur, El Paso, Houston/Galveston, and Dallas/Fort Worth ozone nonattainment areas (Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, Tarrant, and Waller Counties). These rules regulate the filling of gasoline storage tanks at gasoline stations by tank-trucks. To comply with Stage I requirements, a vapor balance system is typically used to capture the vapors from the gasoline storage tanks which would otherwise be displaced to the atmosphere as these tanks are filled with gasoline. The captured vapors are routed to the gasoline tank-truck, and the vapors are processed by a vapor control system when the tank-truck is subsequently refilled at a gasoline terminal or gasoline bulk plant. The proposed rules will reduce VOC emissions which are precursors to ground-level ozone formation, resulting in ground-level ozone reductions.

The effectiveness of Stage I vapor recovery rules depends on the captured vapors being: (1) effectively contained within the gasoline tank-truck during transit; and (2) controlled when the transport vessel is refilled at a gasoline terminal or gasoline bulk plant. Otherwise, the emissions captured at the gasoline station will simply be emitted at a location other than the gasoline station, resulting in no reduction in VOC emissions despite the Stage I requirements.

Chapter 115 includes specific requirements for gasoline terminals in 16 ozone nonattainment counties (Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, Tarrant, and Waller). A gasoline terminal is a gasoline transfer facility, excluding marine terminals, with a gasoline throughput of at least 20,000 gallons per day, averaged over any consecutive 30-day period. Less restrictive Chapter 115 gasoline terminal rules apply in Gregg, Nueces, and Victoria Counties. Chapter 115 regulates gasoline terminals in Aransas, Bexar, Calhoun, Matagorda, San Patricio, and Travis Counties under general VOC transfer rules.

On December 14, 1994, EPA promulgated Title 40 Code of Federal Regulations (CFR) 63, Subpart R, pursuant to §112(d) of the 1990 Amendments to the FCAA. Subpart R is the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Gasoline Distribution. Subpart R requires gasoline terminals nationwide to control emissions from the refilling of gasoline tank-trucks if emissions of hazardous air pollutants (HAPs) reach a threshold of 10 tons per year of any one HAP or 25 tons per year of total HAPs.

Gasoline tank-trucks may also be refilled at a gasoline bulk plant, which is a gasoline transfer facility, excluding marine terminals, with a gasoline throughput less than 20,000 gallons per day, averaged over any consecutive 30-day period. Sections 115.211-115.219 require gasoline bulk plants in ozone nonattainment counties to control gasoline transfer emissions using a vapor balance (similar to that used at gasoline stations meeting Stage I requirements). Outside of the ozone nonattainment counties, however, there is currently no Chapter 115 requirement for control of emissions from gasoline bulk plants. Likewise, there is no Chapter 115 requirement for control of emissions from gasoline tank-truck leaks outside of the ozone nonattainment counties.

The rule changes propose extension of the existing Chapter 115 Stage I vapor recovery, gasoline terminal, gasoline bulk plant, and gasoline tank-truck leak testing requirements (§§115.211-115.217, 115.221-115.227, and 115.234-115.237) to 95 counties in the eastern half of Texas. These counties are: Anderson, Angelina, Aransas, Atascosa, Austin, Bastrop, Bee, Bell, Bexar, Bosque, Bowie, Brazos, Burleson, Caldwell, Calhoun, Camp, Cass, Cherokee, Colorado, Comal, Cooke, Coryell, De Witt, Delta, Ellis, Falls, Fannin, Fayette, Franklin, Freestone, Goliad, Gonzales, Grayson, Gregg, Grimes, Guadalupe, Harrison, Hays, Henderson, Hill, Hood, Hopkins, Houston, Hunt, Jackson, Jasper, Johnson, Karnes, Kaufman, Lamar, Lavaca, Lee, Leon, Limestone, Live Oak, Madison, Marion, Matagorda, McLennan, Milam, Morris, Nacogdoches, Navarro, Newton, Nueces, Panola, Parker, Polk, Rains, Red River, Refugio, Robertson, Rockwall, Rusk, Sabine, San Jacinto, San Patricio, San Augustine, Shelby, Smith, Somervell, Titus, Travis, Trinity, Tyler, Upshur, Van Zandt, Victoria, Walker, Washington, Wharton, Williamson, Wilson, Wise, and Wood.

Concurrently, the commission is proposing revisions which reorganize and clarify the rules, including incorporation of a variety of interpretations made by the agency's Rule Interpretation Team. These clarifying/reorganizing revisions include, where possible, consolidation or elimination of redundant language or requirements, the use of the active (rather than passive) voice, and relocation of rule language to more logical locations. In general, the commission's goal is to make the rules easier to read and more explicit concerning which requirements apply.

EXPLANATION OF PROPOSED RULES The proposed changes to §115.10, concerning Definitions, add a new definition of regional VOC zone which specifies the 95 counties for which Stage I, gasoline tank-truck testing, gasoline terminal, and gasoline bulk plant controls are being proposed; and add

new definitions of flare, vapor combustor, and vapor control system. The proposed definition of vapor control system is identical to the existing definition of vapor recovery system, and will facilitate a transition in the Chapter 115 rules to this term from the misleading term "vapor recovery system," which is defined to include both recovery and combustion control devices. In addition, the definitions of consumer-solvent products, municipal solid waste landfill emissions, and hand-held lawn and garden and utility equipment are being deleted because these three definitions are no longer used in the Chapter 115 rules.

The proposed changes to §115.10 also delete the definitions of alcohol, alcohol substitutes, batch, cleaning solution, fountain solution, heatset, lithography, non-heatset, and offset lithography. These terms are used within the Chapter 115 offset printing rules (§§115.442, 115.443, 115.445, 115.446, and 115.449). In separate rulemaking, the commission is proposing to relocate the definitions of these terms to a new §115.440, concerning Offset Printing Definitions. (See the November 6, 1998 issue of the *Texas Register* (23 TexReg 11277)).

Finally, the following redundant definitions are being deleted from §115.10 because these terms are already defined in §101.1, concerning Definitions, and are used in multiple chapters of the commission's rules: capture system, carbon adsorber, cold solvent cleaning, condensate, control device, control system, conveyorized degreasing, custody transfer, exempt solvent, gasoline, industrial solid waste, leak, liquid-mounted seal, marine vessel, mechanical shoe seal, motor vehicle fuel dispensing facility, municipal solid waste facility, municipal solid waste landfill, open-top vapor degreasing, process or processes, property, remote reservoir cold solvent cleaning, sludge, solid waste, source, submerged fill pipe, system or device, true vapor pressure, vapor-mounted seal, vent, and VOC water separator. Definitions which remain in §115.10 are being numbered in response to recently revised *Texas Register* rules (23 TexReg 1289, February 13, 1998).

The proposed changes to §115.211, concerning Emission Specifications, establish an emission limit for gasoline bulk plants in the regional VOC zone which is equivalent to the current emission limit for gasoline bulk plants in ozone nonattainment counties. Likewise, the proposed changes also establish an emission limit for gasoline terminals in the regional VOC zone. A 1990 rule effectiveness study, in which all gasoline terminals in the Dallas/Fort Worth area (other than those equipped with flares) were stack tested, found these gasoline terminals to be capable of meeting an emission limit of 10.8 milligram per liter (mg/l) of gasoline loaded. In order to gather more current data, the commission surveyed the test results for gasoline terminals in the regional VOC zone and the current ozone nonattainment counties and determined that the vast majority (94%) meet the 10.0 mg/l emission limit in 40 CFR 63, Subpart R (Gasoline Distribution NESHAP). The remaining 6% of the test results show compliance with a 20.0 mg/l emission limit. Consequently, the commission proposes a 20.0 mg/l emission limit for gasoline terminals in the regional VOC zone. Based on the test results, the commission believes that properly-maintained control devices at gasoline terminals can consistently meet the 20.0 mg/l emission limit. The commission solicits information regarding specific gasoline terminals in the regional VOC zone which cannot meet this emission limit when properly maintained. In addition, the proposed changes establish an expiration date for the less-stringent emission limit (80 mg/l) which currently applies to gasoline terminals in Gregg, Nueces, and Victoria Counties, and relocate the emission limit for gasoline terminals in these three counties from the existing §115.211(b) to the proposed §115.211(1)(B). The less stringent limit will expire when the proposed new limits are to be imposed. Finally, the proposed changes delete the emission limit of the existing §115.211(a)(3) for marine terminals in the Houston/Galveston ozone nonattainment area because this limit is already included in the existing §115.212(a)(8)(A).

The proposed changes to §115.212, concerning Control Requirements, extend to the regional VOC zone the requirement that vapors from gasoline transfers at gasoline bulk plants be controlled rather than vented to the atmosphere. Likewise, the proposed changes extend to the regional VOC zone the requirement that vapors from gasoline loading at gasoline terminals be controlled rather than vented to the atmosphere. Also, the proposed changes establish requirements designed to minimize emissions during gasoline transfer at gasoline terminals and gasoline bulk plants in the regional VOC zone. In addition, the proposed changes also extend to the regional VOC zone the requirement that VOC vapors remaining in transport vessels after unloading be kept in vapor-tight transport vessels until the vapors are returned to a loading, cleaning, or degassing operation and discharged in accordance with the control requirements of that operation; and update references to definitions which are currently in §115.10 but are proposed for inclusion only in §101.1.

The proposed changes to §115.212 further add an allowance for draining VOC from a liquid line after transfer into a portable container, which is then closed and disposed of properly. This is proposed for addition to the existing §115.212(a)(3)-(4) and (b)(3)-(4). The requirements of the existing §115.212(a)(4) and (b)(4) are concurrently being relocated to the proposed §115.212(a)(3)(E) and (b)(3)(E), respectively. The gasoline terminal loading lockout provision of existing §115.212(a)(9), which currently applies in the Dallas/Fort Worth, El Paso, and Houston/ Galveston ozone nonattainment areas, is being relocated to the proposed §115.212(a)(4)(C) and (b)(4)(C). This rule requires instrumentation which locks out the gasoline transfer pumps if the vapor control system is not connected or operating properly, thus preventing uncontrolled gasoline loading at the loading rack. The gasoline terminal loading lockout provision is proposed for extension to the Beaumont/ Port Arthur ozone nonattainment area and the regional VOC zone.

Also, the proposed changes to §115.212 consolidate the gasoline bulk plant loading and unloading requirements of existing §115.212(a)(6)-(7) into the proposed §115.212(a)(5), and add an option for gasoline bulk plants to control emissions using a vapor control system rather than a vapor balance system between the storage tank and the storage vessel. The existing §115.212(a)(6)(B), which concerns permissible pressure-vacuum relief valve emissions from gasoline transfer at gasoline bulk plants during emergency situations, is proposed for deletion because upset conditions are already addressed in §101.6, Upset Reporting and Recordkeeping Requirements.

In addition, the proposed changes to §115.212(b)(1), concerning general land-based VOC loading (i.e., non-gasoline, non-marine), require that at VOC loading operations in Aransas, Bexar, Calhoun, Gregg, Matagorda, Nueces, San Patricio, Travis, and Victoria Counties, the vapors from the transport vessel must be controlled by a vapor control system which main-

tains a control efficiency of at least 90%, or by a vapor balance system. Under the current §115.212(b)(1) and (c)(1), VOC emissions from loading operations in these nine counties must be controlled such that the aggregate true vapor pressure of all VOC does not exceed 1.5 psia. When the Texas Air Control Board first adopted this requirement on April 10, 1973, the intent and expectation was that the 1.5 psia control level represented a 90% control efficiency. However, the use of an aggregate true vapor pressure as a surrogate control efficiency has resulted in some confusion over the past 25 years. To eliminate this confusion, the commission proposes to revise the control efficiency to reflect the rule's original intent by using more commonly understood terminology. Most control devices can readily achieve and maintain a control efficiency of at least 90%. For example, flares which meet the standard design and operating criteria of 40 CFR 60.18(b) have been shown to operate with a control efficiency of at least 98%. However, some existing control devices, such as condensers, may be unable to consistently meet a 90% control level. The commission believes that the 90% overall control option for general land-based VOC loading, which is available in the proposed §115.213(c), will allow many general VOC loading operations in Aransas, Bexar, Calhoun, Gregg, Matagorda, Nueces, San Patricio, Travis, and Victoria Counties the flexibility to offset the increased emissions from existing lower-efficiency (less than 90%) control devices with reduced emissions from higher-efficiency (greater than 90%) control devices at the same account number. The commission solicits information regarding specific situations in these nine counties for which the 90% overall control option for general land-based VOC loading will not be a viable method for addressing existing lower-efficiency control devices.

For marine terminals in the Houston/Galveston ozone nonattainment area, the proposed changes to §115.212 also relocate the vapor balance option and the non-dedicated loading lines control requirement from the existing §115.217(a)(7)(C)-(D) to the proposed §115.212(a)(6)(A) and (D), respectively. Finally, the annual marine vessel vapor-tightness test in the existing §115.212(a)(8)(B) is being relocated to the proposed §115.214(a)(3)(A).

The proposed changes to §115.213, concerning Alternate Control Requirements, revise the term "section" (which should have been "undesignated head") to "division" in response to recently revised *Texas Register* rules (23 TexReg 1289, February 13, 1998); extend the availability of alternate means of control to the entire regional VOC zone; and condense the three existing subsections into a single subsection. In addition, the 90% overall control options for marine terminals and general land-based VOC loading (i.e., non-gasoline, non-marine) in the existing §115.217(a)(6), (a)(8), (b)(4), and (c)(4) are being relocated to the proposed §115.213(b)-(d), with the addition of a requirement that loading of VOC with a vapor pressure of 11 psia or more must be controlled by either pressurized loading, a vapor control system, or a vapor balance system.

The proposed changes to §115.214, concerning Inspection Requirements, establish inspection requirements for gasoline terminals and gasoline bulk plants in the regional VOC zone; require annual vapor-tightness testing of gasoline tank-truck tanks in the regional VOC zone; and update references to definitions which are currently in §115.10 but are proposed for inclusion only in §101.1.

The monthly gasoline terminal leak inspection requirement of the existing §115.214(a)(5), which currently applies in the Dallas/Fort Worth, El Paso, and Houston/Galveston ozone nonattainment areas, is being relocated to the proposed §115.214(a)(2). This monthly gasoline terminal leak inspection requirement is proposed for extension to the Beaumont/Port Arthur ozone nonattainment area and the regional VOC zone.

For marine terminals in the Houston/Galveston ozone nonattainment area, the annual marine vessel vapor-tightness testing requirements in the existing §115.212(a)(8)(B) are being relocated to the proposed §115.214(a)(3)(A). The proposed §115.214(a)(3)(D) (currently §115.214(a)(4)(C)) is being updated to reference an additional vapor-tightness test available under 40 CFR 63.565(c). The inclusion of this second test method for determining marine vessel vapor- tightness will provide additional flexibility.

The proposed §115.214(a)(1)(D), (a)(3)(G), and (b)(1)(D) add exclusions from the leak inspection requirements for fumes from hatches or vents resulting from VOC transfer for which control of the transfer emissions is not required. The proposed §115.214(b)(1)(C) adds a requirement to gasoline terminals and gasoline bulk plants in the regional VOC zone that gasoline tank-truck tanks pass an annual leak-tightness test.

The proposed changes to §115.215, concerning Approved Test Methods, extend the existing test methods to the regional VOC zone and consolidate the existing §115.215(a) and (b) into a single subsection. Because it is not reasonably possible to measure the mass emission rate from an elevated flare (an elevated flare's flame is open to the atmosphere, such that the emissions can not be routed through a stack), the test methods for flow rate and VOC concentration in §115.215(1)-(2) do not apply to flares. In order to specify performance requirements for flares, the proposed §115.215(3) establishes the test requirements of 40 CFR 60.18(b). Because flares can not be stack-tested, the proposed §115.215(3) also specifies that compliance with the requirements of 40 CFR 60.18(b) represents compliance with the emission specifications of §115.211 and the control efficiency requirements of §115.212. The proposed changes to §115.215 also add a new paragraph (10), which authorizes the use of test methods other than those specifically listed in §115.215, provided that any new test method is validated using the procedures in 40 CFR 63, Appendix A, Test Method 301, with the executive director acting as the administrator. This revision is necessary because in some specific unique situations the listed test methods may be inappropriate. The new paragraph (10) increases flexibility by allowing the use of additional test methods which may be more cost-effective and more appropriate in certain unique situations.

The proposed changes to §115.216, concerning Monitoring and Recordkeeping Requirements, extend the recordkeeping requirements to gasoline terminals and gasoline bulk plants in the regional VOC zone; update references to definitions which are currently in §115.10 but are proposed for inclusion only in §101.1; revise a reference to the EPA for consistency with the commission's style guidelines; consolidate the existing §115.216(a) and (b) into a single subsection; add a requirement that records must include information on how the design standard and operation of equipment meets the emission specifications and control requirements; specify that flares must meet the requirements of 40 CFR 60.18(b) and Chapter 111; and state that records of appropriate operating parameters must be kept for types of vapor control systems not specifically listed in §115.216(1)(A) and (B). The proposed §115.216(1)(A)(iv) and (1)(B) specify exhaust gas temperature monitoring of vapor

combustors, with an option that the owner/operator of an existing vapor combustor may consider it to be a flare and monitor the unit under the flare requirements specified in 40 CFR 60.18(b) and Chapter 111. These revisions are necessary to ensure that control devices are functioning properly, and to clarify how vapor combustors are to be monitored. Based upon information from the New Source Review Permits Division, most existing flares at gasoline terminals and land-based general VOC (non-gasoline) loading facilities meet the design and operating criteria of 40 CFR 60.18(b). The commission solicits information regarding gasoline terminals and land-based general VOC loading facilities which are equipped with flares that do not meet the requirements of 40 CFR 60.18(b).

The existing §115.216(a)(3)-(5), (b)(3), and (b)(5), which specify the daily recordkeeping for land-based VOC transfer operations, have been consolidated and relocated to the proposed §115.216(3), with the only records required being those which are necessary to establish compliance with, or exemption from, the rule requirements. The existing §115.216(a)(1) and (b)(1), which require a daily record of the total quantity of VOC loaded at the plant, have been consolidated and relocated to the proposed §115.216(3)(D), and the applicability reduced. Specifically, this record of daily VOC loaded will only be required when needed to establish the exemption eligibility of loading operations and gasoline bulk plants below the 20,000 and 4,000 gallons per day thresholds, respectively. Similarly, for general VOC (non-gasoline) transfer operations in which all VOC handled has a low vapor pressure, the proposed §115.216(3)(C) will allow these operations to simply keep records of the type and vapor pressure of each VOC transferred, and any appropriate test results.

Previously, §115.216 did not include specific recordkeeping requirements for land-based VOC transfer operations in Aransas, Bexar, Calhoun, Matagorda, San Patricio, and Travis Counties. The proposed revisions to §115.216 add recordkeeping requirements for land-based general VOC (i.e., non-gasoline) transfer operations in these counties which are sufficient to document compliance with the control requirements, inspection requirements, and exemptions.

The existing §115.216(a)(2)(D) and (b)(2)(D), which concern records associated with control device maintenance activities, are proposed for deletion because maintenance activities are already addressed in §101.7, Maintenance, Start-up and Shutdown Reporting, Recordkeeping, and Operational Requirements.

The proposed changes to §115.217, concerning Exemptions, establish an exemption for small (less than 4000 gallons per day) gasoline bulk plants in the regional VOC zone; update references to definitions which are currently in §115.10 but are proposed for inclusion only in §101.1; revise the term "undesignated head" to "division" in response to recently revised *Texas Register* rules (23 TexReg 1289, February 13, 1998); and consolidate the existing §115.217(b) and (c) into a single subsection.

In addition, the 90% overall control options for marine terminals and general land-based VOC loading (i.e., non-gasoline, non-marine) in the existing §115.217(a)(6), (a)(8), (b)(4), and (c)(4) are being relocated to the proposed §115.213(b)-(d). The marine vessel exemptions in the existing §115.217(a)(4) and (7) are being relocated to the proposed §115.217(a)(5), and the proposed §115.217(a)(5)(A)(ii) is being added to clarify that transfer of VOC from one marine vessel to another marine vessel ("lightering") is exempt, as long as the VOC transfer does not use loading arm(s), pump(s), meter(s), valve(s), or piping that are part of a marine terminal. Any lightering which uses a marine terminal's loading arm(s), pump(s), meter(s), valve(s), or piping is treated as though the VOC was loaded directly from the marine terminal into the marine vessel, and is required to be controlled the same as any other marine vessel loading which occurs at the terminal.

Further, the existing exemptions for low vapor pressure VOC loading, low throughput of land- based VOC loaded, crude oil, condensate, liquefied petroleum gas (LPG), and small gasoline bulk plants are proposed for revision to make clear which requirements these operations must meet. In the existing §115.217(a)(1)-(3), (b)(1)-(3), and (c)(1)-(3), low vapor pressure VOC loading, low throughput of land-based VOC loaded, and LPG are exempt from the requirements of §115.212 only. Similarly, the existing §115.217(b)(3) and (c)(3) exempt the transfer of crude oil and condensate in Aransas, Bexar, Calhoun, Gregg, Matagorda, Nueces, San Patricio, Travis and Victoria Counties from the requirements of §115.212 only. The proposed revisions will require that after unloading, the transport vessel must be kept vapor-tight until the vapors in the transport vessel are returned to a loading, cleaning, or degassing operation and are discharged in accordance with the control requirements of that operation.

The proposed revisions will broaden the existing exemptions for crude oil and condensate (applicable only in Aransas, Bexar, Calhoun, Gregg, Matagorda, Nueces, San Patricio, Travis and Victoria Counties), LPG, low vapor pressure VOC loading, low throughput of land-based VOC loading, and small gasoline bulk plants to exempt most inspection, testing, and recordkeeping requirements. However, these operations will continue to be required to conduct inspections for visible liquid leaks, cease VOC transfer when a liquid leak is observed, and repair the leak before transferring additional VOC. General land-based (i.e., non-gasoline) transfer of low vapor pressure VOC and small general land-based VOC loading plants which handle both exempt and non-exempt VOC will be required to maintain records of test results (e.g., vapor pressure testing) and the vapor pressure and type of each VOC transferred (excluding gasoline). As noted previously, under the proposed §115.216(3)(D), the requirement of the current §115.216(a)(1) and (b)(1) to maintain records of total VOC loaded will continue to apply to low throughput gasoline bulk plants and low throughput general VOC loading operations.

The proposed changes to §115.219, concerning Counties and Compliance Schedules, specify the compliance schedule for the new requirements; delete language which is obsolete due to the passing of a November 15, 1996 compliance date; and revise references to the TNRCC and the EPA for consistency with the commission's style guidelines.

The proposed changes to §115.221, concerning Emission Specifications, add an emission limit for filling of gasoline storage tanks at motor vehicle fuel dispensing facilities in the regional VOC zone, and change a reference from "vapor recovery system" to "vapor control system" for clarification. This emission limit is the same one already required in ozone nonattainment counties.

The proposed changes to §115.222, concerning Control Requirements, extend to the regional VOC zone the requirements

designed to minimize emissions during these gasoline transfer operations, as well as the requirement that filling of gasoline storage tanks at motor vehicle fuel dispensing facilities be controlled through a vapor balance system rather than vented to the atmosphere. The proposed changes to §115.222 also require non-coaxial Stage I connections for the installation of new storage tanks or modification of existing storage tanks in the regional VOC zone after December 22, 1998. In addition, the proposed changes to §115.222 extend to the regional VOC zone the requirement that VOC vapors remaining in tank-truck tanks after unloading be kept in vapor- tight tank-truck tanks until the vapors are returned to a loading, cleaning, or degassing operation and discharged in accordance with the control requirements of that operation. Finally, the proposed changes to §115.222 update references to definitions which are currently in §115.10 but are proposed for inclusion only in §101.1; and delete language which is obsolete upon the passing of the final Stage II compliance deadline on December 22, 1998.

The proposed changes to §115.223, concerning Alternate Control Requirements, revise the term "undesignated head" to "division" in response to recently revised *Texas Register* rules (23 TexReg 1289, February 13, 1998); and establish the availability of alternate means of control in the regional VOC zone.

The proposed changes to §115.224, concerning Inspection Requirements, extend to the regional VOC zone the inspection requirements for gasoline transfers at motor vehicle fuel dispensing facilities and the annual vapor-tightness testing requirement for gasoline tank-truck tanks; revise the term "undesignated head" to "division" in response to recently revised *Texas Register* rules (23 TexReg 1289, February 13, 1998); and update the title of the division subsequent to a previous name change.

The proposed changes to §115.225, concerning Approved Test Methods, extend the existing test methods to the regional VOC zone.

The proposed changes to §115.226, concerning Recordkeeping Requirements, establish recordkeeping requirements for motor vehicle fuel dispensing facilities in the regional VOC zone; add recordkeeping requirements for exempt facilities in the regional VOC zone to ensure compliance with the gasoline tank-truck leak testing requirements; and correct the title of a division.

The proposed changes to §115.227, concerning Exemptions, establish exemptions for gasoline storage tanks in the regional VOC zone; add an exemption from gasoline throughput recordkeeping for small gasoline storage tanks (no more than 1,000 gallons capacity); clarify that the requirements are applicable to motor vehicle fuel dispensing facilities; revise the term "undesignated head" to "division" in response to recently revised *Texas Register* rules (23 TexReg 1289, February 13, 1998); and correct the title of a division. The proposal includes an exemption for gasoline stations in the regional VOC zone with a throughput less than 125,000 gallons per month.

The proposed changes to §115.229, concerning Counties and Compliance Schedules, specify the compliance schedules for the new requirements in the regional VOC zone; revise the term "undesignated head" to "division" in response to recently revised *Texas Register* rules (23 TexReg 1289, February 13, 1998); and correct the title of a division. The proposed changes to §115.229 specify that larger gasoline stations (those with a throughput of at least 125,000 gallons per month) are required to comply by December 31, 1999. The intent of the phrase "as soon as practicable, but no later than..." in §115.229(d) is that before the applicable compliance date, gasoline stations which are equipped for Stage I vapor recovery must utilize Stage I for each gasoline delivery by a gasoline tank-truck which is likewise equipped for Stage I vapor recovery. The commission solicits comments regarding possible city, county, or state incentives to encourage early implementation of the Stage I requirements.

The proposed changes to §115.234, concerning Inspection Requirements, establish annual vapor-tightness testing requirements for gasoline tank-truck tanks in the regional VOC zone; and revise the term "undesignated head" to "division" in response to recently revised *Texas Register* rules (23 TexReg 1289, February 13, 1998).

The proposed changes to §115.235, concerning Inspection Requirements, specify the testing requirements and approved test methods for gasoline tank-truck tanks in the regional VOC zone. The proposed changes to §115.235 also clarify that the alternative testing option of the existing §115.235(4) applies to tank-truck tanks not required to be equipped with vapor collection equipment (e.g., pressure tanks), and more specifically references the leakage test method of 49 CFR 180.407(h).

The proposed changes to §115.236, concerning Inspection Requirements, add recordkeeping requirements for gasoline tank-truck leak testing in the regional VOC zone; clarify that records of leakage tests conducted under 49 CFR 180.407(h) should be kept as specified in 49 CFR 180.417 instead of Method 27 records; and revise the term "undesignated head" to "division" in response to recently revised *Texas Register* rules (23 TexReg 1289, February 13, 1998); and revise references to the TNRCC and the EPA for consistency with the commission's style guidelines.

The proposed changes to §115.237, concerning Exemptions, add an exemption in the regional VOC zone for transport vessels other than tank-trucks (e.g., railcars); delete language which is obsolete due to the passing of a May 31, 1995 compliance date; and revise the term "undesignated head" to "division" in response to recently revised *Texas Register* rules (23 TexReg 1289, February 13, 1998).

The proposed changes to §115.239, concerning Counties and Compliance Schedules, specify the compliance schedule for the gasoline tank-truck leak testing in the regional VOC zone; and delete language which is obsolete due to the passing of January 31, 1994 and May 31, 1995 compliance dates. The intent of the phrase "as soon as practicable, but no later than..." in §115.239(b) is that before the applicable compliance date, gasoline tank-trucks which are equipped for Stage I vapor recovery must utilize Stage I for each gasoline delivery at a gasoline station which is likewise equipped for Stage I vapor recovery.

FISCAL NOTE Jeff Grymkoski, Director, Strategic Planning and Appropriations Division, has determined that for the first five-year period the sections are in effect there will be no significant fiscal implications for state and local governments to administer or enforce the proposed amendments. Specifically, the Field Operations Division and the Enforcement Division of the Office of Compliance and Enforcement are responsible for enforcing the Chapter 115 rules, with the Air Program responsible for the gasoline bulk plant, gasoline terminal, and tank-truck leak testing rules, and the Waste Program responsible for the petroleum storage tank (PST) rules at gasoline stations. The

Waste Program's inspectors could enforce the Stage I vapor recovery rules at gasoline stations when conducting their routine PST inspections.

Most of the gasoline terminals which will have to comply with the proposed rules are currently subject to air permits and/or to similar requirements under 40 CFR 63, Subpart R (the Gasoline Distribution NESHAP), and therefore are already being inspected for compliance. Consequently, only a limited number of additional gasoline terminals will need to be inspected for compliance with the proposed Chapter 115 rules. Based on a survey of throughput at gasoline bulk plants, an estimated 75% are expected to be exempt from the vapor balance requirement because their gasoline throughput is less than 4000 gallons per day (averaged over each consecutive 30-day period). Therefore, only a relatively small number of gasoline bulk plants will need to be inspected for compliance with the substantive requirements of the proposed rules. The Air Program's inspectors could enforce the gasoline tank-truck leak testing requirements when conducting their routine inspections at gasoline terminals and gasoline bulk plants. In conclusion, enforcement of these rules will not significantly increase the number of facilities currently inspected by the state and local governments. However, these rules will cause a minor increase in workload when inspecting the affected facilities.

PUBLIC BENEFIT Mr. Grymkoski has also determined that for each year of the first five years the proposed revisions are in effect, the public benefit anticipated as a result of implementing the sections will be satisfaction of requirements of the FCAA, and reductions of ground-level ozone in ozone near-nonattainment areas, ozone nonattainment areas, and surrounding counties, as well as reduced public exposure to air toxics such as benzene. The costs to small businesses, persons, or businesses who are required to comply with the rules as proposed are as follows.

For gasoline stations not currently equipped to meet the Stage I vapor recovery requirements, the commission estimates capital costs to be $1500 to $1750 per gasoline storage tank, based upon current vendor cost estimates. Since the typical gasoline station has two or three gasoline storage tanks, the total capital costs are estimated to be approximately $3000 to $5250 per gasoline station. The annual cost of maintenance, taxes, and insurance is estimated to be $210 to $368 per gasoline station, based upon methodology in the EPA's *Evaluation of Air Pollution Regulatory Strategies for Gasoline Marketing Industry* (July 1984). The number of gasoline storage tanks does not vary considerably with gasoline throughput and averages 2.45 gasoline tanks per gasoline station, based upon underground storage tank registration data submitted to the Petroleum Storage Tank Division. Consequently, the capital cost estimates are independent of gasoline throughput. Assuming a retail gasoline price of $1.00 per gallon and a throughput of 125,000 gallons per month, the smallest gasoline stations affected by the Stage I rules would incur a cost of approximately $.04 to $.07 per $100 of annual gasoline sales. By comparison, the largest gasoline stations affected by the Stage I rules (those with a throughput of at least 200,000 gallons per month) would incur a cost of approximately $.03 to $.04 per $100 of annual gasoline sales. The cost-effectiveness for the gasoline stations affected by the Stage I rules is approximately $165 to $193 per ton of VOC reduced. By comparison, the EPA estimated the cost-effectiveness of recently promulgated motor vehicle control programs in EPA's *Tier 2 Study, EPA420-R-98-008* (July 31, 1998) as follows: 1) $6000 per ton of VOC reduced and $1380 to $1800 per ton of $NO_x$ reduced for Tier 1 standards for light-duty vehicles and light-duty trucks; 2) $457 to $552 per ton of VOC reduced and $150 to $172 per ton of $NO_x$ reduced for supplemental federal test procedure (SFTP) standards for aggressive driving; 3) $2050 to $2574 per ton of $NO_x$ reduced for SFTP standards for emissions with the air conditioner on; and 4) $1974 per ton of VOC reduced and $1974 per ton of $NO_x$ reduced for on-board diagnostics requirements.

In order to estimate the Stage I emission reductions, the commission obtained statewide gasoline throughput data from gasoline tax records. The statewide gasoline throughput was allocated to each county by the estimated vehicle miles traveled. The gasoline throughput for each county was then allocated among the various gasoline station throughput categories according to the gasoline station throughput distribution for Harris County and six surrounding less-urbanized counties (Brazoria, Fort Bend, Galveston, Liberty, Montgomery, and Waller) found in the EPA's *Technical Guidance - Stage II Vapor Recovery Systems for Control of Vehicle Refueling at Gasoline Dispensing Facilities (* November 1991). The number of gasoline stations and associated gasoline tanks for each county, based upon the PST Division's underground storage tank registration data, was then allocated based upon the gasoline station throughput distribution for Harris County and six surrounding counties from the EPA's *Technical Guidance - Stage II Vapor Recovery Systems for Control of Vehicle Refueling at Gasoline Dispensing Facilities (* November 1991). The four most populated counties in the regional VOC zone (Bexar, Nueces, McLennan, and Travis) were assumed to be similar to Harris County in throughput distribution, and the remaining counties in the regional VOC zone were assumed to be similar to the weighted average of the distributions for Brazoria, Fort Bend, Galveston, Liberty, Montgomery, and Waller Counties. A summary of the approximate number of gasoline stations in each size category, annualized cost of Stage I controls, VOC reductions, and average cost effectiveness is as follows:

Figure: 30 TAC Chapter 115 preamble

For gasoline tank-trucks not currently equipped to meet the vapor recovery requirements, the commission estimates the capital cost to be approximately $1700 to $2700 per gasoline tank-truck. The commission estimates the annual Method 27 vapor tightness testing for gasoline tank-trucks to cost approximately $360 to $650 per gasoline tank-truck. These cost estimates are based on current vendor quotations. Assuming a one-person operation with one gasoline tank-truck, the smallest gasoline transport companies affected by the proposed rules would incur a first-year cost of approximately $2060 to $3350 per employee. By comparison, the largest gasoline transport companies affected by the proposed rules (with about 425 trucks and 575 total employees) would incur a first-year cost of approximately $1523 to $2476 per employee.

For gasoline bulk plants not currently equipped to conduct gasoline transfer using a vapor balance, the commission estimates the capital cost to be approximately $71,350 with the annual cost of maintenance, taxes, and insurance estimated to be $4995 per gasoline bulk plant, based upon estimates in the EPA's *Evaluation of Air Pollution Regulatory Strategies for Gasoline Marketing Industry* (July 1984), adjusted for inflation. According to this guidance document, the number of gasoline storage tanks, distance to the loading rack, and number of loading arms does not vary considerably with gasoline

throughput. Consequently, the capital cost estimates are independent of gasoline throughput. Assuming a wholesale gasoline price of $0.87 per gallon and a throughput of 4,000 gallons per day, the smallest gasoline bulk plants affected by the proposed rules would incur a cost of approximately $1.02 per $100 of annual gasoline sales. By comparison, the largest gasoline bulk plants affected by the gasoline bulk plant rules (those with a throughput of 19,999 gallons per day) would incur a cost of approximately $0.10 per $100 of annual gasoline sales.

For gasoline terminals not currently equipped with loading lockout instrumentation, the commission estimates the installation of this instrumentation to cost approximately $3000, based on current vendor estimates. The annual cost of maintenance, taxes, and insurance is estimated to be $210 per gasoline terminal, based upon methodology in the EPA's *Evaluation of Air Pollution Regulatory Strategies for Gasoline Marketing Industry* (July 1984). These cost estimates are independent of gasoline throughput. Assuming a wholesale gasoline price of $0.87 per gallon and a throughput of 20,000 gallons per day, the smallest gasoline terminals affected by the proposed rules would incur a cost of approximately $0.01 per $100 of annual gasoline sales. By comparison, the largest gasoline terminals affected by the loading lockout requirement (those with a throughput of 500,000 gallons per day) would incur a cost of approximately $0.0004 per $100 of annual gasoline sales.

For gasoline terminals and land-based general VOC (non-gasoline) loading facilities equipped with flares that do not meet the requirements of 40 CFR 60.18(b), the commission estimates that installing a heat-sensing device, such as an ultraviolet beam sensor or thermocouple, at the pilot light to indicate the continuous presence of a flame would cost approximately $19,300 to $22,300, based upon vendor estimates. The commission estimates the cost of testing to determine the exit velocity and the net heating value of the vapors being combusted to be approximately $6000, based upon vendor estimates. These cost estimates are independent of gasoline throughput. Assuming a wholesale gasoline price of $0.87 per gallon and a throughput of 20,000 gallons per day, the smallest gasoline terminals affected by the proposed rules would incur a cost of approximately $0.10 per $100 of annual gasoline sales. By comparison, the largest gasoline terminals affected by the 40 CFR 60.18(b) requirement (those with a throughput of 500,000 gallons per day) would incur a cost of approximately $0.004 per $100 of annual gasoline sales. For land-based general VOC (non-gasoline) loading facilities, the ratio of costs between small and large facilities is expected to be approximately the same as for gasoline terminals. In order to address the disparity in cost to small businesses, the commission has included exemptions to cover as many small businesses as possible while allowing the rule to accomplish its emission reduction purpose. For example, the proposal includes exemptions for gasoline stations with less than 125,000 gallons per month gasoline throughput; stationary gasoline tanks with a nominal storage capacity no more than 1000 gallons; and gasoline bulk plants which load less than 4000 gallons per month into transport vessels per day.

DRAFT REGULATORY IMPACT ANALYSIS The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking is not subject to §2001.0225 because although it meets the definition of a "major environmental rule" as defined in the act, it does not meet any of the four applicability requirements listed in §2001.0225(a). Specifically, the emission limitations and control requirements within this proposal were developed in order to meet the National Ambient Air Quality Standards (NAAQS) for ozone set by the EPA under §109 of the 1990 FCAA. States are primarily responsible for ensuring attainment and maintenance of NAAQS once the EPA has established them. Under §110 of the FCAA and related provisions, states must submit, for approval by the EPA, SIPs that provide for the attainment and maintenance of NAAQS through control programs directed to sources of the pollutants involved. This proposal is not an express requirement of state law, but was developed specifically in order to meet the air quality standards established under federal law as NAAQS. Specifically, this proposal is intended to help bring ozone nonattainment areas into compliance, and help keep attainment and near- nonattainment areas from going into nonattainment. There is no contract or delegation agreement that covers the topic that is the subject of this rulemaking. Therefore, this proposal does not involve an agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program, and was not developed solely under the general powers of the agency. The commission invites public comment on the draft regulatory impact analysis.

TAKINGS IMPACT ASSESSMENT The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code Annotated, §2007.043. The following is a summary of that assessment. The specific purpose of the rulemaking is to extend to the 95-county regional VOC control zone the Chapter 115 rules for Stage I vapor recovery, gasoline terminals, gasoline bulk plants, and gasoline tank-truck leak testing which currently apply in the Beaumont/Port Arthur, El Paso, Houston/ Galveston, and Dallas/Fort Worth ozone nonattainment areas. This rulemaking is part of the new Texas Clean Air Strategy which includes a variety of options to control ground-level ozone. The purpose is to help keep ozone attainment and near-nonattainment areas, such as Austin, Corpus Christi, Longview/Tyler/Marshall, and San Antonio, in compliance with the federal ozone standard, and to help the Beaumont/Port Arthur, Dallas/Fort Worth, and Houston/ Galveston ozone nonattainment areas reach attainment. Promulgation and enforcement of the rule amendments may possibly burden private real property because this rulemaking action requires the installation of Stage I vapor recovery systems at gasoline stations, which includes the permanent installation of subsurface piping. In addition, this rulemaking action requires the installation of a vapor balance system at gasoline bulk plants, which also requires the permanent installation of piping. Finally, this rulemaking action requires the permanent installation of a heat-sensing device, such as an ultraviolet beam sensor or thermocouple, at the pilot light to indicate the continuous presence of a flame. Although the rule revisions do not directly prevent a nuisance, prevent an immediate threat to life or property, or prevent a real and substantial threat to public health and safety, the rule revisions fulfill a federal mandate under §110 of the 1990 Amendments to the FCAA. Specifically, the emission limitations and control requirements within this proposal were developed in order to meet the NAAQS for ozone set by the EPA under §109 of the FCAA. States are primarily responsible for ensuring attainment and maintenance of NAAQS once the EPA has established them. Under §110 of the FCAA and related provisions, states must submit, for approval by the EPA, SIPs that provide for the attainment and maintenance of NAAQS through control programs directed to sources of the

pollutants involved. Therefore, the purpose of the rule proposal is to meet the air quality standards established under federal law as NAAQS. Consequently, the following exemption applies to these rules: an action reasonably taken to fulfill an obligation mandated by federal law.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW The commission has determined that this rulemaking action is 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.), the rules of the Coastal Coordination Council (31 TAC Chapters 501-506), and the commission's rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. As required by 31 TAC §505.11(b)(2) and 30 TAC §281.45(a)(3) relating to actions and rules subject to the CMP, agency rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission has reviewed this action for consistency, and has determined that this rulemaking is consistent with the applicable CMP goals and policies. The primary CMP policy applicable to this rulemaking action is the policy that commission rules comply with regulations at 40 CFR, to protect and enhance air quality in the coastal area. No new sources of air contaminants will be authorized by the rule revisions, and the revisions will result in a reduction in VOC emissions due to the new control requirements on gasoline stations, gasoline terminals, gasoline bulk plants, and gasoline tank-trucks in the 95-county regional VOC control zone. Therefore, in compliance with 31 TAC §505.22(e), the commission affirms that this rulemaking 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.

PUBLIC HEARINGS Public hearings on this proposal will be held in Austin on January 25, 1999 at 11:00 a.m. in Building F, Room 2210 at the Texas Natural Resource Conservation Commission Complex, located at 12100 Park 35 Circle; in San Antonio on January 25, 1999 at 7:00 p.m. at the San Antonio City Council Chambers located at 103 Main Plaza; in Lufkin on January 26, 1999 at 2:00 p.m. at the Lufkin City Council Chambers located at 300 East Shepherd, Room 102; and in Tyler on January 26, 1999 at 7:00 p.m. at the Tyler Junior College Regional Training and Development Complex located at 1530 South Southwest Loop 323, Room 104. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearings; however, an agency staff member will be available to discuss the proposal 30 minutes before each hearing 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 hearing should contact the Office of Policy and Regulatory Development at (512) 239-4900. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS Written comments may be mailed to Heather Evans, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 98028-115-AI. Comments must be received by 5:00 p.m., February 1, 1999. For further information, please contact Bill Jordan, Air Policy and Regulations Division, at (512) 239-2583, or Eddie Mack, Air Policy and Regulations Division, at (512) 239-1488.

## Subchapter A. Definitions

### 30 TAC §115.10

STATUTORY AUTHORITY The amendments are proposed under the Texas Health and Safety Code (Vernon 1992), the Texas Clean Air Act (TCAA), §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA; and TCAA §382.012, which requires the commission to develop plans for protection of the state's air.

The proposed amendments implement the Health and Safety Code, §382.017.

*§115.10. Definitions.*

Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the Texas Natural Resource Conservation Commission (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, shall have the following meanings, unless the context clearly indicates otherwise. Additional definitions for terms used in this chapter are found in §101.1 of this title (relating to Definitions) and §3.2 of this title (relating to Definitions).

[~~Alcohol (used in offset lithographic printing) - For the purposes of complying with §§115.442, 115.443, 115.445, 115.446, and 115.449 of this title (relating to Offset Lithographic Printing), an alcohol is any of the hydroxyl-containing organic compounds with a molecular weight equal to or less than 74.12, (which includes methanol, ethanol, propanol, and butanol).~~]

[~~Alcohol substitutes (used in offset lithographic printing) - Nonalcohol additives that contain volatile organic compounds (VOC) and are used in the fountain solution. Some additives are used to reduce the surface tension of water; others (especially in the newspaper industry) are added to prevent piling (ink build-up).~~]

(1) Bakery oven - An oven for baking bread or any other yeast-leavened products.

[~~Batch (used in offset lithographic printing) - A supply of fountain solution that is prepared and used without alteration until completely used or removed from the printing process.~~]

(2) Beaumont/Port Arthur area - Hardin, Jefferson, and Orange Counties.

(3) Capture efficiency - The amount of volatile organic compounds (VOC) collected by a capture system which is expressed as a percentage derived from the weight per unit time of VOC entering a capture system and delivered to a control device divided by the weight per unit time of total VOC generated by a source of VOC.

[~~Capture system - All equipment (including, but not limited to, hoods, ducts, fans, booths, ovens, dryers, etc.) that contains, collects, and transports an air pollutant to a control device.~~]

[~~Carbon adsorber - An add-on control device which uses activated carbon to adsorb volatile organic compounds from a gas stream.~~]

(4) Carbon adsorption system - A carbon adsorber with an inlet and outlet for exhaust gases and a system to regenerate the saturated adsorbent.

[~~Cleaning solution (used in offset lithographic printing) - Liquids used to remove ink and debris from the operating surfaces of the printing press and its parts.~~]

[Cold solvent cleaning - A batch process that uses liquid solvent to remove soils from the surfaces of metal parts or to dry the parts by spraying, brushing, flushing, and/or immersion while maintaining the solvent below its boiling point. Wipe cleaning (hand cleaning) is not included in this definition.]

(5) Component - A piece of equipment, including, but not limited to pumps, valves, compressors, and pressure relief valves, which has the potential to leak VOC [volatile organic compounds].

[Condensate - Liquids that result from the cooling and/or pressure changes of produced natural gas. Once these liquids are processed at gas plants or refineries or in any other manner, they are no longer considered condensates.]

[Consumer-solvent products - Products sold or offered for sale by wholesale or retail outlets for individual, commercial, or industrial use which may contain VOC, including household products, toiletries, aerosol products, rubbing compounds, windshield washer fluid, polishes and waxes, nonindustrial adhesives, space deodorants, moth control products, or laundry treatments.]

(6) Continuous monitoring - Any monitoring device used to comply with a continuous monitoring requirement of this chapter will be considered continuous if it can be demonstrated that at least 95% of the required data is captured.

[Control device - Equipment (such as an incinerator or carbon adsorber) used to reduce, by destruction or removal, the amount of air pollutant(s) in an air stream prior to discharge to the ambient air.]

[Control system - A combination of one or more capture system(s) and control device(s) working in concert to reduce discharges of air pollutants to the ambient air.]

[Conveyorized degreasing - A solvent cleaning process that uses an automated parts handling system, typically a conveyor, to automatically provide a continuous supply of metal parts to be cleaned or dried using either cold solvent or vaporized solvent. A conveyorized degreasing process is fully enclosed except for the conveyor inlet and exit portals.]

[Custody transfer - The transfer of produced crude oil and/or condensate, after processing and/or treating in the producing operations, from storage tanks or automatic transfer facilities to pipelines or any other forms of transportation.]

(7) Cutback asphalt - Any asphaltic cement which has been liquified by blending with petroleum solvents (diluents).

(8) Dallas/Fort Worth area - Collin, Dallas, Denton, and Tarrant Counties.

(9) El Paso area - El Paso County.

[Exempt solvent - Those carbon compounds or mixtures of carbon compounds used as solvents which have been excluded from the definition of volatile organic compounds.]

(10) External floating roof - A cover or roof in an open-top tank which rests upon or is floated upon the liquid being contained and is equipped with a single or double seal to close the space between the roof edge and tank shell. A double seal consists of two complete and separate closure seals, one above the other, containing an enclosed space between them. An external floating roof storage tank which is equipped with a self-supporting fixed roof (typically a bolted aluminum geodesic dome) shall be considered to be an internal floating roof storage tank.

(11) Flare - An open combustor without enclosure or shroud.

(12) Flexographic printing process - A method of printing in which the image areas are raised above the non-image areas, and the image carrier is made of an elastomeric material.

[Fountain solution (used in offset lithographic printing) - A mixture of water, nonvolatile printing chemicals, and an additive (liquid) that reduces the surface tension of the water so that it spreads easily across the printing plate surface. The fountain solution wets the nonimage areas so that the ink is maintained within the image areas. Isopropyl alcohol, a volatile organic compound, is the most common additive used to reduce the surface tension of the fountain solution.]

(13) Fugitive emission - Any VOC [volatile organic compound] entering the atmosphere which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening designed to direct or control its flow.

[Gasoline - Any petroleum distillate having a Reid vapor pressure (RVP) of four pounds per square inch (27.6 kPa) or greater which is produced for use as a motor fuel and is commonly called gasoline.]

(14) Gasoline bulk plant - A gasoline loading and/or unloading facility, excluding marine terminals, having a gasoline throughput less than 20,000 gallons (75,708 liters) per day, averaged over each [any] consecutive 30-day period. A motor vehicle fuel dispensing facility is not a gasoline bulk plant.

(15) Gasoline terminal - A gasoline loading and/or unloading facility, excluding marine terminals, having a gasoline throughput equal to or greater than 20,000 gallons (75,708 liters) per day, averaged over each [any] consecutive 30-day period.

[Hand-held lawn and garden and utility equipment - Equipment that requires its full weight to be supported by the operator to perform its function and requires multi-positional operation.]

[Heatset (used in offset lithographic printing) - Any operation where heat is required to evaporate ink oil from the printing ink. Hot air dryers are used to deliver the heat.]

(16) Houston/Galveston area - Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties.

(17) Independent small business marketer of gasoline - A person engaged in the marketing of gasoline who owns the dispensing equipment at a motor vehicle fuel dispensing facility and receives at least 50% of his annual income from the marketing of gasoline. A person is not an independent small business marketer of gasoline if such person:

(A) is a refiner; or

(B) controls (i.e., owns more than 50% of a business or corporation's stock), is controlled by, or is under common control with, a refiner; or

(C) is otherwise directly or indirectly affiliated with a refiner or with a person who controls, is controlled by, or is under common control with a refiner (unless the sole affiliation is by means of a supply contract or an agreement or contract to use a trademark, trade name, service mark, or other identifying symbol or name owned by such refiner or any such person).

[Industrial solid waste - Solid waste resulting from, or incidental to, any process of industry or manufacturing, or mining or agricultural operations, classified as follows:]

[(A) Class I industrial solid waste or Class I waste is any industrial solid waste designated as Class I by the Executive Director as any industrial solid waste or mixture of industrial solid wastes that because of its concentration or physical or chemical

characteristics is toxic, corrosive, flammable, a strong sensitizer or irritant, a generator of sudden pressure by decomposition, heat, or other means, and may pose a substantial present or potential danger to human health or the environment when improperly processed, stored, transported, or otherwise managed, including hazardous industrial waste, as defined in §335.1 of this title (relating to Definitions) and §335.505 of this title (relating to Class I Waste Determination).]

[(B) Class II industrial solid waste is any individual solid waste or combination of industrial solid wastes that cannot be described as Class I or Class III, as defined in §335.506 of this title (relating to Class II Waste Determination).]

[(C) Class III industrial solid waste is any inert and essentially insoluble industrial solid waste, including materials such as rock, brick, glass, dirt, and certain plastics and rubber, etc., that are not readily decomposable as defined in §335.507 of this title (relating to Class III Waste Determination).]

(18) Internal floating cover - A cover or floating roof in a fixed roof tank which rests upon or is floated upon the liquid being contained, and is equipped with a closure seal or seals to close the space between the cover edge and tank shell. An external floating roof storage tank which is equipped with a self-supporting fixed roof (typically a bolted aluminum geodesic dome) shall be considered to be an internal floating roof storage tank.

[Leak - A volatile organic compound concentration greater than 10,000 parts per million by volume (ppmv) or the amount specified by applicable rule, whichever is lower, or the dripping or exuding of process fluid based on sight, smell, or sound.]

(19) Leak-free marine vessel - A marine vessel whose cargo tank closures (hatch covers, expansion domes, ullage openings, butterworth covers and gauging covers) were inspected prior to cargo transfer operations and all such closures were properly secured such that no leaks of liquid or vapors can be detected by sight, sound, or smell. Cargo tank closures shall meet the applicable rules or regulations of the marine vessel's classification society or flag state. Cargo tank pressure/vacuum valves shall be operating within the range specified by the marine vessel's classification society or flag state and seated when tank pressure is less than 80% of set point pressure such that no vapor leaks can be detected by sight, sound, or smell. As an alternative, a marine vessel operated at negative pressure is assumed to be leak-free for the purpose of this standard.

[Liquid-mounted seal - A primary seal mounted in continuous contact with the liquid between the tank wall and the floating roof around the circumference of the tank.]

[Lithography (used in offset lithographic printing) - A printing process where the image and nonimage areas are chemically differentiated; the image area is oil receptive, and the nonimage area is water receptive. This method differs from other printing methods, where the image is a raised or recessed surface.]

(20) Marine loading facility - The loading arm(s), pumps, meters, shutoff valves, relief valves, and other piping and valves that are part of a single system used to fill a marine vessel at a single geographic site. Loading equipment that is physically separate (i.e., does not share common piping, valves, and other loading equipment) is considered to be a separate marine loading facility.

(21) Marine loading operation - The transfer of oil, gasoline, or other volatile organic liquids at any affected marine terminal, beginning with the connections made to a marine vessel and ending with the disconnection from the marine vessel.

(22) Marine terminal - Any marine facility or structure constructed to load oil, gasoline, or other volatile organic liquid bulk cargo into a marine vessel. A marine terminal consists of one or more marine loading facilities.

[Marine vessel - Any watercraft used, or capable of being used, as a means of transportation on water, and that is constructed or adapted to carry, or that carries, oil, gasoline, or other volatile organic liquid in bulk as a cargo or cargo residue.]

[Mechanical shoe seal - A metal sheet which is held vertically against the storage tank wall by springs or weighted levers and is connected by braces to the floating roof. A flexible coated fabric (envelope) spans the annular space between the metal sheet and the floating roof.]

[Motor vehicle fuel dispensing facility - Any site where gasoline is dispensed to motor vehicle fuel tanks from stationary storage tanks.]

[Municipal solid waste facility - All contiguous land, structures, other appurtenances, and improvements on the land used for processing, storing, or disposing of solid waste. A facility may be publicly or privately owned and may consist of several processing, storage, or disposal operational units, e.g., one or more landfills, surface impoundments, or combinations of them.]

[Municipal solid waste landfill - A discrete area of land or an excavation that receives household waste and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined under 257.2 of 40 Code of Federal Regulations, Part 257. A municipal solid waste landfill (MSWLF) unit also may receive other types of RCRA Subtitle D wastes, such as commercial solid waste, nonhazardous sludge, conditionally exempt small-quantity generator waste, and industrial solid waste. Such a landfill may be publicly or privately owned. A MSWLF unit may be a new MSWLF unit, an existing MSWLF unit, or a lateral expansion.]

[Municipal solid waste landfill emissions - Any gas derived from a natural process through the decomposition of organic waste deposited in a municipal solid waste disposal site or from the VOC in the waste.]

(23) Natural gas/gasoline processing - A process that extracts condensate from gases obtained from natural gas production and/or fractionates natural gas liquids into component products, such as ethane, propane, butane, and natural gasoline. The following facilities shall be included in this definition if, and only if, located on the same property as a natural gas/gasoline processing operation previously defined: compressor stations, dehydration units, sweetening units, field treatment, underground storage, liquified natural gas units, and field gas gathering systems.

[Non-heatset (used in offset lithographic printing) - Any operation where the printing inks are set without the use of heat. For the purposes of this rule, ultraviolet-cured and electron beam-cured inks are considered non-heatset.]

[Offset lithography - A printing process that transfers the ink film from the lithographic plate to an intermediary surface (blanket) which, in turn, transfers the ink film to the substrate.]

[Open-top vapor degreasing - A batch solvent cleaning process that is open to the air and which uses boiling solvent to create solvent vapor used to clean or dry metal parts through condensation of the hot solvent vapors on the colder metal parts.]

(24) Owner or operator of a motor vehicle fuel dispensing facility (as used in §§115.241-115.249 of this title, relating to Control of Vehicle Refueling Emissions (Stage II) at Motor Vehicle Fuel

Dispensing Facilities) - Any person who owns, leases, operates, or controls the motor vehicle fuel dispensing facility.

(25) Packaging rotogravure printing - Any rotogravure printing upon paper, paper board, metal foil, plastic film, or any other substrate which is, in subsequent operations, formed into packaging products or labels.

(26) Petroleum refinery - Any facility engaged in producing gasoline, kerosene, distillate fuel oils, residual fuel oils, lubricants, or other products through distillation of crude oil, or through the redistillation, cracking, extraction, reforming, or other processing of unfinished petroleum derivatives.

(27) Polymer and resin manufacturing process - A process that produces any of the following polymers or resins: polyethylene, polypropylene, polystyrene, and styrenebutadiene latex.

(28) Printing line - An operation consisting of a series of one or more printing processes and including associated drying areas.

[Process or processes - Any action, operation, or treatment embracing chemical, commercial, industrial, or manufacturing factors such as combustion units, kilns, stills, dryers, roasters, and equipment used in connection therewith, and all other methods or forms of manufacturing or processing that may emit smoke, particulate matter, gaseous matter, or visible emissions.]

[Property - All land under common control or ownership coupled with all improvements on such land, and all fixed or movable objects on such land, or any vessel on the waters of this state.]

(29) Publication rotogravure printing - Any rotogravure printing upon paper which is subsequently formed into books, magazines, catalogues, brochures, directories, newspaper supplements, or other types of printed materials.

(30) Regional VOC zone - Anderson, Angelina, Aransas, Atascosa, Austin, Bastrop, Bee, Bell, Bexar, Bosque, Bowie, Brazos, Burleson, Caldwell, Calhoun, Camp, Cass, Cherokee, Colorado, Comal, Cooke, Coryell, De Witt, Delta, Ellis, Falls, Fannin, Fayette, Franklin, Freestone, Goliad, Gonzales, Grayson, Gregg, Grimes, Guadalupe, Harrison, Hays, Henderson, Hill, Hood, Hopkins, Houston, Hunt, Jackson, Jasper, Johnson, Karnes, Kaufman, Lamar, Lavaca, Lee, Leon, Limestone, Live Oak, Madison, Marion, Matagorda, McLennan, Milam, Morris, Nacogdoches, Navarro, Newton, Nueces, Panola, Parker, Polk, Rains, Red River, Refugio, Robertson, Rockwall, Rusk, Sabine, San Jacinto, San Patricio, San Augustine, Shelby, Smith, Somervell, Titus, Travis, Trinity, Tyler, Upshur, Van Zandt, Victoria, Walker, Washington, Wharton, Williamson, Wilson, Wise, and Wood Counties.

[Remote reservoir cold solvent cleaning - Any cold solvent cleaning operation in which liquid solvent is pumped to a sink-like work area that drains solvent back into an enclosed container while parts are being cleaned, allowing no solvent to pool in the work area.]

(31) Rotogravure printing - The application of words, designs, and/or pictures to any substrate by means of a roll printing technique which involves a recessed image area. The recessed area is loaded with ink and pressed directly to the substrate for image transfer.

[Sludge - Any solid or semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant; water supply treatment plant, exclusive of the treated effluent from a wastewater treatment plant; or air pollution control equipment.]

[Solid waste - Garbage, rubbish, refuse, sludge from a waste water treatment plant, water supply treatment plant, or air pollution control equipment, and other discarded material, including solid, liquid, semisolid, or containerized gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities. The term does not include:]

[(A) solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued under the Water Code, Chapter 26;]

[(B) soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land, if the object of the fill is to make the land suitable for the construction of surface improvements; or]

[(C) waste materials that result from activities associated with the exploration, development, or production of oil or gas or geothermal resources, and other substance or material regulated by the Railroad Commission of Texas under the Natural Resources Code, 91.101, unless the waste, substance, or material results from activities associated with gasoline plants, natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants and is hazardous waste as defined by the Administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by Resource Conservation and Recovery Act, as amended (42 USC, 6901 et seq).]

[Source - A point of origin of air contaminants, whether privately or publicly owned or operated. Upon request of a source owner, the executive director shall determine whether multiple processes emitting air contaminants from a single point of emission will be treated as a single source or as multiple sources.]

[Submerged fill pipe - A fill pipe that extends from the top of a tank to have a maximum clearance of six inches (15.2 cm) from the bottom or, when applied to a tank which is loaded from the side, that has a discharge opening entirely submerged when the pipe used to withdraw liquid from the tank can no longer withdraw liquid in normal operation.]

(32) Synthetic Organic Chemical Manufacturing Industry (SOCMI) batch distillation operation - A SOCMI noncontinuous distillation operation in which a discrete quantity or batch of liquid feed is charged into a distillation unit and distilled at one time. After the initial charging of the liquid feed, no additional liquid is added during the distillation operation.

(33) Synthetic Organic Chemical Manufacturing Industry (SOCMI) batch process - Any SOCMI noncontinuous reactor process which is not characterized by steady-state conditions, and in which reactants are not added and products are not removed simultaneously.

(34) Synthetic Organic Chemical Manufacturing Industry (SOCMI) distillation operation - A SOCMI operation separating one or more feed stream(s) into two or more exit streams, each exit stream having component concentrations different from those in the feed stream(s). The separation is achieved by the redistribution of the components between the liquid and vapor-phase as they approach equilibrium within the distillation unit.

(35) Synthetic Organic Chemical Manufacturing Industry (SOCMI) distillation unit - A SOCMI device or vessel in which distillation operations occur, including all associated internals (including, but not limited to, trays and packing), accessories (including, but not limited to, reboilers, condensers, vacuum pumps, and steam jets), and recovery devices (such as absorbers, carbon adsorbers, and condensers) which are capable of, and used for, recovering chemicals for use, reuse, or sale.

(36) Synthetic Organic Chemical Manufacturing Industry (SOCMI) reactor process - A SOCMI unit operation in which one or more chemicals, or reactants other than air, are combined or decomposed in such a way, that their molecular structures are altered and one or more new organic compounds are formed.

(37) Synthetic organic chemical manufacturing process - A process that produces, as intermediates or final products, one or more of the chemicals listed in Table I of this section.
Figure: 30 TAC §115.10(37)

[System or device - Any article, chemical, machine, equipment, or other contrivance, the use of which may eliminate, reduce, or control the emission of air contaminants to the atmosphere.]

(38) Tank-truck tank - Any storage tank having a capacity greater than 1,000 gallons, mounted on a tank-truck or trailer. Vacuum trucks used exclusively for maintenance and spill response are not considered to be tank-truck tanks.

(39) Transport vessel - Any land-based mode of transportation (truck or rail) that is equipped with a storage tank having a capacity greater than 1,000 gallons which is used primarily to transport oil, gasoline, or other volatile organic liquid bulk cargo. Vacuum trucks used exclusively for maintenance and spill response are not considered to be transport vessels.

(40) True partial pressure - The absolute aggregate partial pressure (psia) of all VOC in a gas stream.

[True vapor pressure - The absolute aggregate partial vapor pressure (psia) of all VOC at the temperature of storage, handling, or processing.]

(41) Vapor balance system - A system which provides for containment of hydrocarbon vapors by returning displaced vapors from the receiving vessel back to the originating vessel.

[Vapor-mounted seal - A primary seal mounted so there is an annular space underneath the seal. The annular vapor space is bound by the bottom of the primary seal, the tank wall, the liquid surface, and the floating roof or cover.]

(42) Vapor combustor - A partially enclosed combustion device, where the combustion flame may be partially visible, but at no time does the device operate with a fully visible flame. A vapor combustor is used to destroy VOCs to the destruction requirements defined in the applicable emission specifications and control requirements sections of this chapter by smokeless combustion without extracting energy in the form of process heat or steam. Auxiliary fuel and/or a flame air control damping system, which can operate at all times to control the air/fuel mixture to the combustor's flame zone, may be required to ensure smokeless combustion during operation.

(43) Vapor control system - Any control system which utilizes vapor collection equipment to route VOC to a control device that reduces VOC emissions.

(44) Vapor recovery system - Any control system which utilizes vapor collection equipment to route VOC [volatile organic compounds (VOC)] to a control device that reduces VOC emissions.

(45) Vapor-tight - Not capable of allowing the passage of gases at the pressures encountered except where other acceptable leak-tight conditions are prescribed in the regulations.

[Vent - Any duct, stack, chimney, flue, conduit, or other device used to conduct air contaminants into the atmosphere.]

[Volatile organic compound (VOC) water separator - Any tank, box, sump, or other container in which any VOC floating on or contained in water entering such tank, box, sump, or other container is physically separated and removed from water prior to outfall, drainage, or recovery of such water.]

(46) Waxy, high pour point crude oil - A crude oil with a pour point of 50 degrees Fahrenheit (10 degrees Celsius) or higher as determined by the American Society for Testing and Materials Standard D97-66, "Test for Pour Point of Petroleum Oils."

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 December 18, 1998.

TRD-9818440
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: May 26, 1999
For further information, please call: (512) 239–1970

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## Subchapter C. Volatile Organic Compound Transfer Operations

## Division 1. Loading and Unloading of Volatile Organic Compounds

**30 TAC §§115.211-115.217, 115.219**

STATUTORY AUTHORITY The amendments are proposed under the Texas Health and Safety Code (Vernon 1992), the Texas Clean Air Act (TCAA), §382.017, which provides the Texas Natural Resource Conservation Commission (commission) with the authority to adopt rules consistent with the policy and purposes of the TCAA; and TCAA §382.012, which requires the commission to develop plans for protection of the state's air.

The proposed amendments implement the Health and Safety Code, §382.017.

*§115.211. Emission Specifications.*

[(a)] The owner or operator of each gasoline terminal and gasoline bulk plant in the regional VOC zone and [For all persons] in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, as defined in §115.10 of this title (relating to Definitions), shall ensure that [the following emission specifications shall apply.]

[(1)] VOC [volatile organic compound (VOC)] emissions from gasoline transfer do not exceed the following rates:

(1) from the vapor control system vent at gasoline terminals:

(A) in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, [shall be reduced to a level not to exceed] 0.09 pound [of VOC from the vapor recovery system vent] per 1,000 gallons (10.8 mg/liter) of gasoline loaded into transport vessels.

(B) in the regional VOC zone, 0.17 pound per 1,000 gallons (20 mg/liter) of gasoline loaded into transport vessels. Until December 31, 1999 in Gregg, Nueces, and Victoria Counties, VOC

emissions shall not exceed 0.67 pound per 1,000 gallons (80 mg/liter) of gasoline loaded into transport vessels.

(2) [The maximum loss of VOC due to product transfer] at [a] gasoline bulk plants, [plant, as defined in §115.10 of this title, is limited to] 1.2 pounds per 1,000 gallons (140 mg/liter) of gasoline transferred into transport vessels or storage tanks.

[(3) In the Houston/Galveston area, VOC emissions from marine terminals, as defined in §115.10 of this title, shall be reduced to a level not to exceed 0.09 pounds of VOC from the vapor recovery system vent per 1,000 gallons (10.8 mg/liter) of VOC loaded into the marine vessel, or the vapor recovery system shall maintain a control efficiency of at least 90%.]

[(b) For all persons in Gregg, Nueces, and Victoria Counties, VOC emissions from gasoline terminals shall be reduced to a level not to exceed 0.67 pound from the vapor recovery system vent per 1,000 gallons (80 mg/liter) of gasoline transferred.]

*§115.212. Control Requirements.*

(a) The owner or operator of each volatile organic compound (VOC) transfer operation, transport vessel, and marine vessel [For all persons] in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas[,] shall comply with the following control requirements [shall apply].

(1) General vapor control. At [volatile organic compound] VOC loading operations other than gasoline terminals, gasoline bulk plants, and marine terminals, vapors from the transport vessel caused by [no person shall permit] the loading of VOC with a true vapor pressure greater than or equal to 0.5 psia under actual storage conditions must be controlled [to transport vessels unless the vapors are processed] by:

(A) a vapor control [recovery] system which maintains a control efficiency of at least 90%; or

(B) [are controlled by] a vapor balance system, as defined in §115.10 of this title (relating to Definitions). [The vapor recovery system shall maintain a control efficiency of at least 90%.]

(2) Disposal of transported vapors. After unloading, transport vessels must be [No person shall permit the unloading of VOC with a true vapor pressure greater than or equal to 0.5 psia under actual storage conditions from any transport vessel unless the transport vessel is] kept vapor- tight [at all times] until the vapors [remaining] in the transport vessel [after unloading] are returned to a loading, cleaning, or degassing operation and discharged in accordance with the control requirements of that operation. [discharged to a vapor recovery system if the transport vessel is refilled, degassed, and/or cleaned in one of the counties in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas. The requirement to discharge the vapors remaining in the transport vessel after unloading to a vapor recovery system does not apply if the transport vessel is refilled, degassed, and/or cleaned at an operation for which control of the vapors is not required.]

(3) Leak-free requirements. All land-based loading and unloading of VOC shall be conducted such that:

(A) All liquid and vapor lines are:

*(i)* (No change.)

*(ii)* equipped to permit residual VOC [in the loading line] after transfer [loading] is complete to discharge into a recovery or disposal system which routes all VOC emissions to a vapor control [recovery] system or a vapor balance system. After VOC transfer, if necessary to empty a liquid line, the contents may be placed in a portable container, which is then closed and disposed of properly.

(B) There are no VOC leaks, as defined in §101.1 [§115.10] of this title (relating to Definitions), when measured with a hydrocarbon gas analyzer, and no liquid or vapor leaks, as detected by sight, sound, or smell, from any potential leak source in the transport vessel and transfer system (including, but not limited to, liquid lines, vapor lines, hatch covers, pumps, and valves, including pressure relief valves).

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

(E) [(4)] If VOC is loaded [When loading is effected] through the hatches of a transport vessel [with a loading arm equipped with a vapor collection adapter], then pneumatic, hydraulic, or other mechanical means shall [be provided to] force a vapor-tight seal between the loading arm's vapor collection adapter and the hatch. A means shall be provided which prevents liquid drainage from the loading device when it is removed from the hatch of any transport vessel, or which routes all VOC emissions to a vapor control [recovery] system. After VOC transfer, if necessary to empty a liquid line, the contents may be placed in a portable container, which is then closed and disposed of properly.

(4) Gasoline terminals. The following additional control requirements apply to the transfer of gasoline at gasoline terminals.

(A) [(5)] A [No person shall permit the loading of gasoline to a transport vessel from a gasoline terminal unless the vapors are processed by a] vapor control [recovery] system [as defined in §115.10 of this title] must be used to control the vapors from loading each transport vessel.

(B) Vapor control [recovery] systems and loading equipment at gasoline terminals shall be designed and operated such that gauge pressure does not exceed 18 inches of water [(4.5 kPa)] and vacuum does not exceed six inches of water [(1.5 kPa)] in the gasoline tank-truck.

(C) Each vapor control system shall be instrumented so that the pump(s) transferring gasoline to the transport vessels will not operate unless the vapor control system is properly connected and properly operating. No transport vessel loading shall take place at a loading rack when the vapor control system serving that loading rack is out of service or is not operating in accordance with the manufacturer's parameters.

(5) [(6)] Gasoline bulk plants. The following additional control requirements apply to [No person shall permit the] transfer of gasoline at [from a transport vessel into a] gasoline bulk plants. [plant storage tank, unless the following requirements are met:]

(A) A vapor balance system must be used between the storage tank and transport vessel. Alternatively, a vapor control system which maintains a control efficiency of at least 90% may be used to control the vapors. [a vapor return line is installed from the storage tank to the transport vessel;]

(B) While filling a transport vessel from a storage tank:

*(i)* the transport vessel, if equipped for top loading, must use a submerged fill pipe; and

*(ii)* gauge pressure must not exceed 18 inches of water and vacuum must not exceed six inches of water in the gasoline tank-truck tank.

[(B) the only atmospheric emission during gasoline transfer is through the storage tank's pressure- vacuum relief valve

resulting from emergency situations when pressures exceed the specifications in paragraph (7)(C) of this section; and]

[(C) the transport vessel is kept vapor-tight at all times until the vapors remaining in the transport vessel are discharged to a vapor recovery system, if the transport vessel is refilled, degassed, and/or cleaned in one of the counties in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas. The requirement to discharge the vapors remaining in the transport vessel after unloading to a vapor recovery system does not apply if the transport vessel is refilled, degassed, and/or cleaned at an operation for which control of the vapors is not required.]

[(7) No person shall permit the transfer of gasoline from a gasoline bulk plant into a transport vessel, unless the following requirements are met:]

[(A) the transport vessel, if equipped for top loading, has a submerged fill pipe;]

[(B) a vapor return line is installed from the transport vessel to the storage tank;]

[(C) gauge pressure does not exceed 18 inches of water (4.5 kPa) and vacuum does not exceed six inches of water (1.5 kPa) in the gasoline tank-truck tank; and]

[(D) the only atmospheric emission during gasoline transfer is through the storage tank pressure- vacuum relief valves resulting from emergency situations when pressures exceed the specification in subparagraph (C) of this paragraph.]

(6) [(8)] Marine terminals. The following control requirements apply to [For] marine terminals in the Houston/Galveston area[, the following control requirements shall apply].

(A) [Control device(s) shall reduce] VOC emissions [by at least 90% by weight from uncontrolled conditions or to a level] shall not [to] exceed 0.09 pound [pounds of VOC] from the vapor control [recovery] system vent per 1,000 gallons (10.8 mg/liter) of VOC loaded into the marine vessel, or the vapor control system shall maintain a control efficiency of at least 90%. Alternatively, a vapor balance system may be used to control the vapors.

(B) Only [certified] leak-free marine vessels, as defined in §115.10 of this title, shall be used for loading operations. [If no documentation of the annual vapor tightness test is available, one of the following methods may be substituted:]

*[(i)* VOC shall be loaded into the marine vessel with the vessel product tank at negative gauge pressure;]

*[(ii)* Leak testing shall be performed during loading using Test Method 21. The testing shall be conducted during the final 20% of loading of each product tank of the marine vessel and shall be applied to any potential sources of vapor leaks on the vessel; or]

*[(iii)* Documentation of leak testing conducted during the preceding 12 months as described in clause (ii) of this subparagraph shall be provided.]

(C) All gauging and sampling devices shall be vapor-tight except for necessary gauging and sampling. Any nonvapor-tight gauging and/or sampling shall:

*(i)* be limited in duration to the time necessary to practicably gauge and/or sample; and

*(ii)* not occur while VOC is being transferred.

(D) When non-dedicated loading lines are used to load VOC with a true vapor pressure less than 0.5 psia (or a flash point less than 150 degrees Fahrenheit) and the preceding transfer through these lines was VOC with a true vapor pressure equal to or greater than 0.5 psia, the residual VOC vapors from this preceding transfer must be controlled by the vapor control system or vapor balance system specified in subparagraph (A) of this paragraph.

[(9) For gasoline terminals in the Dallas/Fort Worth, El Paso, and Houston/Galveston areas, each vapor recovery system shall be instrumented in such a way that the pump(s) transferring fuel to the transport vessels will not operate unless the vapor recovery system is properly connected and properly operating. No transport vessel loading shall take place at a loading rack when the vapor recovery system serving that loading rack is out of service or is not operating in accordance with the manufacturer's parameters.]

(7) [(10)] Once-in-always-in. Any loading or unloading operation that becomes subject to the provisions of this subsection by exceeding provisions of §115.217(a) of this title (relating to Exemptions) will remain subject to the provision of this subsection, even if throughput or emissions later fall below exemption limits unless and until emissions are reduced to no more than the controlled emissions level existing before implementation of the project by which throughput or emission rate was reduced to less than the applicable exemption limits in §115.217(a) of this title; and

(A) the project by which throughput or emission rate was reduced is authorized by any permit or permit amendment or standard permit or standard exemption required by Chapter 116 or Chapter 106 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification; and Exemptions from Permitting). If a standard exemption is available for the project, compliance with this subsection must be maintained for 30 days after the filing of documentation of compliance with that standard exemption; or

(B) if authorization by permit, permit amendment, standard permit, or standard exemption is not required for the project, the owner/operator has given the executive director 30 days' notice of the project in writing.

(b) The owner or operator of each land-based VOC transfer operation and transport vessel in the regional VOC zone shall comply with [For all persons in Gregg, Nueces, and Victoria Counties,] the following control requirements [shall apply].

(1) General vapor control in Aransas, Bexar, Calhoun, Gregg, Matagorda, Nueces, San Patricio, Travis, and Victoria Counties. At VOC loading operations other than gasoline terminals and gasoline bulk plants, vapors from the transport vessel caused by [no person shall permit] the loading of VOC with a true vapor pressure greater than or equal to 1.5 psia under actual storage conditions must be controlled [to a transport vessel unless the vapors are processed] by:

(A) a vapor control [recovery] system which maintains a control efficiency of at least 90%; or

(B) [are controlled by] a vapor balance system, as defined in §115.10 of this title. [The vapor recovery system shall control the VOC emissions such that the aggregate true vapor pressure of all VOC does not exceed 1.5 psia.]

(2) Disposal of transported vapors. After unloading, transport vessels must be [No person shall permit the unloading of VOC with a true vapor pressure greater than or equal to 1.5 psia under actual storage conditions from any transport vessel unless the transport vessel is] kept vapor- tight [at all times] until the vapors [remaining] in the transport vessel [after unloading]

are returned to a loading, cleaning, or degassing operation and discharged in accordance with the control requirements of that operation [discharged to a vapor recovery system if the transport vessel is refilled in Gregg, Nueces, or Victoria Counties].

(3) Leak-free requirements. All land-based loading and unloading of VOC shall be conducted such that:

(A) All liquid and vapor lines are:

*(i)* equipped with fittings which make vapor-tight connections and that close automatically when disconnected; or

*(ii)* equipped to permit residual VOC [in the loading line] after transfer [loading] is complete to discharge into a recovery or disposal system which routes all VOC emissions to a vapor control [recovery] system or a vapor balance system. After VOC transfer, if necessary to empty a liquid line, the contents may be placed in a portable container, which is then closed and disposed of properly.

(B) There are no VOC leaks, as defined in §101.1 [§115.10] of this title, when measured with a hydrocarbon gas analyzer, and no liquid or vapor leaks, as detected by sight, sound, or smell, from any potential leak source in the transport vessel and transfer system (including, but not limited to, liquid lines, vapor lines, hatch covers, pumps, and valves, including pressure relief valves).

(C) All gauging and sampling devices are vapor-tight except for necessary gauging and sampling. Any nonvapor-tight gauging and/or sampling shall:

*(i)* be limited in duration to the time necessary to practicably gauge and/or sample; and

*(ii)* not occur while VOC is being transferred.

(D) [(C)] Any openings in a transport vessel during unloading are limited to minimum openings which are sufficient to prevent collapse of the transport vessel.

(E) [(4)] If VOC is loaded [When loading is effected] through the hatches of a transport vessel [with a loading arm equipped with a vapor collection adapter], then pneumatic, hydraulic, or other mechanical means shall [be provided to] force a vapor-tight seal between the loading arm's vapor collection adapter and the hatch. A means shall be provided which prevents liquid drainage from the loading device when it is removed from the hatch of any transport vessel, or which routes all VOC emissions to a vapor control [recovery] system. After VOC transfer, if necessary to empty a liquid line, the contents may be placed in a portable container, which is then closed and disposed of properly.

(4) Gasoline terminals. The following additional control requirements apply to gasoline transfer at gasoline terminals.

(A) A vapor control system must be used to control the vapors from loading the transport vessel.

(B) Vapor control systems and loading equipment at gasoline terminals shall be designed and operated such that gauge pressure does not exceed 18 inches of water and vacuum does not exceed six inches of water in the gasoline tank-truck.

(C) Each vapor control system shall be instrumented so that the pump(s) transferring gasoline to the transport vessels will not operate unless the vapor control system is properly connected and properly operating. No transport vessel loading shall take place at a loading rack when the vapor control system serving that loading rack is out of service or is not operating in accordance with the manufacturer's parameters.

(5) Gasoline bulk plants. The following additional control requirements apply to gasoline transfer at gasoline bulk plants.

(A) A vapor balance system must be used between the storage tank and transport vessel. Alternatively, a vapor control system which maintains a control efficiency of at least 90% may be used to control the vapors.

(B) While filling a transport vessel from a storage tank:

*(i)* the transport vessel, if equipped for top loading, must use a submerged fill pipe; and

*(ii)* gauge pressure must not exceed 18 inches of water and vacuum must not exceed six inches of water in the gasoline tank-truck tank.

[(5) No person shall permit the loading of gasoline to a transport vessel from a gasoline terminal unless the vapors are processed by a vapor recovery system as defined in §115.10 of this title. Vapor recovery systems and loading equipment at gasoline terminals shall be designed and operated such that gauge pressure does not exceed 18 inches of water (4.5 kPa) and vacuum does not exceed six inches of water (1.5 kPa) in the gasoline tank-truck.]

[(6) All gauging and sampling devices shall be vapor-tight except for necessary gauging and sampling.]

[(c) For all persons in Aransas, Bexar, Calhoun, Matagorda, San Patricio, and Travis Counties, the following requirements shall apply.]

[(1) No person shall permit the loading of VOC with a true vapor pressure greater than or equal to 1.5 psia under actual storage conditions to a transport vessel unless the vapors are processed by a vapor recovery system or are controlled by a vapor balance system, as defined in §115.10 of this title. The vapor recovery system shall control the VOC emissions such that the aggregate true vapor pressure of all VOC does not exceed 1.5 psia.]

[(2) No person shall permit the unloading of VOC with a true vapor pressure greater than or equal to 1.5 psia under actual storage conditions from any transport vessel unless the transport vessel is kept vapor-tight at all times until the vapors remaining in the transport vessel after unloading are discharged to a vapor recovery system if the transport vessel is refilled in Aransas, Bexar, Calhoun, Matagorda, San Patricio, or Travis Counties.]

[(3) All loading and unloading of VOC shall be conducted such that:]

[(A) All liquid and vapor lines are:]

*[(i)* equipped with fittings which make vapor-tight connections and that close automatically when disconnected; or]

*[(ii)* equipped to permit residual VOC in the loading line after loading is complete to discharge into a recovery or disposal system which routes all VOC emissions to a vapor recovery system or a vapor balance system.]

[(B) There are no VOC leaks, as defined in §115.10 of this title, when measured with a hydrocarbon gas analyzer, and no liquid or vapor leaks, as detected by sight, sound, or smell, from any potential leak source in the transport vessel and transfer system (including, but not limited to, liquid lines, vapor lines, hatch covers, pumps, and valves, including pressure relief valves).]

[(C) Any openings in a transport vessel during unloading are limited to minimum openings which are sufficient to prevent collapse of the transport vessel.]

[(4) When loading is effected through the hatches of a transport vessel with a loading arm equipped with a vapor collection adapter, then pneumatic, hydraulic, or other mechanical means shall be provided to force a vapor-tight seal between the adapter and the hatch. A means shall be provided which prevents liquid drainage from the loading device when it is removed from the hatch of any transport vessel, or which routes all VOC emissions to a vapor recovery system.]

[(5) All gauging and sampling devices shall be vapor-tight except for necessary gauging and sampling.]

*§115.213. Alternate Control Requirements.*

(a) Alternate means of control. [For all persons in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, alternate] Alternate methods of demonstrating and documenting continuous compliance with the applicable control requirements or exemption criteria in this division (relating to Loading and Unloading of Volatile Organic Compounds (VOC)) [section] may be approved by the executive director in accordance with §115.910 of this title (relating to Availability of Alternate Means of Control) if emission reductions are demonstrated to be substantially equivalent.

(b) General VOC loading - 90% overall control option in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas. As an alternative to §115.212(a)(1) of this title (relating to Control Requirements), VOC loading operations other than gasoline terminals, gasoline bulk plants, and marine terminals may elect to achieve a 90% overall control of emissions at the account from the loading of VOC (excluding loading into marine vessels and loading at gasoline terminals and gasoline bulk plants) with a true vapor pressure between 0.5 and 11 psia under actual storage conditions, provided that the following requirements are met.

(1) To qualify for the control option available under this subsection after December 31, 1996, the owner or operator of a VOC loading operation for which a control plan was not previously submitted shall submit a control plan to the executive director, the appropriate regional office, and any local air pollution control program with jurisdiction which demonstrates that the overall control of emissions at the account from the loading of VOC with a true vapor pressure between 0.5 and 11 psia under actual storage conditions will be at least 90% (excluding VOC loading into marine vessels and VOC loading at gasoline terminals and gasoline bulk plants). Any control plan submitted after December 31, 1996, must be approved by the executive director before the owner or operator may use the control option available under this subsection for compliance. For each loading rack and any associated control device at the account, the control plan shall include the emission point number (EPN), the facility identification number (FIN), the throughput of VOC with a true vapor pressure between 0.5 and 11 psia under actual storage conditions for the preceding calendar year, a plot plan showing the location, EPN, and FIN of each loading rack and any associated control device, the controlled and uncontrolled emission rates for the preceding calendar year, and an explanation of the recordkeeping procedure and calculations which will be used to demonstrate compliance.

(2) The owner or operator of the VOC loading operation shall submit an annual report no later than March 31 of each year to the executive director, the appropriate regional office, and any local air pollution control program with jurisdiction which demonstrates that the overall control of emissions at the account from the loading of VOC with a true vapor pressure between 0.5 and 11 psia under actual storage conditions during the preceding calendar year is at least 90%. For each loading rack and any associated control device at the account, the report shall include the EPN, the FIN, the throughput of VOC with a true vapor pressure between 0.5 and 11 psia under actual storage conditions for the preceding calendar year, a plot plan showing the location, EPN, and FIN of each loading rack and any associated control device, and the controlled and uncontrolled emission rates for the preceding calendar year.

(3) The owner or operator of the VOC loading operation shall submit an updated report no later than 30 days after the installation of an additional loading rack(s) or any change in service of a loading rack(s) from loading VOC with a true vapor pressure less than 0.5 psia to loading VOC with a true vapor pressure greater than or equal to 0.5 psia, or vice versa. The report shall be submitted to the executive director, the appropriate regional office, and any local air pollution control program with jurisdiction and shall demonstrate that the overall control of emissions at the account from the loading of VOC with a true vapor pressure between 0.5 and 11 psia under actual storage conditions continues to be at least 90%.

(4) All representations in control plans and annual reports become enforceable conditions. It shall be unlawful for any person to vary from such representations if the variation will cause a change in the identity of the specific emission sources being controlled or the method of control of emissions unless the owner or operator of the VOC loading operation submits a revised control plan to the executive director, the appropriate regional office, and any local air pollution control program with jurisdiction no later than 30 days after the change. All control plans and reports shall demonstrate that the overall control of emissions at the account from the loading of VOC with a true vapor pressure between 0.5 and 11 psia under actual storage conditions continues to be at least 90%. The emission rates shall be calculated in a manner consistent with the most recent emissions inventory.

(5) The loading of VOC with a true vapor pressure greater than or equal to 11 psia under actual storage conditions must be controlled by:

(A) pressurized loading;

(B) a vapor control system which maintains a control efficiency of at least 90%; or

(C) a vapor balance system, as defined in §115.10 of this title (relating to Definitions).

(c) General VOC loading - 90% overall control option in Aransas, Bexar, Calhoun, Gregg, Matagorda, Nueces, San Patricio, Travis, and Victoria Counties. As an alternative to §115.212(b)(1) of this title, VOC loading operations other than gasoline terminals, gasoline bulk plants, and marine terminals may elect to achieve a 90% overall control of emissions at the account from the loading of VOC (excluding loading into marine vessels and loading at gasoline terminals and gasoline bulk plants) with a true vapor pressure between 1.5 and 11 psia under actual storage conditions. Each VOC loading operation using this control option shall meet the requirements of §115.212(b)(1)-(5) of this title, except that 1.5 psia shall be substituted for 0.5 psia in these paragraphs.

(d) Marine vessel loading - 90% control option. As an alternative to §115.212(a)(6)(A) of this title, marine terminals may elect to achieve a 90% overall control of emissions at the marine terminal from the loading of VOC with a true vapor pressure between 0.5 and 11 psia under actual storage conditions into marine vessels, provided that the following requirements are met.

(1) To qualify for the control option available under this subsection after December 31, 1996, the owner or operator of a

marine terminal for which a control plan was not previously submitted shall submit a control plan to the executive director, the appropriate regional office, and any local air pollution control program with jurisdiction which demonstrates that the overall control of emissions at the marine terminal from the loading of VOC with a true vapor pressure between 0.5 and 11 psia under actual storage conditions into marine vessels will be at least 90%. Any control plan submitted after December 31, 1996 must be approved by the executive director before the owner or operator may use the control option available under this subsection for compliance. For each marine loading facility and any associated control device at the marine terminal, the control plan shall include the EPN, the FIN, the throughput of VOC with a true vapor pressure between 0.5 and 11 psia under actual storage conditions for the preceding calendar year, a plot plan showing the location, EPN, and FIN of each marine loading facility and any associated control device, the controlled and uncontrolled emission rates for the preceding calendar year, and an explanation of the recordkeeping procedure and calculations which will be used to demonstrate compliance.

(2) The owner or operator of the marine terminal shall submit an annual report no later than March 31 of each year to the executive director, the appropriate regional office, and any local air pollution control program with jurisdiction which demonstrates that the overall control of emissions at the marine terminal from the loading of VOC with a true vapor pressure between 0.5 and 11 psia under actual storage conditions into marine vessels during the preceding calendar year is at least 90%. For each marine loading facility and any associated control device at the account, the report shall include the EPN, the FIN, the throughput of VOC with a true vapor pressure between 0.5 and 11 psia under actual storage conditions for the preceding calendar year, a plot plan showing the location, EPN, and FIN of each marine loading facility and any associated control device, and the controlled and uncontrolled emission rates for the preceding calendar year.

(3) All representations in control plans and annual reports become enforceable conditions. It shall be unlawful for any person to vary from such representations if the variation will cause a change in the identity of the specific emission sources being controlled or the method of control of emissions unless the owner or operator of the marine terminal submits a revised control plan to the executive director, the appropriate regional office, and any local air pollution control program with jurisdiction no later than 30 days after the change. All control plans and reports shall demonstrate that the overall control of emissions at the marine terminal from the loading into marine vessels of VOC with a true vapor pressure between 0.5 and 11 psia under actual storage conditions continues to be at least 90%. The emission rates shall be calculated in a manner consistent with the most recent emissions inventory.

(4) The loading of VOC with a true vapor pressure greater than 11 psia under actual storage conditions must be controlled by:

(A) pressurized loading;

(B) a vapor control system which maintains a control efficiency of at least 90%; or

(C) a vapor balance system, as defined in §115.10 of this title.

(5) A marine loading operation which, under the 90% control option of this subsection, is not required to control vapors caused by loading VOC into a marine vessel is likewise not required to comply with §115.212(a)(6)(B) and (C) of this title.

[~~(b) For all persons in Gregg, Nueces, and Victoria Counties, alternate methods of demonstrating and documenting continuous compliance with the applicable control requirements or exemption criteria in this section may be approved by the executive director in accordance with §115.910 of this title if emission reductions are demonstrated to be substantially equivalent.~~]

[~~(c) For all persons in Aransas, Bexar, Calhoun, Matagorda, San Patricio, and Travis Counties, alternate methods of demonstrating and documenting continuous compliance with the applicable control requirements or exemption criteria in this section may be approved by the executive director in accordance with §115.910 of this title if emission reductions are demonstrated to be substantially equivalent.~~]

*§115.214. Inspection Requirements.*

(a) The owner or operator of each volatile organic compound (VOC) transfer operation [~~For all persons~~] in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas[~~,~~] shall comply with the following inspection requirements [~~shall apply~~].

(1) Land-based VOC transfer.

(A) During each VOC transfer, the owner or operator of the transfer operation or of the transport vessel shall inspect [~~Inspection~~] for:

*(i)* visible liquid leaks; [~~,~~]

*(ii)* visible fumes; and [~~, or~~]

*(iii)* significant odors [~~resulting from land-based volatile organic compounds (VOCs) transfer operations shall be conducted during each transfer by the owner or operator of the VOC loading and unloading operation or the owner or operator of the transport vessel~~].

(B) [~~(2)~~] [~~Land-based~~] VOC loading or unloading through the affected transfer lines shall be discontinued immediately when a leak is observed and shall not be resumed until the observed leak is repaired.

(C) [~~(3)~~] All tank-truck tanks loading or unloading VOC having a true vapor pressure greater than or equal to 0.5 pounds per square inch absolute under actual storage conditions shall have been leak tested within one year in accordance with the requirements of §§115.234-115.237 and 115.239 of this title (relating to Control of Volatile Organic Compound Leaks From Transport Vessels) as evidenced by prominently displayed certification affixed near the U.S. Department of Transportation certification plate.

(D) Subparagraphs (A) and (B) of this paragraph do not apply to fumes from hatches or vents if the fumes result from VOC transfer which is exempt from §115.211 or §115.212(a)(1) of this title (relating to Emission Specifications; and Control Requirements).

(2) Gasoline terminals - additional inspection. The owner or operator of each gasoline terminal shall perform a monthly leak inspection of all equipment in gasoline service. Each piece of equipment shall be inspected during the loading of gasoline tank-trucks. For this inspection, detection methods incorporating sight, sound, and smell are acceptable. Alternatively, a hydrocarbon gas analyzer may be used for the detection of leaks, by meeting the requirements of §§115.352- 115.357 and 115.359 of this title (relating to Fugitive Emission Control in Petroleum Refining, Natural Gas/Gasoline Processing, and Petrochemical Processes in Ozone Nonattainment Areas). Every reasonable effort shall be made to repair or replace a leaking component within 15 days after a leak is found. If the repair or replacement of a leaking component would require

a unit shutdown, the repair may be delayed until the next scheduled shutdown.

(3) [~~(4)~~] Marine terminals. For marine terminals in the Houston/Galveston area, the following inspection requirements [~~shall~~] apply.

(A) Before loading a marine vessel with a VOC which has a vapor pressure equal to or greater than 0.5 pounds per square inch absolute under actual storage conditions, the owner or operator of the marine terminal shall verify that the marine vessel has passed an annual vapor tightness test as specified in §115.215(7) of this title (relating to Approved Test Methods). If no documentation of the annual vapor tightness test is available, one of the following methods may be substituted.

*(i)* VOC shall be loaded into the marine vessel with the vessel product tank at negative gauge pressure;

*(ii)* Leak testing shall be performed during loading using Test Method 21. The testing shall be conducted during the final 20% of loading of each product tank of the marine vessel and shall be applied to any potential sources of vapor leaks on the vessel; or

*(iii)* Documentation of leak testing conducted during the preceding 12 months as described in clause (ii) of this subparagraph shall be provided.

(B) [~~(A)~~] During each VOC transfer, the owner or operator of the marine terminal or of the marine vessel shall inspect [~~Inspection~~] for:

*(i)* visible liquid leaks; [~~,~~]

*(ii)* visible fumes; and [~~, or~~]

*(iii)* significant odors [~~resulting from VOC transfer operations shall be conducted during each transfer by the owner or operator of the VOC loading and unloading operation or the owner or operator of the marine vessel~~].

(C) [~~(B)~~] If a liquid leak is detected during VOC transfer [~~the loading operation~~] and cannot be repaired immediately (for example, by tightening a bolt or packing gland), then the transfer operation shall cease until the leak is repaired.

(D) [~~(C)~~] If a vapor leak is detected by sight, sound, smell, or hydrocarbon gas analyzer during the VOC loading operation, then a "first attempt" shall be made to repair the leak. VOC [~~Cargo~~] loading operations need not be ceased if the first attempt to repair the leak, as defined in §101.1 [~~by §115.10~~] of this title (relating to Definitions), to less than 10,000 parts per million by volume (ppmv) or 20% of the lower explosive limit, is not successful provided that the first attempt effort is documented by the owner or operator of the marine vessel as soon as practicable and a copy of the repair log made available to a representative of the marine terminal [~~loading facility~~]. No additional loadings shall be made into the cargo tank until a successful repair has been completed and [~~certified by a~~] an inspection conducted under 40 Code of Federal Regulations (CFR) 61.304(f) or 63.565(c) [~~or equivalent inspection~~].

(E) [~~(D)~~] The intentional bypassing of a vapor control device during marine loading operations is prohibited.

(F) [~~(E)~~] All shore-based equipment is subject to the fugitive emissions monitoring requirements of §§115.352-115.357 and 115.359 of this title [~~(relating to Fugitive Emission Control in Petroleum Refining, Natural Gas/Gasoline Processing, and Petrochemical Processes in Ozone Nonattainment Areas)~~]. For the purposes of this paragraph, shore-based equipment includes, but is not limited to, all equipment such as loading arms, pumps, meters, shut-off valves, relief valves, and other piping and valves between the marine loading facility and the vapor control [~~recovery~~] system and between the marine loading facility and the associated land-based storage tanks, excluding working emissions from the storage tanks.

(G) Subparagraphs (B) and (D) of this paragraph do not apply to fumes from hatches or vents if the fumes result from VOC transfer which is exempt from §115.212(a)(6)(A) of this title.

[~~(5) Each gasoline terminal, as defined in §115.10 of this title, in the Dallas/Fort Worth, El Paso, and Houston/Galveston areas shall perform a monthly leak inspection of all equipment in gasoline service. Each piece of equipment shall be inspected during the loading of gasoline tank trucks. For this inspection, detection methods incorporating sight, sound, and smell are acceptable. Alternatively, gasoline terminals may use a hydrocarbon gas analyzer for the detection of leaks, by meeting the requirements of §§115.352-115.357 and 115.359 of this title. Every reasonable effort shall be made to repair or replace a leaking component within 15 days after a leak is found. If the repair or replacement of a leaking component would require a unit shutdown, the repair may be delayed until the next scheduled shutdown.~~]

(b) The owner or operator of each VOC transfer operation in the regional VOC zone shall comply with [~~For all persons in Gregg, Nueces, and Victoria Counties,~~] the following inspection requirements [~~shall apply~~].

(1) Land-based VOC transfer. At all VOC transfer operations in Aransas, Bexar, Calhoun, Gregg, Matagorda, Nueces, San Patricio, Travis, and Victoria Counties, and at gasoline terminals and gasoline bulk plants in the regional VOC zone:

(A) During each VOC transfer, the owner or operator of the transfer operation or of the transport vessel shall inspect [~~Inspection~~] for:

*(i)* visible liquid leaks; [~~,~~]

*(ii)* visible fumes; and [~~, or~~]

*(iii)* significant odors [~~resulting from VOC transfer operations shall be conducted during each transfer by the owner or operator of the VOC loading and unloading operation or the owner or operator of the transport vessel~~].

(B) [~~(2)~~] VOC loading or unloading through the affected transfer lines shall be discontinued immediately when a leak is observed and shall not be resumed until the observed leak is repaired.

(C) All gasoline tank-truck tanks shall have been leak tested within one year in accordance with the requirements of §§115.234-115.237 and 115.239 of this title as evidenced by prominently displayed certification affixed near the U.S. Department of Transportation certification plate.

(D) Subparagraphs (A) and (B) of this paragraph do not apply to fumes from hatches or vents if the fumes result from VOC transfer which is exempt from §115.211 or §115.212(b)(1) of this title.

(2) Gasoline terminals - additional inspection. The owner or operator of each gasoline terminal shall perform a monthly leak inspection of all equipment in gasoline service. Each piece of equipment shall be inspected during the loading of gasoline tank-trucks. For this inspection, detection methods incorporating sight, sound, and smell are acceptable. Alternatively, a hydrocarbon gas analyzer may be used for the detection of leaks, by meeting

the requirements of §§115.352- 115.357 and 115.359 of this title. Every reasonable effort shall be made to repair or replace a leaking component within 15 days after a leak is found. If the repair or replacement of a leaking component would require a unit shutdown, the repair may be delayed until the next scheduled shutdown.

*§115.215. Approved Test Methods.*

[(a)] Compliance [For the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, compliance] with the emission specifications, vapor control system efficiency, and certain control requirements, inspection requirements, and exemption criteria of §§115.211-115.214 and 115.217 of this title (relating to Loading and Unloading of Volatile Organic Compounds) (VOC) [§115.211(a) and §115.212(a) of this title (relating to Emission Specifications; and Control Requirements)] shall be determined by applying one or more of the following test methods and procedures, as appropriate.[ :]

(1) Flow rate. Test Methods 1-4 (40 Code of Federal Regulations (CFR) 60, Appendix A) are used for determining flow rates, as necessary. [;]

(2) Concentration of VOC.

(A) Test Method 18 (40 CFR [Code of Federal Regulations] 60, Appendix A) is used for determining gaseous organic compound emissions by gas chromatography.[ ;]

(B) [(3)] Test Method 25 (40 CFR [Code of Federal Regulations] 60, Appendix A) is used for determining total gaseous nonmethane organic emissions as carbon.[ ;]

(C) [(4)] Test Methods 25A or 25B (40 CFR [Code of Federal Regulations] 60, Appendix A) are used for determining total gaseous organic concentrations using flame ionization or nondispersive infrared analysis. [ ;]

(3) Performance requirements for flares. If a flare is used to control emissions from VOC transfer operations and the flare's emissions cannot be measured using the procedures of paragraphs (1) and (2) of this section, then the performance test requirements of 40 CFR 60.18(b) shall apply. Compliance with the requirements of 40 CFR 60.18(b) will be considered to demonstrate compliance with the emission specifications and control efficiency requirements of §115.211 and §115.212 of this title.

(4) Vapor pressure. Use standard reference texts or American Society for Testing and Materials (ASTM) Test Methods D323-89, D2879, D4953, D5190, or D5191 for the measurement of vapor pressure.

(5) Leak determination by instrument method. Use Test Method 21 (40 CFR 60, Appendix A) for determining VOC leaks.

(6) [(5)] Gasoline terminal test procedures. Use the additional test procedures described in 40 CFR [Code of Federal Regulations] 60.503 b, c, and d, for pre-test leak determination, emission specifications test for vapor control systems, and pressure limit in transport vessel, respectively.[ ;]

[(6) Test Method 21 (40 Code of Federal Regulations 60, Appendix A) for determining volatile organic compound leaks;]

[(7) determination of true vapor pressure using American Society for Testing and Materials (ASTM) Test Methods D323-89, D2879, D4953, D5190, or D5191 for the measurement of Reid vapor pressure;]

(7) [(8)] Vapor-tightness test procedures for marine vessels. Use 40 CFR 63.565(c) (effective September 19, 1995) or 40 CFR 61.304(f) (effective April 3, 1990) for determination of marine vessel vapor tightness.[ ;]

(8) [(9)] Flash point. Use ASTM Test Method D93 for the measurement of flash point. [; or]

(9) [(10)] Minor modifications. Minor [minor] modifications to these test methods may be used, if approved by the executive director.

(10) Alternate test methods. Test methods other than those specified in paragraphs (1)-(8) of this section (relating to Approved Test Methods) may be used if validated by 40 CFR 63, Appendix A, Test Method 301 (effective December 29, 1992). For the purposes of this paragraph, substitute "executive director" each place that Test Method 301 references "administrator."

[(b) For Gregg, Nueces, and Victoria Counties, compliance with §115.211(b) of this title and §115.212(b) of this title shall be determined by applying the following test methods, as appropriate:]

[(1) Test Methods 1-4 (40 Code of Federal Regulations 60, Appendix A) for determining flow rates, as necessary;]

[(2) Test Method 18 (40 Code of Federal Regulations 60, Appendix A) for determining gaseous organic compound emissions by gas chromatography;]

[(3) Test Method 25 (40 Code of Federal Regulations 60, Appendix A) for determining total gaseous nonmethane organic emissions as carbon;]

[(4) Test Methods 25A or 25B (40 Code of Federal Regulations 60, Appendix A) for determining total gaseous organic concentrations using flame ionization or nondispersive infrared analysis;]

[(5) additional test procedures described in 40 Code of Federal Regulations 60.503 b, c, and d;]

[(6) Test Method 21 (40 Code of Federal Regulations 60, Appendix A) for determining volatile organic compound leaks;]

[(7) determination of true vapor pressure using ASTM Test Methods D323-89, D2879, D4953, D5190, or D5191 for the measurement of Reid vapor pressure; or]

[(8) minor modifications to these test methods approved by the executive director.]

*§115.216. Monitoring and Recordkeeping Requirements.*

[(a)] The owner or operator of each [For] volatile organic compound (VOC) loading or unloading operation [operations] in the regional VOC zone or in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas [affected by §115.211(a) or §115.212(a) of this title (relating to Emission Specifications; and Control Requirements), the owner or operator] shall maintain information on how the design standard and operation of equipment meets the emission specifications and control requirements, and 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 [for at least two years and] shall make the [such] information available upon request to representatives of the executive director, EPA [United States Environmental Protection Agency (EPA)], or any local air pollution control agency having jurisdiction in the area:

[(1) A daily record of the total throughput of VOC loaded at the plant as defined by its air quality account number.]

(1) [(2)] Vapor control systems. For vapor control [recovery] systems used to control emissions from VOC transfer oper-

ations, records of appropriate parameters to demonstrate compliance, including:

(A) continuous monitoring and recording of:

*(i)* the exhaust gas temperature immediately downstream of a direct-flame incinerator;

*(ii)* [~~(B)~~] [~~continuous monitoring and recording of~~] the inlet and outlet gas temperature of a chiller or catalytic incinerator;

*(iii)* [~~(C)~~] [~~continuous monitoring and recording of~~] the exhaust gas VOC concentration of a [~~any~~] carbon adsorption system, as defined in §101.1 [~~§115.10~~] of this title (relating to Definitions); and

*(iv)* the exhaust gas temperature immediately downstream of a vapor combustor. Alternatively, the owner or operator of a vapor combustor may consider the unit to be a flare and meet the requirements of subparagraph (B) of this paragraph.

(B) the requirements specified in 40 Code of Federal Regulations 60.18(b) and Chapter 111 of this title (relating to Control of Air Pollution from Visible Emissions and Particulate Matter) for flares; and

(C) for vapor control systems other than those specified in subparagraphs (A) and (B) of this paragraph, records of appropriate operating parameters.

[~~(D) the date and reason for any maintenance and repair of the required control devices and the estimated quantity and duration of VOC emissions during such activities.~~]

(2) Test results. A record of the results of any testing conducted in accordance with §115.215 of this title (relating to Approved Test Methods).

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

(A) A daily record of:

*(i)* the identification number of each tank-truck tank;

*(ii)* the quantity of VOC loaded into each transport vessel; and

*(iii)* the date of the last leak testing of each tank-truck tank as required by §115.214(a)(1)(C) or (b)(1)(C) of this title (relating to Inspection Requirements).

(B) A record of the type and vapor pressure of each VOC transferred (excluding gasoline).

(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 psia as specified in §115.217(a)(1) (relating to Exemptions) of this title 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) The owner or operator of any plant, as defined by its air quality account number, that is exempt under §115.217(a)(2)(A) or (B), or §115.217(b)(3)(A) or (B) of this title based upon gallons per day transferred shall maintain a daily record of the total throughput of gasoline or of VOC equal to or greater than 0.5 or 1.5 psia vapor pressure, as appropriate, loaded into transport vessels at the plant.

(E) For gasoline terminals, records of the results of the fugitive monitoring and maintenance program required by §115.214(a)(2) and (b)(2) of this title:

*(i)* a description of the types, identification numbers, and locations of all equipment in gasoline service;

*(ii)* the date of each monthly inspection;

*(iii)* the results of each inspection;

*(iv)* the location, nature, severity, and method of detection for each leak;

*(v)* the date each leak is repaired and explanation if repair is delayed beyond 15 days;

*(vi)* a list identifying those leaking components which cannot be repaired or replaced until a scheduled unit shutdown; and

*(vii)* the inspector's name and signature.

[~~(3) For gasoline terminals:~~]

[~~(A) a comprehensive record of all tank-trucks loaded, including the identification number of the tank- truck and the date of the last leak testing required by §115.214(a)(3) of this title (relating to Inspection Requirements);~~]

[~~(B) a daily record of the identification number of all tank-trucks loaded at the affected terminal;~~]

[~~(C) a daily record of the number of transport vessels loaded at the terminal and the quantity of gasoline loaded to each transport vessel; and~~]

[~~(D) a record of the results of any testing conducted at the terminal in accordance with the provisions specified in §115.215(a) of this title (relating to Testing Requirements).~~]

[~~(4) For gasoline bulk plants:~~]

[~~(A) a comprehensive record of all tank-trucks loaded, including the identification number of the tank- truck and the date of the last leak testing required by §115.214(a)(3) of this title;~~]

[~~(B) a daily record of the identification number of all tank-trucks loaded at the affected bulk plant;~~]

[~~(C) a daily record of the number of transport vessels loaded at the bulk plant and the quantity of gasoline loaded to each transport vessel; and~~]

[~~(D) a record of the results of any testing conducted at the bulk plant in accordance with the provisions specified in §115.215(a) of this title.~~]

[~~(5) For VOC loading or unloading operations other than gasoline terminals, gasoline bulk plants, and marine terminals, a daily record of each transport vessel loaded or unloaded, including:~~]

[~~(A) the identification number of each tank-truck loaded or unloaded and the date of the last leak testing required by §115.214(a)(3) of this title;~~]

[~~(B) the volume of VOC loaded to or unloaded from each transport vessel; and~~]

[~~(C) the vapor pressure of the VOC loaded to or unloaded from each transport vessel.~~]

(4) [~~(6)~~] Marine terminals. For marine terminals in the Houston/Galveston area:

(A) a daily record of all marine vessels loaded at the affected terminal, including:

*(i)* the name, registry of the marine vessel, and the legal owner or operator of the marine vessel;

*(ii)* the chemical name and amount of VOC cargo loaded; and

*(iii)* the conditions of the tanks prior to being loaded (i.e., cleaned, crude oil washed, gas freed, etc.) and the prior cargo carried by the marine vessel.

(B) [all marine vessel loading operations conducted with a VOC which has a vapor pressure equal to or greater than 0.5 pounds per square inch absolute under actual storage conditions must certify that the marine vessel has passed an annual vapor tightness test as required by §115.215(a)(8) of this title. A] a copy of each marine vessel's vapor tightness test documentation or records documenting compliance with the alternate methods specified in 115.214(a)(3)(A) of this title [certification shall be kept on file by the marine terminal for a minimum of two years].

(C) a copy of each marine vessel's first attempt repair log required by §115.214(a)(3)(D) [§115.214(a)(4)(C)] of this title [shall be maintained on file by the marine terminal for a minimum of two years].

(D) records of the results of the [required] fugitive monitoring and maintenance program required by §115.214(a)(3)(F) of this title, including appropriate dates, test methods, instrument readings, repair results, and corrective action taken. Records of flange inspections are not required unless a leak is detected.

[(7) For gasoline terminals in the Dallas/Fort Worth, El Paso, and Houston/Galveston areas, records of the results of the required fugitive monitoring and maintenance program, as specified in §115.214(a)(5) of this title, shall be maintained at the plant site for two years, and shall include the following:]

[(A) a description of the types, identification numbers, and locations of all equipment in gasoline service;]

[(B) the date of each monthly inspection;]

[(C) the results of each inspection;]

[(D) the location, nature, severity, and method of detection for each leak;]

[(E) the date each leak is repaired and explanation if repair is delayed beyond 15 days;]

[(F) a list identifying those leaking components which cannot be repaired or replaced until a scheduled unit shutdown; and]

[(G) the inspector's name and signature.]

[(8) Affected persons shall maintain the results of any testing conducted in accordance with the provisions specified in §115.215(a) of this title.]

[(b) For VOC loading or unloading operations in Victoria County, the owner or operator shall maintain the following information at the plant as defined by its air quality account number for at least two years and shall make such information available upon request to representatives of the executive director, EPA, or any local air pollution control agency having jurisdiction in the area:]

[(1) A daily record of the total throughput of VOC loaded at the plant as defined by its air quality account number.]

[(2) For vapor recovery systems:]

[(A) continuous monitoring and recording of the exhaust gas temperature immediately downstream of a direct-flame incinerator;]

[(B) continuous monitoring and recording of the inlet and outlet gas temperature of a chiller or catalytic incinerator;]

[(C) continuous monitoring and recording of the exhaust gas VOC concentration of any carbon adsorption system, as defined in §115.10 of this title; and]

[(D) the date and reason for any maintenance and repair of the required control devices and the estimated quantity and duration of VOC emissions during such activities.]

[(3) For gasoline terminals:]

[(A) a daily record of the number of transport vessels loaded at the terminal and the quantity of gasoline loaded to each transport vessel; and]

[(B) a record of the results of any testing conducted at the terminal in accordance with the provisions specified in §115.215(b) of this title.]

[(4) Affected persons shall maintain the results of any testing conducted in accordance with the provisions specified in §115.215(b) of this title.]

[(5) For VOC loading or unloading operations other than gasoline terminals, gasoline bulk plants, and marine terminals, which are exempt under §115.217(b) of this title (relating to Exemptions), a daily record of each transport vessel loaded or unloaded, including:]

[(A) the volume of VOC loaded to or unloaded from each transport vessel; and]

[(B) the vapor pressure of the VOC loaded to or unloaded from each transport vessel.]

*§115.217. Exemptions.*

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

(1) Vapor pressure (at land-based operations). All land-based loading and unloading of volatile organic compounds (VOC) with a true vapor pressure less than 0.5 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) §115.212(a)(2) [§115.212(a)] of this title (relating to Control Requirements);

(B) §115.214(a)(1)(A)(i) and (B) of this title (relating to Inspection Requirements);

(C) §115.215(4) of this title (relating to Approved Test Methods); and

(D) §115.216(2) and (3)(B) of this title (relating to Monitoring and Recordkeeping Requirements).

(2) Throughput.

(A) Any plant, as defined by its air quality account number, excluding gasoline bulk plants, which loads [having] less than 20,000 gallons [(75,708 liters)] of VOC [loaded] into transport vessels per day (averaged over each [any] consecutive 30-day period) with a true vapor pressure greater than or equal to 0.5 psia under actual storage conditions is exempt from the requirements of this

division (relating to Loading and Unloading of Volatile Organic Compounds), except for:

*(i)* §115.212(a)(2) [~~§115.212(a)~~] of this title;

*(ii)* §115.214(a)(1)(A)(i) and (B) of this title;

*(iii)* §115.215(4) of this title; and

*(iv)* §115.216(2), (3)(B), and (3)(D) of this title.

(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)* §115.212(a)(2) of this title;

*(ii)* §115.214(a)(1)(A)(i) and (B) of this title; and

*(iii)* §115.216(3)(D) of this title.

(3) Liquefied petroleum gas. All loading and unloading of liquefied petroleum gas [~~only (regulated by the Safety Rules of the Liquefied Petroleum Gas Division of the Texas Railroad Commission)~~] is exempt from the requirements of this division (relating to Loading and Unloading of Volatile Organic Compounds), except for:

(A) §115.212(a)(2) [~~§115.212(a)~~] of this title;

(B) §115.214(a)(1)(A)(i) and (B) of this title; and

(C) §115.216(3) of this title.

(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).

~~[(4) The following are exempt from the requirements of §115.212(a) of this title:]~~

~~[(A) all unloading of marine vessels; and]~~

~~[(B) all loading of marine vessels in ozone nonattainment areas other than the Houston/Galveston area.]~~

~~[(5) Gasoline bulk plants which load less than 4,000 gallons (15,142 liters) of gasoline into transport vessels per day averaged over any consecutive 30-day period are exempt from the provisions of §115.211(a)(2), §115.212(a)(7), and §115.216(a)(4) of this title (relating to Emission Specifications; Control Requirements; and Monitoring and Recordkeeping Requirements).]~~

~~[(6) VOC loading operations other than gasoline terminals, gasoline bulk plants, and marine terminals are exempt from the control requirements of §115.212(a)(1) of this title if the overall control of emissions at the account from the loading of VOC (excluding VOC loading into marine vessels and VOC loading at gasoline terminals and gasoline bulk plants) with a true vapor pressure between 0.5 and 11 psia under actual storage conditions is at least 90%, and the following requirements are met.]~~

~~[(A) To qualify for the exemption available under this paragraph after December 31, 1996, the owner or operator of a VOC loading operation for which a control plan was not previously submitted shall submit a control plan to the executive director, the appropriate regional office, and any local air pollution control program with jurisdiction which demonstrates that the overall control of emissions at the account from the loading of VOC with a true vapor pressure between 0.5 and 11 psia under actual storage conditions will be at least 90%. Any control plan submitted after December 31, 1996, must be approved by the executive director before the owner or operator may use the exemption available under this paragraph for compliance. For each loading rack and any associated control device at the account, the control plan shall include the EPN, the FIN, the throughput of VOC with a true vapor pressure between 0.5 and 11 psia under actual storage conditions for the preceding calendar year, a plot plan showing the location, EPN, and FIN of each loading rack and any associated control device, the controlled and uncontrolled emission rates for the preceding calendar year, and an explanation of the recordkeeping procedure and calculations which will be used to demonstrate compliance.]~~

~~[(B) In order to maintain exemption status under this paragraph, the owner or operator of the VOC loading operation shall submit an annual report no later than March 31 of each year to the executive director, the appropriate regional office, and any local air pollution control program with jurisdiction which demonstrates that the overall control of emissions at the account from the loading of VOC with a true vapor pressure between 0.5 and 11 psia under actual storage conditions during the preceding calendar year is at least 90%. For each loading rack and any associated control device at the account, the report shall include the EPN, the FIN, the throughput of VOC with a true vapor pressure between 0.5 and 11 psia under actual storage conditions for the preceding calendar year, a plot plan showing the location, EPN, and FIN of each loading rack and any associated control device, and the controlled and uncontrolled emission rates for the preceding calendar year.]~~

~~[(C) The owner or operator of the VOC loading operation shall submit an updated report no later than 30 days after the installation of an additional loading rack(s) or any change in service of a loading rack(s) from loading VOC with a true vapor pressure less than 0.5 psia to loading VOC with a true vapor pressure greater than or equal to 0.5 psia, or vice versa. The report shall be submitted to the executive director, the appropriate regional office, and any local air pollution control program with jurisdiction and shall demonstrate that the overall control of emissions at the account from the loading of VOC with a true vapor pressure between 0.5 and 11 psia under actual storage conditions continues to be at least 90%.]~~

~~[(D) All representations in control plans and annual reports become enforceable conditions. It shall be unlawful for any person to vary from such representations if the variation will cause a change in the identity of the specific emission sources being controlled or the method of control of emissions unless the owner or operator of the VOC loading operation submits a revised control plan to the executive director, the appropriate regional office, and any local air pollution control program with jurisdiction no later than 30 days after the change. All control plans and reports shall demonstrate that the overall control of emissions at the account from the loading of VOC with a true vapor pressure between 0.5 and 11 psia under actual storage conditions continues to be at least 90%. The emission rates shall be calculated in a manner consistent with the most recent emissions inventory.]~~

(5) [~~(7)~~] Marine vessels. The following marine vessel transfer exemptions apply. [~~loading operations are exempt from the requirements of §115.211(a) and §115.212(a) of this title:~~]

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

*(i)* all loading of marine vessels in ozone nonattainment areas other than the Houston/Galveston area; and

*(ii)* transfer of VOC from one marine vessel to another marine vessel ("lightering"), provided that the VOC transfer does not use loading arm(s), pump(s), meter(s), valve(s), or piping that are part of a marine terminal.

(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)* all unloading of marine vessels, except for §115.214(a)(3)(B)-(C) and §115.216(2) of this title;

*(ii)* [~~(A)~~] marine terminals with uncontrolled marine loading VOC emissions less than 100 tons per year, except for §115.214(a)(3)(B)-(C) and §115.216(2) of this title. Emissions from marine vessel loading operations which were routed to a control device that was installed as of November 15, 1993, are excluded from this calculation. Compliance with this exemption shall be demonstrated through the recordkeeping and reporting requirements of the annual emissions inventory submitted by the owner or operator of the marine terminal;

*(iii)* [~~(B)~~] all throughput of VOC with a vapor pressure less than 0.5 psia loaded into marine vessels, except for §§115.212(a)(6)(D), 115.214(a)(3)(B)-(C), and 115.216(2) of this title; and

~~[(C) marine loading operations which use a vapor balance system to control emissions from the marine vessel to fixed roof storage tank(s). For the purposes of this paragraph, vapor balance system is defined as a closed system that transfers vapor displaced from the tank of a vessel receiving cargo into a tank of the vessel or facility delivering cargo via an arrangement of piping and hoses used to collect vapor emitted from a vessel's cargo tanks;]~~

~~[(D) non-dedicated loading lines when commodities with a true vapor pressure less than 0.5 psia are transferred, provided that after transfer of VOC with a true vapor pressure greater than or equal to 0.5 psia these non-dedicated loading lines are cleaned, purged, and the residual vapors controlled of VOC with a true vapor pressure greater than or equal to 0.5 psia; and]~~

*(iv)* [~~(E)~~] all throughput of VOC with a flash point of 150 degrees Fahrenheit or greater loaded into marine vessels, except for §§115.212(a)(6)(D), 115.214(a)(3)(B)- (C), and 115.216(2) of this title.

~~[(8) Marine terminals are exempt from the control requirements of §115.211(a)(3) and §115.212(a)(8)(A) of this title if the overall control of emissions at the marine terminal from the loading of VOC with a true vapor pressure between 0.5 and 11 psia under actual storage conditions into marine vessels is at least 90%, and the following requirements are met.]~~

~~[(A) To qualify for the exemption available under this paragraph after December 31, 1996, the owner or operator of a marine terminal for which a control plan was not previously submitted shall submit a control plan to the executive director, the appropriate regional office, and any local air pollution control program with jurisdiction which demonstrates that the overall control of emissions at the marine terminal from the loading of VOC with a true vapor pressure between 0.5 and 11 psia under actual storage conditions into marine vessels will be at least 90%. Any control plan submitted after December 31, 1996 must be approved by the executive director before the owner or operator may use the exemption available under this paragraph for compliance. For each marine loading facility and any associated control device at the marine terminal, the control plan shall include the EPN, the FIN, the throughput of VOC with a true vapor pressure between 0.5 and 11 psia under actual storage conditions for the preceding calendar year, a plot plan showing the location, EPN, and FIN of each marine loading facility and any associated control device, the controlled and uncontrolled emission rates for the preceding calendar year, and an explanation of the recordkeeping procedure and calculations which will be used to demonstrate compliance.]~~

~~[(B) In order to maintain exemption status under this paragraph, the owner or operator of the marine terminal shall submit an annual report no later than March 31 of each year to the executive director, the appropriate regional office, and any local air pollution control program with jurisdiction which demonstrates that the overall control of emissions at the marine terminal from the loading of VOC with a true vapor pressure between 0.5 and 11 psia under actual storage conditions into marine vessels during the preceding calendar year is at least 90%. For each marine loading facility and any associated control device at the account, the report shall include the EPN, the FIN, the throughput of VOC with a true vapor pressure between 0.5 and 11 psia under actual storage conditions for the preceding calendar year, a plot plan showing the location, EPN, and FIN of each marine loading facility and any associated control device, and the controlled and uncontrolled emission rates for the preceding calendar year.]~~

~~[(C) All representations in control plans and annual reports become enforceable conditions. It shall be unlawful for any person to vary from such representations if the variation will cause a change in the identity of the specific emission sources being controlled or the method of control of emissions unless the owner or operator of the marine terminal submits a revised control plan to the executive director, the appropriate regional office, and any local air pollution control program with jurisdiction no later than 30 days after the change. All control plans and reports shall demonstrate that the overall control of emissions at the marine terminal from the loading into marine vessels of VOC with a true vapor pressure between 0.5 and 11 psia under actual storage conditions continues to be at least 90%. The emission rates shall be calculated in a manner consistent with the most recent emissions inventory.]~~

~~[(9) Motor vehicle fuel dispensing facilities, as defined in §115.10 of this title (relating to Definitions), are exempt from the requirements of this undesignated head (relating to Loading and Unloading of Volatile Organic Compounds).]~~

(b) [~~For all persons, in Gregg, Nueces, and Victoria Counties, the~~] The following exemptions apply in the regional VOC zone.

(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 is exempt from the requirements of this division (relating to Loading and Unloading of Volatile Organic Compounds).

(2) [~~(1)~~] Vapor pressure (at land-based operations). All land- based loading and unloading of VOC with a true vapor pressure less than 1.5 psia [~~(10.3 kPa)~~] under actual storage conditions is exempt from the requirements of this division (relating to Loading and Unloading of Volatile Organic Compounds), except for:

(A) §115.212(b)(2) [~~§115.212(b)~~] of this title;

(B) §115.214(b)(1)(A)(i) and (B) of this title;

(C) §115.215(4) of this title; and

(D) §115.216(2) and (3)(B) of this title.

(3) [~~(2)~~] Throughput.

(A) Any plant, as defined by its air quality account number, excluding gasoline bulk plants, which loads [having] less than 20,000 gallons [(75,708 liters)] of VOC [loaded] into transport vessels per day (averaged over each [any] consecutive 30-day period) with a true vapor pressure greater than or equal to 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:

*(i)* §115.212(b)(2) [§115.212(b)] of this title;

*(ii)* §115.214(b)(1)(A)(i) and (B) of this title;

*(iii)* §115.215(4) of this title; and

*(iv)* §115.216(2), (3)(B), and (3)(D) of this title.

(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)* §115.212(b)(2) of this title;

*(ii)* §115.214(b)(1)(A)(i) and (B) of this title; and

*(iii)* §115.216(3)(D) of this title.

(4) [(3)] Crude oil, condensate, and liquefied petroleum gas. All loading and unloading of crude oil, [and] condensate, [all loading and unloading of] marine vessels, and [all loading and unloading of] liquefied petroleum gas [only (regulated by the Safety Rules of the Liquefied Petroleum Gas Division of the Texas Railroad Commission)] is exempt from the requirements of this division (relating to Loading and Unloading of Volatile Organic Compounds), except for:

(A) §115.212(b)(2) [§115.212(b)] of this title;

(B) §115.214(b)(1)(A)(i) and (B) of this title; and

(C) §115.216(3) of this title.

[(4) VOC loading operations other than gasoline terminals, gasoline bulk plants, and marine terminals are exempt from the control requirements of §115.212(b)(1) of this title if the overall control of emissions at the account from the loading of VOC (excluding VOC loading into marine vessels and VOC loading at gasoline terminals and gasoline bulk plants) with a true vapor pressure between 1.5 and 11 psia under actual storage conditions is at least 90%, and the following requirements are met:]

[(A) To qualify for the exemption available under this paragraph after December 31, 1996, the owner or operator of a VOC loading operation for which a control plan was not previously submitted shall submit a control plan to the executive director, the appropriate regional office, and any local air pollution control program with jurisdiction which demonstrates that the overall control of emissions at the account from the loading of VOC with a true vapor pressure between 1.5 and 11 psia under actual storage conditions will be at least 90%. Any control plan submitted after December 31, 1996, must be approved by the executive director before the owner or operator may use the exemption available under this paragraph for compliance. For each loading rack and any associated control device at the account, the control plan shall include the EPN, the FIN, the throughput of VOC with a true vapor pressure between 1.5 and 11 psia under actual storage conditions for the preceding calendar year, a plot plan showing the location, EPN, and FIN of each loading rack and any associated control device, the controlled and uncontrolled emission rates for the preceding calendar year, and an explanation of the recordkeeping procedure and calculations which will be used to demonstrate compliance.]

[(B) In order to maintain exemption status under this paragraph, the owner or operator of the VOC loading operation shall submit an annual report no later than March 31 of each year to the executive director, the appropriate regional office, and any local air pollution control program with jurisdiction which demonstrates that the overall control of emissions at the account from the loading of VOC with a true vapor pressure between 1.5 and 11 psia under actual storage conditions during the preceding calendar year is at least 90%. For each loading rack and any associated control device at the account, the report shall include the EPN, the FIN, the throughput of VOC with a true vapor pressure between 1.5 and 11 psia under actual storage conditions for the preceding calendar year, a plot plan showing the location, EPN, and FIN of each loading rack and any associated control device, and the controlled and uncontrolled emission rates for the preceding calendar year.]

[(C) The owner or operator of the VOC loading operation shall submit an updated report no later than 30 days after the installation of an additional loading rack(s) or any change in service of a loading rack(s) from loading VOC with a true vapor pressure less than 1.5 psia to loading VOC with a true vapor pressure greater than or equal to 1.5 psia, or vice versa. The report shall be submitted to the executive director, the appropriate regional office, and any local air pollution control program with jurisdiction and shall demonstrate that the overall control of emissions at the account from the loading of VOC with a true vapor pressure between 1.5 and 11 psia under actual storage conditions continues to be at least 90%.]

[(D) All representations in control plans and annual reports become enforceable conditions. It shall be unlawful for any person to vary from such representations if the variation will cause a change in the identity of the specific emission sources being controlled or the method of control of emissions unless the owner or operator of the VOC loading operation submits a revised control plan to the executive director, the appropriate regional office, and any local air pollution control program with jurisdiction no later than 30 days after the change. All control plans and reports shall demonstrate that the overall control of emissions at the account from the loading of VOC with a true vapor pressure between 1.5 and 11 psia under actual storage conditions continues to be at least 90%. The emission rates shall be calculated in a manner consistent with the most recent emissions inventory.]

(5) Motor vehicle fuel dispensing facilities. Motor vehicle fuel dispensing facilities, as defined in §101.1 [§115.10] of this title [(relating to Definitions)], are exempt from the requirements of this division [undesignated head] (relating to Loading and Unloading of Volatile Organic Compounds).

[(c) For all persons in Aransas, Bexar, Calhoun, Matagorda, San Patricio, and Travis Counties, the following exemptions apply.]

[(1) All loading and unloading of VOC with a true vapor pressure less than 1.5 psia (10.3 kPa) under actual storage conditions is exempt from the requirements of §115.212(c) of this title.]

[(2) Any plant, as defined by its air quality account number, having less than 20,000 gallons (75,708 liters) of VOC loaded into transport vessels per day (averaged over any consecutive 30-day period) with a true vapor pressure greater than or equal to 1.5 psia under actual storage conditions is exempt from the requirements of §115.212(c) of this title.]

[(3) All loading and unloading of crude oil and condensate, all loading and unloading of marine vessels, and all loading and

unloading of liquefied petroleum gas only (regulated by the Safety Rules of the Liquefied Petroleum Gas Division of the Texas Railroad Commission) are exempt from the requirements of §115.212(c) of this title.]

[(4) VOC loading operations other than gasoline terminals, gasoline bulk plants, and marine terminals are exempt from the control requirements of §115.212(c)(1) of this title if the overall control of emissions at the account from the loading of VOC (excluding VOC loading into marine vessels and VOC loading at gasoline terminals and gasoline bulk plants) with a true vapor pressure between 1.5 and 11 psia under actual storage conditions is at least 90%, and the following requirements are met:]

[(A) To qualify for the exemption available under this paragraph after December 31, 1996, the owner or operator of a VOC loading operation for which a control plan was not previously submitted shall submit a control plan to the executive director, the appropriate regional office, and any local air pollution control program with jurisdiction which demonstrates that the overall control of emissions at the account from the loading of VOC with a true vapor pressure between 1.5 and 11 psia under actual storage conditions will be at least 90%. Any control plan submitted after December 31, 1996 must be approved by the executive director before the owner or operator may use the exemption available under this paragraph for compliance. For each loading rack and any associated control device at the account, the control plan shall include the EPN, the FIN, the throughput of VOC with a true vapor pressure between 1.5 and 11 psia under actual storage conditions for the preceding calendar year, a plot plan showing the location, EPN, and FIN of each loading rack and any associated control device, the controlled and uncontrolled emission rates for the preceding calendar year, and an explanation of the recordkeeping procedure and calculations which will be used to demonstrate compliance.]

[(B) In order to maintain exemption status under this paragraph, the owner or operator of the VOC loading operation shall submit an annual report no later than March 31 of each year to the executive director, the appropriate regional office, and any local air pollution control program with jurisdiction which demonstrates that the overall control of emissions at the account from the loading of VOC with a true vapor pressure between 1.5 and 11 psia under actual storage conditions during the preceding calendar year is at least 90% . For each loading rack and any associated control device at the account, the report shall include the EPN, the FIN, the throughput of VOC with a true vapor pressure between 1.5 and 11 psia under actual storage conditions for the preceding calendar year, a plot plan showing the location, EPN, and FIN of each loading rack and any associated control device, and the controlled and uncontrolled emission rates for the preceding calendar year.]

[(C) The owner or operator of the VOC loading operation shall submit an updated report no later than 30 days after the installation of an additional loading rack(s) or any change in service of a loading rack(s) from loading VOC with a true vapor pressure less than 1.5 psia to loading VOC with a true vapor pressure greater than or equal to 1.5 psia, or vice versa. The report shall be submitted to the executive director, the appropriate regional office, and any local air pollution control program with jurisdiction and shall demonstrate that the overall control of emissions at the account from the loading of VOC with a true vapor pressure between 1.5 and 11 psia under actual storage conditions continues to be at least 90%.]

[(D) All representations in control plans and annual reports become enforceable conditions. It shall be unlawful for any person to vary from such representations if the variation will cause a change in the identity of the specific emission sources being controlled or the method of control of emissions unless the owner or operator of the VOC loading operation submits a revised control plan to the executive director, the appropriate regional office, and any local air pollution control program with jurisdiction no later than 30 days after the change. All control plans and reports shall demonstrate that the overall control of emissions at the account from the loading of VOC with a true vapor pressure between 1.5 and 11 psia under actual storage conditions continues to be at least 90%. The emission rates shall be calculated in a manner consistent with the most recent emissions inventory.]

[(5) Motor vehicle fuel dispensing facilities, as defined in §115.10 of this title (relating to Definitions), are exempt from the requirements of this undesignated head (relating to Loading and Unloading of Volatile Organic Compounds).]

*§115.219. Counties and Compliance Schedules.*

[All affected persons in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas shall be in compliance with this undesignated head (relating to Loading and Unloading of Volatile Organic Compounds) in accordance with the following schedules.]

[(1) All affected persons shall be in compliance with §115.211(a)(1), §115.212(a)(1) and (2), and §115.217(a)(1) and (2) of this title (relating to Emission Specifications; Control Requirements; and Exemptions) as soon as practicable, but no later than November 15, 1996.]

[(2) All land-based loading and unloading of crude oil and condensate to and from transport vessels, as defined in §115.10 of this title (relating to Definitions), shall be in compliance with §115.211(a), §115.212(a), §115.213(a), §115.214(a), §115.215(a), §115.216(a), and §115.217(a) of this title (relating to Emission Specifications; Control Requirements; Alternate Control Requirements; Inspection Requirements; Monitoring and Recordkeeping Requirements; Approved Test Methods; and Exemptions) as soon as practicable, but no later than November 15, 1996.]

[(3) All affected marine terminals in Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties shall be in compliance with §115.211(a), §115.212(a), §115.213(a), §115.214(a), §115.215(a), §115.216(a), and §115.217(a) of this title as soon as practicable, but no later than November 15, 1996.]

[(4) All affected gasoline terminals in Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Harris, Liberty, Montgomery, Tarrant, and Waller Counties shall be in compliance with §115.212(a)(9), §115.214(a)(5), and §115.216(a)(7) of this title as soon as practicable, but no later than November 15, 1996.]

(a) The owner or operator of each volatile organic compound (VOC) transfer operation in Aransas, Bexar, Brazoria, Calhoun, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Gregg, Hardin, Harris, Jefferson, Liberty, Matagorda, Montgomery, Nueces, Orange, San Patricio, Tarrant, Travis, Victoria, and Waller Counties shall continue to comply with this division (relating to Loading and Unloading of Volatile Organic Compounds) as required by §115.930 of this title (relating to Compliance Dates).

(b) The owner or operator of each gasoline bulk plant in the regional VOC zone as defined in §115.10 of this title (relating to Definitions) shall comply with §§115.211(2), 115.212(b), 115.214(b), 115.216, and 115.217(b) of this title (relating to Emission Specifications; Control Requirements; Inspection Requirements; Monitoring and Recordkeeping Requirements; and Exemptions) of this title as soon as practicable, but no later than December 31, 1999.

(c) The owner or operator of each gasoline terminal in the regional VOC zone, as defined in §115.10 of this title (excluding Gregg, Nueces, and Victoria Counties) shall comply with §§115.211(1)(B), 115.212(b), 115.214(b), 115.216, and 115.217(b) of this title as soon as practicable, but no later than December 31, 1999.

(d) The owner or operator of each gasoline terminal in Gregg, Nueces, and Victoria Counties shall:

(1) continue to comply with the vapor control requirements specified in §115.212(b)(4)(A) and (B) of this title; and

(2) be in compliance with the following specifications as soon as practicable, but no later than December 31, 1999:

(A) the 20 mg/liter emission specification of §115.211(1)(B) of this title;

(B) the loading lockout requirements of §115.212(b)(4)(C) of this title;

(C) the gasoline tank-truck leak testing requirements of §115.214(b)(1)(C) of this title; and

(D) the monthly leak inspection requirements of §115.214(b)(2) of this title.

(e) The owner or operator of each gasoline terminal in Hardin, Jefferson, and Orange Counties shall comply with the loading lockout requirements of §115.212(a)(4)(C) of this title and the monthly leak inspection requirements of §115.214(a)(2) and §115.216(3)(E) of this title as soon as practicable, but no later than December 31, 1999.

(f) The owner or operator of each land-based VOC loading operation (excluding gasoline terminals and gasoline bulk plants) in Aransas, Bexar, Calhoun, Gregg, Matagorda, Nueces, San Patricio, Travis, and Victoria Counties shall comply with the 90% control efficiency requirement of §115.212(b)(1)(A) of this title as soon as practicable, but no later than December 31, 1999.

(g) The owner or operator of each land-based VOC loading operation (excluding gasoline terminals and gasoline bulk plants) in Aransas, Bexar, Calhoun, Matagorda, San Patricio, and Travis Counties shall comply with the recordkeeping requirements of §115.216 of this title as soon as practicable, but no later than December 31, 1999.

(h) [~~(5)~~] The owner or operator of each [~~All affected~~] marine terminal [~~terminals~~] in Hardin, Jefferson, and Orange Counties shall comply [~~be in compliance~~] with §§115.212(a)(6), 115.214(a)(3), 115.215, 115.216, and 115.217 [~~§§115.211(a), 115.212(a), 115.213(a), 115.214(a), 115.215(a), 115.216(a), and 115.217(a)~~] of this title [~~(relating to Emission Specifications; Control Requirements; Alternate Control Requirements; Inspection Requirements; Approved Test Methods; Monitoring and Recordkeeping Requirements; and Exemptions)~~] as soon as practicable but no later than three years after the earliest of the following occurs:

(1) [~~(A)~~] the commission [~~Texas Natural Resource Conservation Commission~~] publishes notification in the *Texas Register* of its determination that this contingency rule is necessary as a result of failure to attain the national ambient air quality standard for ozone by the attainment deadline or failure to demonstrate reasonable further progress as set forth in the 1990 Amendments to the Federal Clean Air Act, §172(c)(9);

(2) [~~(B)~~] the EPA [~~United States Environmental Protection Agency (EPA)~~] publishes notification in the *Federal Register* of its determination to deny the petition to redesignate the Beaumont/Port Arthur ozone nonattainment area as an ozone attainment area; or

(3) [~~(C)~~] the EPA publishes notification in the *Federal Register* of its determination to deny approval of the demonstration of attainment for the Beaumont/Port Arthur ozone nonattainment area based upon Urban Airshed Model modeling.

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 December 18, 1998.

TRD-9818439
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: May 26, 1999
For further information, please call: (512) 239-1970

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## Division 2. Filing of Gasoline Storage Vessels (Stage I) for Motor Vehicle Fuel Dispensing Facilities

**30 TAC §§115.221–115.227, 115.229**

STATUTORY AUTHORITY The amendments are proposed under the Texas Health and Safety Code (Vernon 1992), the Texas Clean Air Act (TCAA), §382.017, which provides the Texas Natural Resource Conservation Commission (commission) with the authority to adopt rules consistent with the policy and purposes of the TCAA; and TCAA §382.012, which requires the commission to develop plans for protection of the state's air.

The proposed amendments implement the Health and Safety Code, §382.017.

*§115.221. Emission Specifications.*

No person in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas or in the regional VOC zone, as defined in §115.10 of this title (relating to Definitions), shall transfer, or allow the transfer of, gasoline from any tank-truck tank into a stationary storage container which is located at a motor vehicle fuel dispensing facility, unless the displaced vapors from the gasoline storage container are controlled by one of the following:

(1) a vapor control [~~recovery~~] system which reduces the emissions of VOC [~~volatile organic compounds (VOC)~~] to the atmosphere to not more than 0.8 pound per 1,000 gallons (93 mg/liter) of gasoline transferred; or

(2) (No change.)

*§115.222. Control Requirements.*

[~~For all affected persons in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, a~~] A vapor balance system will be assumed to comply with the specified emission limitation of §115.221 of this title (relating to Emission Specifications) if the following conditions are met:

(1) the container is equipped with a submerged fill pipe as defined in §101.1 [~~§115.10~~] of this title (relating to Definitions). The path through the submerged fill pipe to the bottom of the tank shall not be obstructed by a screen, grate, or similar device whose presence would preclude the determination of the submerged fill

pipe's proximity to the tank bottom while the submerged fill tube is properly installed;

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

[(5) until the installation of a Stage II vapor recovery system as required by §§115.241- 115.249 of this title (relating to Control of Vehicle Refueling Emissions (Stage II) at Motor Vehicle Fuel Dispensing Facilities), the only atmospheric emission during gasoline transfer into the storage container is through a storage container vent line equipped either with an orifice no greater than 3/4 inch (1.9 cm) internal diameter or a pressure-vacuum relief valve set to open at a pressure of no less than eight ounces per square inch (3.4 kPa);]

(5) [(6)] In the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas [after the installation of a Stage II vapor recovery system as required by §§115.241-115.249 of this title], the only atmospheric emission during gasoline transfer into the storage container is through a storage container vent line equipped with a pressure-vacuum relief valve set to open at a pressure of no more than eight ounces per square inch (3.4 kPa) or in accordance with the facility's Stage II system as defined in the California Air Resources Board (CARB) Executive Order(s) for the facility;

(6) In the regional VOC zone, as defined in §115.10 of this title (relating to Definitions), the only atmospheric emission during gasoline transfer into the storage container is through a storage container vent line equipped with a pressure-vacuum relief valve set to open at a pressure of no more than eight ounces per square inch (3.4 kPa);

(7) after unloading, the tank-truck tank is kept vapor-tight [at all times] until the [captured] vapors in the tank-truck are returned to a loading, cleaning, or degassing operation and discharged in accordance with the control requirements of that operation. [discharged to a vapor recovery system, if the tank-truck tank is refilled, degassed, and/or cleaned in one of the counties in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas. The requirement to discharge the vapors remaining in the tank-truck tank after unloading to a vapor recovery system does not apply if the tank-truck tank is refilled, degassed, and/or cleaned at an operation for which control of the vapors is not required.]

(8) the gauge pressure in the tank-truck tank does not exceed 18 inches of water (4.5 kPa) or vacuum exceed six inches of water (1.5 kPa);

(9) no leak, as defined in §101.1 [§115.10] of this title, exists from potential leak sources when measured with a combustible gas detector;

(10) in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, any storage tank installed after November 15, 1993 which is required to install Stage I control equipment shall be equipped with a non-coaxial Stage I connection. In addition, any modification to a storage tank existing prior to November 15, 1993 requiring excavation of the top of the storage tank shall be equipped with a non-coaxial Stage I connection, even if the original installation utilized coaxial Stage I connections. At any facility for which a Stage II system was installed prior to November 15, 1993, the Stage I system utilized must be consistent with the relevant requirements of the CARB Executive Order for the Stage II system installed at that facility; [and]

(11) in the regional VOC zone, any storage tank installed after December 22, 1998 which is required to install Stage I control equipment shall be equipped with a non-coaxial Stage I connection. In addition, any modification to a storage tank existing prior to December 22, 1998 requiring excavation of the top of the storage tank shall be equipped with a non-coaxial Stage I connection, even if the original installation utilized coaxial Stage I connections; and

(12) [(11)] any motor vehicle fuel dispensing facility that becomes subject to the provisions of paragraphs (1)-(11) [(1)-(10)] of this section by exceeding the throughput limits of §115.227 of this title (relating to Exemptions) shall have 120 days to come into compliance and will remain subject to the provisions of this subsection, even if its gasoline throughput later falls below exemption limits. However, if gasoline throughput exceeds the exemption limit due to a natural disaster or emergency condition for a period not to exceed one month, upon written request, the executive director may grant a facility continued exempt status.

*§115.223. Alternate Control Requirements.*

[For all affected persons in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas,] Alternate [ alternate] methods of demonstrating and documenting continuous compliance with the applicable control requirements or exemption criteria in this division [undesignated head] (relating to Filling of Gasoline Storage Vessels (Stage I) for Motor Vehicle Fuel Dispensing Facilities) may be approved by the executive director in accordance with §115.910 of this title (relating to Availability of Alternate Means of Control) if emission reductions are demonstrated to be substantially equivalent.

*§115.224. Inspection Requirements.*

In [For all affected persons in] the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas and in the regional VOC zone, as defined in §115.10 of this title (relating to Definitions), the following inspection requirements shall apply.

(1) (No change.)

(2) The gasoline tank-truck tank must have been inspected for leaks within one year in accordance with the requirements of §§115.234-115.236 and 115.239 of this title (relating to Control of Volatile Organic Compound Leaks from Transport Vessels [Gasoline Tank-Trucks]), as evidenced by a prominently displayed certification affixed near the Department of Transportation certification plate.

*§115.225. Testing Requirements.*

[For all affected persons in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, compliance] Compliance with §115.221 [of this title (relating to Emission Specifications)] or §115.222 of this title (relating to Emission Specifications; and Control Requirements) shall be determined by applying the following test methods, as appropriate:

(1) Test Methods 1-4 (40 Code of Federal Regulations (CFR) 60, Appendix A) for determining flow rate, as necessary;

(2) Test Method 18 (40 CFR [Code of Federal Regulations] 60, Appendix A) for determining gaseous organic compound emissions by gas chromatography;

(3) Test Method 25 (40 CFR [Code of Federal Regulations] 60, Appendix A) for determining total gaseous nonmethane organic emissions as carbon;

(4) Test Method 25A or 25B (40 CFR [Code of Federal Regulations] 60, Appendix A) for determining total gaseous organic concentrations using flame ionization or nondispersive infrared analysis;

(5) Test Method 21 (40 CFR [Code of Federal Regulations] 60, Appendix A) for determining volatile organic compound leaks; or

(6) (No change.)

*§115.226. Recordkeeping Requirements.*

[For the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, the] The owner or operator of each [any] motor vehicle fuel dispensing facility in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas and in the regional VOC zone as defined in §115.10 of this title (relating to Definitions) [subject to the control requirements of this section] shall:

(1) (No change.)

(2) maintain for a period of two years:

(A) a record of the results of any testing conducted at the motor vehicle fuel dispensing facility in accordance with the provisions specified in §115.225 of this title (relating to Testing Requirements); [and]

(B) in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, a record of gasoline throughput for each calendar month since January 1, 1991 until such time as the facility installs a Stage II vapor recovery system as required by §§115.241-115.249 of this title (relating to Control of Vehicle Refueling Emissions (Stage II) at Motor Vehicle Fuel Dispensing Facilities [Vapor Recovery]); and

(C) in the regional VOC zone, a record of gasoline throughput for each calendar month beginning January 1, 1999, until the facility is in compliance with §115.221 and §115.222 of this title (relating to Emission Specifications; and Control Requirements). The records must contain the calendar month and year, and the total facility gasoline throughput for each calendar month. These records must be made available at the site during inspection by representatives of the executive director, EPA, or any local air pollution control program with jurisdiction.

*§115.227. Exemptions.*

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

(1) In the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, stationary [Stationary] gasoline storage containers with a nominal capacity less than or equal to 1,000 gallons [(3,785 liters)], at motor vehicle fuel dispensing facilities for which construction began prior to November 15, 1992, are exempt from §§115.221, 115.222, and 115.226(2) [§115.221] of this title (relating to Emission Specifications; Control Requirements; and Recordkeeping Requirements) [and §115.222 of this title (relating to Control Requirements)].

(2) In the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, transfers [Transfers] to stationary storage tanks located at a motor vehicle fuel dispensing facility which has dispensed no more than 10,000 gallons of gasoline in any calendar month after January 1, 1991, and for which construction began prior to November 15, 1992, are exempt from §115.221 [of this title] and §115.222 of this title.

(3) In the regional VOC zone, as defined in §115.10 of this title (relating to Definitions), stationary gasoline storage containers with a nominal capacity less than or equal to 1,000 gallons at motor vehicle fuel dispensing facilities are exempt from §§115.221, 115.222, and 115.226(2) of this title.

(4) In the regional VOC zone, transfers to stationary storage tanks located at a motor vehicle fuel dispensing facility which has dispensed less than 125,000 gallons of gasoline in any calendar month after January 1, 1999 are exempt from §115.221 and §115.222 of this title.

(5) [(3)] Transfers to the following stationary receiving containers are exempt from the requirements of this division [undesignated head] (relating to [Stage I] Filling of Gasoline Storage Vessels (Stage I) for Motor Vehicle Fuel Dispensing Facilities) :

(A) containers used exclusively for the fueling of implements of agriculture; and

(B) storage tanks equipped with external floating roofs, internal floating roofs, or their equivalent.

*§115.229. Counties and Compliance Schedules.*

(a) All affected persons in Chambers, Collin, Denton, Fort Bend, Hardin, Jefferson, Liberty, Montgomery, Orange, and Waller Counties shall comply [be in compliance] with this division [undesignated head] (relating to [Stage I] Filling of Gasoline Storage Vessels (Stage I) for Motor Vehicle Fuel Dispensing Facilities) as soon as practicable, but no later than the installation of a Stage II vapor recovery system as required by §§115.241- 115.249 of this title (relating to Control of Vehicle Refueling Emissions (Stage II) at Motor Vehicle Fuel Dispensing Facilities) or January 31, 1994, whichever occurs first.

(b) The owner or operator of each motor vehicle fuel dispensing facility [All affected facilities] in Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, Tarrant, and Waller Counties which has [have] dispensed more than 10,000 gallons of gasoline in any calendar month after January 1, 1991, but less than 120,000 gallons of gasoline per year, and for which construction began prior to November 15, 1992 shall comply [be in compliance] with this division [undesignated head] (relating to [Stage I] Filling of Gasoline Storage Vessels (Stage I) for Motor Vehicle Fuel Dispensing Facilities) as soon as practicable, but no later than the installation of a Stage II vapor recovery system as required by §§115.241-115.249 of this title or January 31, 1994, whichever occurs first.

(c) The owner or operator of each motor vehicle fuel dispensing facility [All facilities] in Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, Tarrant, and Waller Counties affected by §115.222(1) of this title (relating to Control Requirements), regarding the prohibition of any obstruction in the submerged fill pipe, shall comply [be in compliance] with the prohibition on submerged fill pipe obstructions as soon as practicable, but no later than:

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

(d) The owner or operator of each motor vehicle fuel dispensing facility in the regional VOC zone, as defined in §115.10 of this title (relating to Definitions), which dispenses 125,000 gallons of gasoline or more in any calendar month after January 1, 1999 shall comply with this division (relating to Filling of Gasoline Storage Vessels (Stage I) for Motor Vehicle Fuel Dispensing Facilities) as soon as practicable, but no later than December 31, 1999.

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 December 18, 1998.

TRD-9818438
Margaret Hoffman
Director, Environmental Law Division

Texas Natural Resource Conservation Commission
Proposed date of adoption: May 26, 1999
For further information, please call: (512) 239–1970

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## Division 3. Control of Volatile Organic Compound Leaks from Transport Vessels

**30 TAC §§115.234–115.237, 115.239**

STATUTORY AUTHORITY The amendments are proposed under the Texas Health and Safety Code (Vernon 1992), the Texas Clean Air Act (TCAA), §382.017, which provides the Texas Natural Resource Conservation Commission (commission) with the authority to adopt rules consistent with the policy and purposes of the TCAA; and TCAA §382.012, which requires the commission to develop plans for protection of the state's air.

The proposed amendments implement the Health and Safety Code, §382.017.

*§115.234. Inspection Requirements.*

(a) No person in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, as defined in §115.10 of this title (relating to Definitions), shall allow a tank-truck tank to be filled with or emptied of volatile organic compounds (VOC) having a true vapor pressure greater than or equal to 0.5 pounds per square inch absolute under actual storage conditions at any facility affected by the division [~~§§115.211-115.217 and 115.219 of this title~~] (relating to Loading and Unloading of Volatile Organic Compounds), the division [~~§§115.221-115.227 and 115.229 of this title~~] (relating to Filling of Gasoline Storage Vessels (Stage I) for Motor Vehicle Fuel Dispensing Facilities), or the division [~~§§115.241-115.249 of this title~~] (relating to Control of Vehicle Refueling Emissions (Stage II) at Motor Vehicle Fuel Dispensing Facilities) unless the tank being filled or emptied has passed a leak-tight test within the past year as evidenced by a prominently displayed certification affixed near the Department of Transportation certification plate which:

(1) shows the date the tank-truck tank last passed the leak-tight test required by §115.235 of this title (relating to Approved Test Methods [~~Testing Requirements~~]); and

(2) shows the identification number of the tank-truck tank.

(b) No person in the regional VOC zone, as defined in §115.10 of this title, shall allow a gasoline tank-truck tank to be filled or emptied at any facility affected by the division relating to Loading and Unloading of Volatile Organic Compounds, or the division relating to Filling of Gasoline Storage Vessels (Stage I) for Motor Vehicle Fuel Dispensing Facilities, unless the tank being filled or emptied has passed a leak-tight test within the past year as evidenced by a prominently displayed certification affixed near the Department of Transportation certification plate which:

(1) shows the date the gasoline tank-truck tank last passed the leak-tight test required by §115.235 of this title; and

(2) shows the identification number of the tank-truck tank.

*§115.235. Approved Test Methods.*

(a) In [~~For all affected persons in~~] the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, the following testing requirements [~~shall~~] apply:

(1) The owner or operator of any tank-truck which loads or unloads at any gasoline terminal, gasoline bulk plant, motor vehicle fuel dispensing facility, or other volatile organic compound (VOC) loading or unloading facility shall cause each such tank to be tested annually to ensure that the tank is vapor-tight.

(2) Any tank failing to meet the testing criteria of paragraph (1) of this subsection [~~section~~] shall be repaired and retested within 15 days.

(3) Testing required in paragraph (1) of this subsection [~~section~~] shall be conducted in accordance with the following test methods, as appropriate:

(A) Test Method 27 (40 Code of Federal Regulations (CFR) 60, Appendix A) for determining vapor-tightness of gasoline delivery tank using pressure-vacuum test such that the pressure in the tank must change no more than three inches of water (0.75 kPa) in five minutes when pressurized to a gauge pressure of 18 inches of water (4.5 kPa) and when evacuated to a vacuum of six inches of water (1.5 kPa); or

(B) minor modifications to these test methods approved by the executive director.

(4) For tank-truck tanks not required to be equipped with vapor collection equipment (e.g., pressure tanks) [~~Where applicable~~], the leakage test method [~~methods~~] described in 49 CFR [~~Code of Federal Regulations~~] 180.407(h) [~~180.407~~] for [~~test and inspection of~~] specification cargo tanks is an [~~are~~] acceptable alternative [~~alternatives~~] to Test Method 27 (40 CFR 60, Appendix A) [~~the test methods described in paragraph (3) of this section~~].

(b) In the regional VOC zone, the following testing requirements shall apply:

(1) The owner or operator of any tank-truck which loads or unloads at any gasoline terminal, gasoline bulk plant, or motor vehicle fuel dispensing facility shall cause each such tank to be tested annually to ensure that the tank is vapor-tight.

(2) Any tank failing to meet the testing criteria of paragraph (1) of this subsection shall be repaired and retested within 15 days.

(3) Testing required in paragraph (1) of this subsection shall be conducted in accordance with the following test methods, as appropriate:

(A) Test Method 27 (40 CFR 60, Appendix A) for determining vapor tightness of gasoline delivery tank using pressure-vacuum test such that the pressure in the tank must change no more than three inches of water (0.75 kPa) in five minutes when pressurized to a gauge pressure of 18 inches of water (4.5 kPa) and when evacuated to a vacuum of six inches of water (1.5 kPa); or

(B) minor modifications to these test methods approved by the executive director.

*§115.236. Recordkeeping Requirements.*

[~~For all affected persons in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, the~~] The following recordkeeping requirements shall apply:

(1) The owner or operator of each tank-truck subject to this division [~~undesignated head~~] (relating to Control of Volatile Organic Compound Leaks from Transport Vessels) shall maintain records of all certification testing and repairs. The records must be maintained for at least two years after the date the testing or repair was completed.

(2) The record of each Test Method 27 certification test required by paragraph (1) of this section shall, at a minimum, contain:

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

(3) Records of each leakage test conducted under §115.235(a)(4) of this title (relating to Approved Test Methods) shall be maintained as specified in 49 Code of Federal Regulations 180.417.

(4) [~~(3)~~] Copies of all records required by this section shall be made available for review upon request by representatives of the executive director, EPA, [~~personnel of the Texas Air Control Board, United States Environmental Protection Agency,~~] or any local air pollution control agency with jurisdiction.

*§115.237. Exemptions.*

(a) The following exemptions apply [~~For all affected persons~~] in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas [~~, the following exemptions shall apply~~]: [~~.~~]

(1) Any tank-truck tank which is used exclusively to transport volatile organic compounds (VOC) with a true vapor pressure less than 0.5 pounds per square inch absolute under actual storage conditions is exempt from the requirements of this division [~~undesignated head~~] (relating to Control of Volatile Organic Compound Leaks From Transport Vessels).

[~~(2) Until May 31, 1995, any tank-truck tank which is used exclusively to transport VOC other than gasoline is exempt from the requirements of this undesignated head (relating to Control of Volatile Organic Compound Leaks From Transport Vessels).~~]

(2) [~~(3)~~] Transport vessels other than tank-trucks are exempt from the requirements of this division [~~undesignated head~~] (relating to Control of Volatile Organic Compound Leaks From Transport Vessels).

(b) In the regional VOC zone, transport vessels other than tank-trucks are exempt from the requirements of this division (relating to Control of Volatile Organic Compound Leaks From Transport Vessels).

*§115.239. Counties and Compliance Schedules.*

(a) The owner or operator of each tank-truck tank in Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, Tarrant, and Waller Counties shall continue to comply with §§115.234, 115.235, 115.236, and 115.237 of this title (relating to Inspection Requirements, Approved Test Methods, Recordkeeping Requirements, and Exemptions) as required by §115.930 of this title (relating to Compliance Dates).

(b) The owner or operator of each gasoline tank-truck tank in the regional VOC zone, as defined in §115.10 of this title (relating to Definitions), shall comply with §§115.234, 115.235, 115.236, and 115.237 of this title as soon as practicable, but no later than December 31, 1999.

[~~(a) All affected gasoline tank-trucks in Chambers, Collin, Denton, Fort Bend, Hardin, Liberty, Montgomery, and Waller Counties shall be in compliance with §§115.234, 115.235, 115.236, and 115.237 of this title (relating to Inspection Requirements, Approved Test Methods, Recordkeeping Requirements, and Exemptions) as soon as practicable, but no later than January 31, 1994.~~]

[~~(b) All affected tank-trucks which are used to transport volatile organic compounds other than gasoline in Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, Tarrant, and Waller Counties shall be in compliance with §§115.234, 115.235, 115.236, and 115.237 of this title as soon as practicable, but no later than May 31, 1995.~~]

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 December 18, 1998.

TRD-9818437
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: May 26, 1999
For further information, please call: (512) 239–1970

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# Chapter 305. Consolidated Permits

## Subchapter C. Application for Permit

### 30 TAC §305.46

*(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 Natural Resource Conservation Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Texas Natural Resource Conservation Commission (commission) proposes the repeal of §305.46, concerning Designation of Material as Confidential. The repeal is necessary to remove requirements that are duplicated in the commission's general procedural rules, and this action is part of the commission's continuing effort to consolidate its procedural rules.

In addition to this action, the commission is proposing a conforming change in 30 TAC §312.11 in this edition of the *Texas Register.*

EXPLANATION OF PROPOSED RULES

The proposed repeal of §305.46 would remove requirements that duplicate those in 30 TAC §1.5(d), concerning Records of the Agency. This action is part of the commission's ongoing effort to reorganize, clarify, and consolidate its procedural rules. By consolidating these rules, the commission hopes to eliminate any conflicting procedural requirements and unwarranted nonstatutory differences within its rules.

FISCAL NOTE

Jeff Grymkoski, Director of the Strategic Planning and Appropriations Division, has determined that for the first five-year period the section is in effect there will be no significant fiscal implications for state or local government as a result of enforcing or administering the section.

PUBLIC BENEFIT

Mr. Grymkoski has also determined that for the first five years the rule is in effect, the anticipated public benefit will be the elimination of unnecessary and duplicate rules. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

SMALL BUSINESS ANALYSIS

There are no anticipated costs for small businesses to comply with this proposed rulemaking. The primary purpose of this

action is to consolidate the commission's procedural rules and eliminate unnecessary and duplicate rules.

DRAFT REGULATORY IMPACT ANALYSIS

The commission has reviewed the proposed rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and has determined that it is not subject to that statute because it does not meet the definition of major environmental rule as defined in that statute, and it does not meet any of the four applicability requirements listed in §2001.0225(a). The rule is not a major environmental rule because it concerns commission procedural rules. In addition, the adoption of such rules is expressly required by the Administrative Procedure Act, Texas Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. In addition, Texas Water Code, §5.103 and §5.105, require the commission to adopt rules to carry out its powers and to adopt policy by rule, respectively.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment of this rule under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of this rule is to streamline agency processes. Adoption of this rule will substantially advance these purposes by providing specific provisions on these matters. Promulgation and enforcement of this rule will not burden private real property which is the subject of this rule because it concerns the commission's procedural rules.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed the rulemaking and found that the rule is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Coastal Management Program, nor will it affect any action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. This action concerns only the procedural rules of the commission. Therefore, the proposed rule is not subject to the Coastal Management Program.

PUBLIC HEARING

A public hearing on this proposal will be held February 1, 1999, at 10:30 a.m., in Room 2210 of Texas Natural Resource Conservation Commission Building F, located at 12100 Park 35 Circle, Austin. 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 occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes before the hearing and will answer questions before and after the hearing.

SUBMITTAL OF COMMENTS

Comments may be submitted to Lisa Martin, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas, 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 98049-001-AD. Comments must be received by 5:00 p.m., February 1, 1999. For further information, please contact Brian Christian, Policy Research Division, (512) 239- 1760.

Persons with disabilities who have special communication or accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

STATUTORY AUTHORITY

The repeal is proposed under the following sections of Texas Water Code (TWC): §5.103, which establishes the commission's general authority to adopt rules; and §5.105, which establishes the commission's authority to set policy by rule. Texas Government Code (TGC), §2001.004, which requires state agencies to adopt rules of practice, also applies to this rulemaking.

The proposed repeal implements TWC, §5.103 and §5.105 and TGC, §2001.004.

*§305.46. Designation of Material as Confidential.*

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 December 18, 1998.

TRD-9818453

Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

Proposed date of adoption: April 8, 1999

For further information, please call: (512) 239–1966

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## Chapter 312. Sludge Use, Disposal, and Transportation

## Subchapter A. General Provisions

**30 TAC §312.11**

The Texas Natural Resource Conservation Commission (commission) proposes an amendment to §312.11, concerning Permits. The amendment is necessary to correct a reference to 30 TAC §305.46, which is being concurrently proposed for repeal in this edition of the *Texas Register.* This action is part of the commission's continuing effort to consolidate its procedural rules.

EXPLANATION OF PROPOSED RULE

The proposed amendment to §312.11 removes the reference to §305.46, concerning Designation of Material as Confidential, and replaces it with a reference to 30 TAC §1.5, concerning Records of the Agency. Section 305.46 is concurrently being proposed for repeal because it duplicates §1.5. The proposed amendment is necessary to ensure that the correct reference is made in the commission's rules. This action is part of the commission's ongoing effort to reorganize, clarify, and consolidate its procedural rules. By consolidating these rules, the commission hopes to eliminate any conflicting procedural requirements and unwarranted non-statutory differences within its rules.

FISCAL NOTE

Jeff Grymkoski, Director of the Strategic Planning and Appropriations Division, has determined that for the first five-year period the section is in effect there will be no significant fiscal implica-

tions for state or local government as a result of enforcing or administering the proposed rule.

PUBLIC BENEFIT

Mr. Grymkoski has also determined that for the first five years the section is in effect, the public benefit that is anticipated from these rules will be the elimination of unnecessary and duplicate rules. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

SMALL BUSINESS ANALYSIS

There are no anticipated costs to small businesses to comply with this rulemaking. The primary purpose of this action is to clarify the commission's procedural rules by correcting certain statutory references.

DRAFT REGULATORY IMPACT ANALYSIS

The commission has reviewed the proposed rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and has determined that it is not subject to that statute because it does not meet the definition of major environmental rule as defined in that statute, and it does not meet any of the four applicability requirements listed in §2001.0225(a). The rule is not a major environmental rule because it concerns commission procedural rules. In addition, the adoption of such rules is expressly required by the Administrative Procedure Act, Texas Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. In addition, Texas Water Code, §5.103 and §5.105, require the commission to adopt rules to carry out its powers and to adopt policy by rule, respectively.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment of this rule under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of this rule is to streamline agency processes. Adoption of this rule will substantially advance these purposes by providing specific provisions on these matters. Promulgation and enforcement of this rule will not burden private real property which is the subject of this rule because it concerns the commission's procedural rules.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed the rulemaking and found that the rule is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Coastal Management Program, nor will it affect any action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. This action concerns only the procedural rules of the commission. Therefore, the proposed rule is not subject to the Coastal Management Program.

PUBLIC HEARING

A public hearing on this proposal will be held February 1, 1999, at 10:30 a.m., in Room 2210 of Texas Natural Resource Conservation Commission Building F, located at 12100 Park 35 Circle, Austin. 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 occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes before the hearing and will answer questions before and after the hearing.

SUBMITTAL OF COMMENTS

Comments may be submitted to Lisa Martin, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas, 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 98049-001-AD. Comments must be received by 5:00 p.m., February 1, 1999. For further information, please contact Brian Christian, Policy Research Division, (512) 239- 1760.

Persons with disabilities who have special communication or accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

STATUTORY AUTHORITY

The amendment is proposed under the following sections of Texas Water Code (TWC): §5.103, which establishes the commission's general authority to adopt rules; and §5.105, which establishes the commission's authority to set policy by rule. This action is also taken under Texas Health and Safety Code (HSC), §382.017, which establishes the commission's rulemaking authority.

The proposed amendment implements TWC, §5.103 and §5.105, and HSC, §382.017.

*§312.11. Permits.*

(a) (No change.)

(b) Any person who is required to obtain a permit, or who requests an amendment, modification, or renewal of a permit to dispose of or incinerate sewage sludge is subject to the permit application procedures of §1.5(d) of this title (relating to Records of the Agency), §305.42(a) of this title (relating to Application Required), §305.43 of this title (relating to Who Applies), §305.44 of this title (relating to Signatories to Applications), §305.45 of this title (relating to Contents of Application for Permit), [~~§305.46 of this title (relating to Designation of Material as Confidential),~~] and §305.47 of this title (relating to Retention of Application Data).

(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 December 18, 1998.

TRD-9818466
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: April 8, 1999
For further information, please call: (512) 239–1966

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# TITLE 37. PUBLIC SAFETY AND CORRECTIONS

## Part IX. Texas Commission on Jail Standards

## Chapter 253. Definitions

**37 TAC §253.1**

The Texas Commission on Jail Standards proposes an amendment to §253.1, concerning definitions.

The rule is being amended due to a commission meeting held November 16, 1998, where jail administrators, architects and other jail associations were invited to discuss the proposed changes to construction standards. During that time it was indicated that a definition for the words "system" and "ward" should be included in the standard.

Jack E. Crump, executive director, Texas Commission on Jail Standards, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Crump also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be the addition of the words "system" and "ward" to the standard. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Lynn Weatherby, Texas Commission on Jail Standards, P.O. Box 12985, Austin, Texas 78711.

The amendment is proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to revise, amend, or change rules and procedures if necessary.

The Local Government Code, Chapter 351, §351.002 and §351.015 are affected by this proposal.

*§253.1. Definitions.*

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

(1) Administrative Separation - The assignment of an inmate to a special housing unit, usually a separation or single cell, when staff determines that such close custody is needed for the safety of inmates or staff, for the security of the facility, or to promote order in the facility.

(2) Capacity - The number of inmates a facility is authorized by the commission to house, excluding holding, detoxification, medical, and violent cells.

(3) Commission - Texas Commission on Jail Standards.

(4) Control Area - The area inside the security perimeter to which inmates have only controlled access.

(5) Control Room - A secured, enclosed room which contains facility door controls, intercom panels and/or fire alarm panels.

(6) Day Room - A space within or adjacent to single cells, multiple occupancy cells, and dormitories specifically for inmate day time activities.

(7) Detoxification Cell - A cell designed for the temporary holding of intoxicated persons.

(8) Direct Supervision - An inmate supervision management style in which corrections officer(s) are stationed inside a housing unit 24 hours per day.

(9) Disabled - Persons who have a physical or mental impairment that substantially limits one or more of the major life activities of such individuals.

(10) Dormitory - A cell designed to accommodate nine to 48 inmates.

(11) Existing Facility - A maximum security, lockup, or minimum security facility that was being operated as such on December 23, 1976.

(12) Guard Station - A designated space from which a corrections officer performs his/her functions.

(13) Holding Cell - A cell designed for the temporary holding of inmates.

(14) Inmate Housing Area - Cells and day rooms where inmates are assigned.

(15) Inmate Occupied Area - Any area in the facility normally occupied by inmates.

(16) May - Permissive or optional.

(17) Multiple Occupancy Cell - A cell designed to accommodate two to eight inmates.

(18) Owner - A county commissioner's court, municipality, or private vendor who holds title to a facility.

(19) Safety Vestibule - An enclosed space, served by at least two doors, that serves as a passageway between two areas.

(20) Sally Port - A secured space inside or abutting a facility for vehicles to deliver or pick up inmates or goods.

(21) Security Perimeter - The outer limits of the facility where construction prevents egress by inmates or ingress by unauthorized persons or contraband.

(22) Separation Cell - A special purpose cell designed to accommodate one inmate [~~person~~]. The cell minimally contains one [~~a~~] bunk, mirror, toilet, lavatory, shower, floor drain, [~~mirror,~~] table, and seat. This cell is used to house inmates requiring protection or whose behavior requires close supervision.

(23) Shall - Mandatory and required for compliance.

(24) Sheriff/Operator - County sheriff, jail administrator, or a person authorized to act with their authority.

(25) Should - Recommended but not required for compliance.

(26) Single Cell - A cell designed to accommodate one inmate.

(27) Small Jail - A facility with a capacity of less than 50 inmates.

(28) Special Purpose Cell - Detoxification cell, holding cell, separation cell, violent cell, and medical cell. These cells are not required to be provided with day rooms or safety vestibules.

(29) System - A combination of all facilities creating a functional unit.

(30) Violent Cell - A single occupancy padded cell for the temporary holding of inmates harmful to themselves and or others.

(31) Ward - An infirmary area holding a number of inmates.

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 December 21, 1998.

TRD-9818506
Jack E. Crump
Executive Director
Texas Commission on Jail Standards
Earliest possible date of adoption: January 31, 1999
For further information, please call: (512) 463-5505

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## Chapter 257. Construction Approval Rules

**37 TAC §257.9, §257.10**

The Texas Commission on Jail Standards proposes amendments to §257.9 and §257.10, concerning construction approval rules.

Section 257.9 is being amended due to the commission adopted the Americans with Disabilities Act Accessibility Guidelines (ADAAG), §11.4.1 and §11.4.2 and Chapter 12 and the Texas Accessibility Standards effective August 1996. Since that time, ADAAG designations have been amended. The proposed change to this section will update the standard consistent with the latest interim final rules for courtroom holding cells and jail facilities.

Currently §257.10 requires plans be submitted to the elimination of Architectural Barriers (EAB) of the Texas Department of Licensing and Regulation for review. Amending this rule will still require the plans to be supplied to EAB for review but allow the county to begin construction immediately following jail standards review.

Both of these sections are part of the agency review process in accordance with the Appropriations Act of 1997, HB 1, Article IX, Section 167.

Jack E. Crump, executive director, Texas Commission on Jail Standards, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Mr. Crump also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be an updated standard consistent with the latest interim final rules for courtroom holding cells and jail facilities and the allowing of the county to begin construction immediately following jail standards review. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to Lynn Weatherby, Texas Commission on Jail Standards, P.O. Box 12985, Austin, Texas 78711.

The amendments are proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to revise, amend, or change rules and procedures if necessary.

The Local Government Code, Chapter 351, §351.002 and §351.015 are affected by this proposal.

*§257.9. Laws Applicable.*
Facilities constructed prior to subsequent amendments to these rules, entailing changes, additions, or deletions to the structure of equipment therein, shall not be required to meet the changes unless the change also establishes a date by which the change shall be effected. The facility shall conform to the building, safety, and health requirements of state and local authority. The facility shall also conform to Title 36, CFR, Part 1191, Sections 11.2.3(1) and (2) [~~11.4.1,~~ ~~11.4.2~~], and Chapter 12 in its entirety regarding the Americans with Disabilities Act Accessibility Guidelines (ADAAG). The commission adopts these rules and the Texas Accessibility Standards, Article 9102, Texas Civil Statutes [~~TCS~~], by reference. State standards for a facility which exceed those of the local authority shall take precedence. Where local building codes do not exist, the Uniform Building Code or Standard Building Code, latest editions, will apply.

*§257.10. Accessibility Review.*
The plans for all facilities shall be submitted to the Texas Department of Licensing and Regulation, Elimination of Architectural Barriers for review and approval of accessibility features [~~prior to construction~~].

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 December 21, 1998.

TRD-9818507
Jack E. Crump
Executive Director
Texas Commission on Jail Standards
Earliest possible date of adoption: January 31, 1999
For further information, please call: (512) 463-5505

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## Chapter 269. Records and Procedures

### Subchapter A. General

**37 TAC §269.4**

The Texas Commission on Jail Standards proposes an amendment to §269.4, concerning records and procedures.

The U.S. Supreme Court ruled on June 15, 1998 that prison inmates are protected by the Americans with Disabilities Act (ADA) in Yeskey *v* Pennsylvania. The courts in effect stated that the ADA applied to correctional facilities. The proposed change is resultant of that decision and will encompass all of Title II of the ADA instead of just subparts. Title II is comprised of the following headings: General, General Requirements, Employment, Program Accessibility, Communications, Compliance Procedures and Designated Agencies.

Jack E. Crump, executive director, Texas Commission on Jail Standards, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Crump also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as

a result of enforcing the rule will be an updated standard in compliance with current ADA requirements. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Lynn Weatherby, Texas Commission on Jail Standards, P.O. Box 12985, Austin, Texas 78711.

The amendment is proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the custody, care, and treatment of prisoners.

The Local Government Code, Chapter 351, §351.002 and §351.015 are affected by this proposal.

*§269.4. Equitable Treatment.*

Each sheriff/operator shall have and implement a written procedure providing for equitable treatment regardless of race, religion, national origin, sex, age, or disabilities. The treatment of inmates with disabilities shall be in accordance with Title II, Subtitle A, of the Americans with Disabilities Act, 42 United States Code, §§12131-12134 and its regulations at 28 Code of Federal Regulations, Part 35, §§35.101-35.190 [~~Title 35, CFR, Subpart B and Subpart D~~].

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 December 21, 1998.

TRD-9818508
Jack E. Crump
Executive Director
Texas Commission on Jail Standards
Earliest possible date of adoption: January 31, 1999
For further information, please call: (512) 463-5505

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# TITLE 40. SOCIAL SERVICES AND ASSISTANCE

## Part I. Texas Department of Human Services

### Chapter 3. Income Assistance Services

### Subchapter NN. Electronic Benefit Transfer

**40 TAC §3.4007**

The Texas Department of Human Services (DHS) proposes to amend §3.4007, concerning benefit conversion, in its Income Assistance Services chapter. The purpose of the amendment is to allow benefits to be issued in various ways in the event the Electronic Benefit Transfer (EBT) System is unavailable for more than three days due to a natural disaster, emergency, or major crisis of the EBT System.

Eric M. Bost, commissioner, has determined that for the first five- year period the proposed section will be in effect, the exact fiscal impact cannot be determined because of the nature of natural disasters. It is impossible to predict the location or the extent of the natural disaster's impact on EBT operations. The cost to state or local governments as a result of enforcing or administering the section is directly related to these factors.

Mr. Bost 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 is that benefits can still be used in retail stores even if the EBT System is unavailable. It is not anticipated that this change will affect small businesses because clients will receive the same amount of benefits during a disaster as they normally would receive and have available to spend. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Questions about the content of this proposal may be directed to Mary Haifley at (512) 438-2599 in DHS's Client Self-Support Services Department. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-073, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The amendments are proposed under the Human Resources Code, Title 2, Chapters 22 and 31, which provides the department with the authority to administer public and financial assistance programs.

The amendments implement the Human Resources Code, §§22.001- 22.030 and §§31.001-31.0325.

*§3.4007. Benefit Conversion.*

(a) (No change.)

(b) When a Temporary Assistance for Needy Families (TANF) [~~an Aid to Families with Dependent Children (AFDC)~~] recipient moves out of the EBT area(s), he may use the EBT card to remove cash from the cash account anytime after a month's benefit becomes available. The TANF [~~AFDC~~] recipient is responsible for taking this action when leaving the EBT area.

(c) DHS does not convert available TANF [~~AFDC~~] benefits in an EBT account to a warrant if the recipient leaves the EBT area without using all the TANF [~~AFDC~~] benefits in the EBT account which are available when the recipient leaves. If an eligible recipient moves out of the EBT area before a particular month's TANF [~~AFDC~~] benefit is available, upon the recipient's request DHS converts that benefit to a warrant.

(d) If EBT benefits become unavailable for more than three days due to a natural disaster or other major emergency or crisis, DHS may offer cardholders an alternative method of issuance of benefits determined feasible and cost effective. Such methods may include, but not be limited to, cashing out EBT benefits via money orders obtained at DHS-specified locations; state warrants either mailed or obtained at DHS-specified locations; direct mail issuance of food coupons to recipients; over-the-counter food stamp issuance in specified counties/locations; or some other method not yet available or feasible.

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 December 17,1998.

TRD-9818419
Glenn Scott
General Counsel, Legal Services

Texas Department of Human Services
Earliest possible date of adoption: January 31, 1999
For further information, please call: (512) 438–3765

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# TITLE 43. TRANSPORTATION

## Part I. Texas Department of Transportation

### Chapter 2. Environmental Policy

### Subchapter B. Memoranda of Understanding with Natural Resource Agencies

**43 TAC §2.22**

The Texas Department of Transportation proposes the repeal of §2.22 and simultaneously proposes new §2.22, concerning Memorandum of Understanding with the Texas Parks and Wildlife Department.

EXPLANATION OF PROPOSED REPEAL AND NEW SECTION

Transportation Code §201.607, requires the Texas Department of Transportation (TxDOT) to adopt a Memorandum of Understanding (MOU) with each state agency that has responsibilities for the protection of the natural environment, the preservation of the natural environment, or for the preservation of historic or archeological resources. Section 201.607 also requires TxDOT to adopt the memoranda and all revisions by rule and to periodically evaluate and revise the memoranda. In order to meet the legislative intent and to ensure that natural environmental resources are given full consideration in accomplishing TxDOT's activities, TxDOT has evaluated the memorandum adopted in 1992 and finds it necessary to propose the repeal of §2.22 and to simultaneously propose the adoption of new §2.22 in a revised form. New §2.22 describes procedures providing for Texas Parks and Wildlife Department (TPWD) review of TxDOT projects that have the potential to affect natural resources within the jurisdiction of TPWD.

New §2.22 describes the purpose of the section, including implementing provisions of Texas Transportation Code, §201.607, and the rules for coordination of state-assisted transportation projects, Title 43, Texas Administrative Code, §§2.40-2.51, which underline the need for and importance of comprehensive environmental coordination for all transportation projects. Section 2.22 also provides definitions for words and terms used in the MOU.

Subsection (a) explains the purpose of the MOU, including a statement of TxDOT policy regarding the identification of environmental impacts of TxDOT projects; the basis for project decisions; public input; and the use of a systematic interdisciplinary approach in project development. The MOU provides a formal mechanism by which TPWD may review TxDOT projects. This review will promote the mutually beneficial sharing of information between TxDOT and TPWD, which will assist TxDOT in making environmentally sound decisions.

Subsection (b) provides definitions for this section.

Subsection (c) outlines the responsibilities of the department and TPWD. The department's responsibilities include planning and designing safe, efficient, effective and environmentally sound transportation facilities, while avoiding, minimizing, or compensating, where practicable, for anticipated environmental impacts; the timely and efficient construction of transportation facilities; and the ongoing maintenance of transportation facilities. As a state natural resource protection agency, TPWD's responsibilities include protecting the state's fish and wildlife resources; providing recommendations for protection of fish and wildlife resources to agencies that construct developmental projects; providing information on fish and wildlife resources to agencies or organizations that make decisions affecting those resources; and maintaining a listing of endangered and threatened species and providing these listings to agencies that make decisions affecting those species.

Subsection (d) contains a new provision for early project development that provides a process for early contact with TPWD to identify potential impacts to natural resources caused by proposed transportation projects; contains a revised set of criteria under which transportation projects will be coordinated with TPWD; provides for the review of biological and natural resource information contained in the environmental documentation by a qualified biologist prior to coordination with TPWD; contains a new provision for an interagency team (TPWD and TxDOT) that will develop procedures and methodologies for providing habitat characterizations and impact descriptions to be included in environmental documentation, and which will also develop criteria for the appropriateness, planning and implementation of mutually agreed upon mitigation needs; provides for an amended TPWD review time of environmental documentation by decreasing the time from 50 days to 45 days; provides TxDOT the authority to determine final disposition of transportation projects; provides for continuing coordination between TxDOT and TPWD through the construction period of a transportation project if needed; reiterates that additional coordination with TPWD will occur if unforeseen impacts to endangered or threatened species or their habitat occur; provides an opportunity for TPWD to review TxDOT statewide maintenance programs; and specifies that information provided by TPWD will include species of concern in a project area, suggested mitigation measures, and recommendations for the protection of natural resources under the jurisdiction of TPWD.

Subsection (e) contains a revised section concerning special provisions relating to information exchange between TPWD and TxDOT as it relates to the maintenance and enhancement of a computer-based information system detailing threatened and endangered species. This subsection also provides for the development of a protocol for the transfer, use, distribution and security of information relating to the location of endangered and threatened species and habitats of concern.

Subsection (f) provides for the review and revision of the MOU, at a minimum, every fifth year beginning January 1, 2002, and that TxDOT and TPWD will adopt by rule the MOU and all revisions to the MOU.

FISCAL NOTE

Frank J. Smith, Director, Finance Division, has determined that, for the first five-year period the new section is in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the new section. There are no anticipated economic costs for persons required to comply with the sections as proposed.

Dianna F. Noble, P.E., Director, Environmental Affairs Division, has certified that there will not be significant impacts on local economies or overall employment as a result of enforcing or administering the repealed and new section.

PUBLIC BENEFIT

Ms. Noble has also determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of enforcing the section, consistent with TxDOT's mission, will be an increased effectiveness in how TxDOT's transportation projects provide for the safe, effective, efficient movement of people and goods in an environmentally sensitive manner, as a result of increased coordination and communication between the department and TPWD. Implementation of this MOU will also ensure that the state's natural resources are preserved to the fullest extent possible, enhanced where practicable, and will ensure comprehensive environmental coordination for all transportation projects in a manner consistent with federal and state laws, regulations and guidelines. There will be no effect on small businesses.

PUBLIC HEARING

Pursuant to the Administrative Procedure Act, Government Code, Chapter 2001, TxDOT and TPWD will conduct a joint public hearing to receive comments concerning the proposed new chapter. The public hearing will be held at 10:00 a.m. on Friday, January 22, 1999, in the first floor hearing room of the Dewitt C. Greer State Highway Building, 125 East 11th Street, Austin, Texas and will be conducted in accordance with the procedures specified in 43 TAC §1.5. Those desiring to make comments or presentations may register starting at 9:30 a.m. Any interested persons may appear and offer comments, either orally or in writing; however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views and identical or similar comments through a representative member when possible. Comments on the proposed text should include appropriate citations to sections, subsections, paragraphs, etc., for proper reference. Any suggestions or requests for alternative language or other revisions to the proposed text should be submitted in written form. Presentations must remain pertinent to the issues being discussed. A person may not assign a portion of his or her time to another speaker. A person who disrupts a public hearing must leave the hearing room if ordered to do so by the presiding officer. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are requested to contact Eloise Lundgren, Director, Public Information Office, 125 East 11th Street, Austin, Texas, 78701-2483, 512/463-8588 at least two working days prior to the hearing so that appropriate services can be provided.

SUBMITTAL OF COMMENTS

Written comments on the proposed repeal and new section may be submitted to Dianna F. Noble, P.E., Director of Environmental Affairs, 125 East 11th Street, Austin, Texas, 78701-2483. The deadline for receipt of comments will be 5:00 p.m. on February 1, 1999.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

This rulemaking action has been determined to be subject to the 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 rules of the Coastal Coordination Council (31 TAC Chapters 501-506). As required by 31 TAC §505.22(a), this rulemaking action must be consistent with all applicable CMP policies.

This action has been reviewed for consistency, and it has been determined that this rulemaking is consistent with the applicable CMP goals and policies. The primary CMP policy applicable to this rulemaking action is the policy that transportation projects be located at sites that, to the greatest extent practicable, avoid and otherwise minimize the potential for adverse effects to coastal natural resource areas from construction and maintenance of roads, bridges, causeways, and other development associated with the project. This rulemaking action provides a means for identifying the environmental impacts of department transportation projects on natural resources, including threatened and endangered species and habitat, for coordination of these projects with the relevant state resource agency, and for inclusion of these investigations and coordination in the environmental documentation for each project. All of these purposes will provide a mechanism for avoiding, minimizing, or compensating, where practicable, for the adverse effects of department projects on coastal natural resource areas that serve as habitat, on coastal preserves, and on threatened and endangered species. For these same reasons, the rulemaking action is consistent with the CMP goal of protecting, preserving, restoring, and enhancing the diversity, quality, quantity, functions, and values of coastal natural resource areas. Interested persons are requested to submit comments on the consistency of the proposed rules with the CMP.

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

STATUTORY AUTHORITY

The repeal is proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation, and more specifically, Transportation Code, §201.607, which requires that the department adopt memoranda of understanding with each agency that has responsibility for the protection of the natural environment, the preservation of the natural environment, or for the preservation of historic or archeological resources, and that these memoranda and all revisions be adopted as rules.

No statutes, articles, or codes are affected by this proposed repeal.

*§2.22. Memorandum of Understanding with the Texas Department of Parks and Wildlife.*

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 December 21, 1998.

TRD-9818480

Richard Monroe

General Counsel
Texas Department of Transportation
Earliest possible date of adoption: January 31, 1999
For further information, please call: (512) 463–8630

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STATUTORY AUTHORITY

The new section is proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation, and more specifically, Transportation Code, §201.607, which requires that the department adopt memoranda of understanding with each agency that has responsibility for the protection of the natural environment, the preservation of the natural environment, or for the preservation of historic or archeological resources, and that these memoranda and all revisions be adopted as rules.

No statutes, articles, or codes are affected by this proposed new section.

*§2.22. Memorandum of Understanding with the Texas Parks and Wildlife Department.*

(a) Purpose.

(1) It is the policy of the Texas Department of Transportation (TxDOT) to:

(A) investigate fully the environmental impacts of TxDOT transportation projects, coordinate these projects with applicable state and federal agencies, and reflect these investigations and coordinations in the environmental documentation for each project;

(B) base project decisions on a balanced consideration of the need for a safe, efficient, economical, and environmentally sound transportation system;

(C) receive input from the public through the public involvement process; and

(D) utilize a systematic interdisciplinary approach as an essential part of the development process for transportation projects.

(2) In order to pursue this policy, TxDOT and the Texas Parks and Wildlife Department (TPWD) have agreed to develop this Memorandum of Understanding (MOU) that will supersede the MOU which became effective on October 15, 1992.

(3) Transportation Code, §201.607, directs TxDOT to adopt memoranda of understanding with appropriate environmental resource agencies, including TPWD.

(4) The rules for coordination of state-assisted transportation projects found in §§2.40-2.51, of this title (relating to Environmental Review and Public Involvement for Transportation Projects), underline the need for and importance of comprehensive environmental coordination for all transportation projects.

(5) It is the purpose of this MOU to provide a formal mechanism by which the TPWD may review TxDOT transportation projects, including those that have the potential to affect natural resources within facilities owned or managed by TPWD. This review will promote the mutually beneficial sharing of information between TxDOT and TPWD, which will assist TxDOT in making environmentally sound decisions.

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

(1) Construction–Activities which involve the building of transportation facilities on a new location, or the expansion, rehabilitation, or reconstruction of an existing facility.

(2) Early project development–The phase of project development that includes, but is not limited to, project planning, field surveys, database searches, in-house coordination, initial resource agency coordination, and scoping, if necessary prior to selection of alternatives.

(3) Environmental document–A decision-making document which incorporates the results of environmental studies, coordination and consultation efforts, and engineering elements. Types of documents include categorical exclusions, environmental assessments, and environmental impact statements.

(4) Habitat–Areas of intrinsic biological resource value, the disturbance of which would not require: a U.S. Army Corps of Engineers permit; a U.S. Coast Guard permit; coordination under the Endangered Species Act, Fish and Wildlife Coordination Act, or the Migratory Bird Treaty Act.

(5) Maintenance–Activities which involve the repair or preservation of an existing facility to prevent that facility's degradation to an unsafe or irreparable state, or which involve the treatment of an existing facility or its environs to meet acceptable standards of operations or aesthetic quality. Such activities generally do not require the acquisition of additional right of way.

(6) Maintenance programs–A collection of maintenance activities performed singularly or collectively on the state highway system. The following categories have been established as maintenance programs: bridge maintenance; customer service; debris and spills; drainage; ferry maintenance; maintenance enhancement; pavement maintenance; roadside appurtenances; traffic pavement markings; and vegetation management.

(7) Memorandum of Understanding (MOU)–A formal document which outlines the relationship between agencies or parties, including the responsibilities and jurisdiction of each party.

(8) Mitigation–A means of addressing adverse impacts to the natural environment including, in general order of preference, avoidance, minimization, and compensation, the commitment for which will be included in the environmental document wherever the need is mutually agreed upon by TxDOT and TPWD, including detailed plans where practicable.

(9) National Environmental Policy Act of 1969 (NEPA)–The basic national charter for protection of the environment which establishes policy, sets goals, and provides means for carrying out the policies. NEPA is binding upon federal agencies, including the Federal Highway Administration, and is usually followed as an environmental guideline by state and local agencies. In this document, NEPA includes the Act itself, its subsequent amendments, and implementing regulations.

(10) Project development–The planning process of a transportation project which includes early project development, environmental studies including the development of the appropriate environmental documentation, public involvement, engineering design, and right of way acquisition.

(11) Public involvement–An important, ongoing phase of the project planning process which encourages and solicits public

input and seeks to provide the public the opportunity to become fully informed regarding project development.

(12) Right of way–The land provided for a transportation facility, for example, the roadway itself (including shoulders), and areas between the roadway and adjacent properties (including drainage facilities).

(13) Transportation projects–All surface transportation projects designed, constructed, and maintained by TxDOT, excluding toll projects.

(c) Responsibilities.

(1) Texas Department of Transportation. The responsibilities of TxDOT pertain primarily to:

(A) planning and designing safe, efficient, effective, and environmentally sound transportation facilities, while avoiding, minimizing, or compensating for anticipated environmental impacts to the fullest extent practicable;

(B) timely and efficient construction of transportation facilities in a manner consistent with approved plans or agreements that TxDOT has executed regarding the protection of the natural environment to provide safe, efficient, and environmentally sound transportation facilities for the traveling public;

(C) the ongoing maintenance of these facilities to provide safe, efficient, and environmentally sound transportation facilities for the traveling public, and dedication to the protection of natural resources within the jurisdiction of TxDOT; and

(D) as directed by House Bill 1359, 74th Legislature, 1995 which amended House Bill 9, 72nd Legislature, 1991, the construction, repair, and maintenance of roads in and adjacent to state parks, state fish hatcheries, state wildlife management areas, and support facilities for parks, fish hatcheries, and wildlife management areas. (These items have been implemented under a separate memorandum of agreement between TxDOT and TPWD dated September 1, 1998.)

(2) Texas Parks and Wildlife Department.

(A) The responsibilities of TPWD relate primarily to its functions as a natural resource agency, including its resource protection functions, designated by Parks and Wildlife Code, Chapters 67, 68, 88, and §12.001 and §12.0011, and include:

*(i)* acting as the state agency with primary responsibility to protect the state's fish and wildlife resources;

*(ii)* providing recommendations that will promote fish and wildlife resources to local, state, and federal agencies that approve, permit, license, or construct developmental projects;

*(iii)* providing information on fish and wildlife resources to any local, state, or federal agencies or private organizations that make decisions affecting those resources; and

*(iv)* maintaining a listing of endangered and threatened species and providing these listings to local, state, and federal agencies that make decisions affecting those species.

(B) TPWD will identify and appoint appropriate staff to coordinate with TxDOT staff on transportation projects and to review project-specific information and documentation.

(d) Provisions. For the purpose of this MOU, the activities of TxDOT are divided into the following categories.

(1) Early project development. TxDOT may coordinate the potential impacts with TPWD Wildlife Habitat Assessment Program staff or the appropriate selected regional staff. TPWD will provide a list of regional director contacts for district use. TPWD staff may provide information concerning the occurrence of unique or important wildlife travel or activity areas, sensitive habitats, important vegetative communities or ecosystems, suitability of habitat for threatened or endangered species, or other natural resource information that could identify potential undesirable impacts and associated planning constraints before completion of a project design, and selection of a preferred project alternative. The level of information provided by TPWD will be consistent with protocol established to protect confidentiality of site-specific data collected on private lands pursuant to Parks and Wildlife Code, §12.0251 and §12.103. TxDOT will provide project specific information, as available, to TPWD regional contacts. Following appropriate early coordination that may involve TPWD regional staff, TxDOT may solicit written concurrence from TPWD of a proposed project's potential impacts and mitigation during early project development. However, initially, written concurrence must be coordinated through the Wildlife Habitat Assessment Program of TPWD. Eventually, projects successfully coordinated with TPWD regional staff during early project development may not require additional coordination with TPWD as required under paragraph (2) of this subsection, as determined by mutual agreement between TPWD and TxDOT.

(2) Project development. Upon completion of TxDOT's preliminary project review, a copy of the environmental documentation shall be furnished to TPWD for all projects meeting the criteria for coordination unless previously documented as shown in paragraph (1) of this subsection. Coordination will be conducted for projects that:

(A) involve more than 1.0 acre (0.4 hectares) of new right of way within floodplains or creek drainages in rural or undeveloped urban areas;

(B) require channel modifications to streams, rivers, or water bodies;

(C) involve a channel realignment involving the creation of new drainage ways or other excavation impacting more than 1.0 acre (0.4 hectares) of mature woody vegetation;

(D) require any excavation (scraping, clearing, or other surface disturbance) of the existing channel outside of TxDOT's existing right of way or of the channel inside TxDOT's existing right of way which is not routinely maintained and exhibits native vegetation;

(E) might affect mature woody vegetation, dense mature brush, including any significant remnant native vegetation (e.g., undisturbed native prairie or bottomland hardwood, etc.);

(F) are within the range and in suitable habitat of any state or federally listed threatened or endangered species;

(G) involve mitigation plans, or otherwise involve proposals to redress project impacts on fish, wildlife, or plant resources;

(H) have previous environmental documentation but where three years have passed without major action(s) (i.e., final design, acquisition of right of way, approval of plans, specifications, or estimates) and the project has not been reviewed by TPWD, but meets the above listed criteria; or

(I) have previous environmental documentation but where three years have passed with major action(s) and the project

may or may not have been reviewed by TPWD, but meets the above listed criteria.

(3) Elements of documentation. The level of environmental documentation prepared and provided to TPWD will be of sufficient detail to allow determination of the kinds of vegetation communities that will be affected and areal extent of vegetation impacted. The biological and natural resource information contained in the environmental documentation will be interpreted and verified by a qualified biologist prior to coordination with TPWD. When available, environmental documentation may be supported by aerial photography or on-ground photography taken by a hand-held camera.

(4) Interagency team. An interagency team consisting of staff from both TxDOT and TPWD will be established within 60 days from the signature date of this MOU.

(A) This team will:

*(i)* develop procedures and methodologies for providing habitat characterizations and impact descriptions, and develop supporting information for the environmental documentation; and

*(ii)* establish criteria for the appropriateness, planning, and implementation of compensatory mitigation when TxDOT has identified a need, or when TxDOT and TPWD mutually have identified the need, for compensation (Because mitigation planning or implementation may be completed after the contract for the project is awarded, no project shall be delayed pending mitigation.).

(B) In addition, TxDOT has the final decision on the implementation of a given mitigation plan. However, if TxDOT determines that mitigation is not feasible, an explanation of why it will not be undertaken shall be provided to TPWD.

(5) Review period. TPWD shall have a period of 45 days from the date of the transmittal letter to review project environmental documentation. Any comments submitted by TPWD shall be considered by TxDOT in making project decisions. If additional information is requested by TPWD it shall be provided by TxDOT, if such information is available or reasonably can be obtained. In such case, TPWD shall have an additional 30 days from the date of TxDOT's second transmittal letter that will accompany the additional information forwarded to TPWD to review documentation.

(6) Final disposition of projects. TxDOT reserves the right to determine the final disposition of proposed transportation projects, based on a considered analysis of TPWD comments and practical alternatives as they relate to TxDOT's responsibilities as described in this document.

(7) Ongoing coordination. When necessary, construction activities coordination between TxDOT and TPWD shall continue through the construction phase to provide for the protection of natural resources. Mitigation proposals agreed upon by TxDOT and TPWD relating to construction activities will be included in the project construction plans.

(8) Unforeseen protected species impacts. In the event that unforeseen impacts to endangered or threatened species or their habitat under TPWD jurisdiction are identified after construction has commenced, TxDOT will coordinate with TPWD regarding such resources.

(9) Maintenance program review. TPWD will be provided the opportunity to review TxDOT maintenance programs prior to implementation of each program or plan. TPWD will be provided an opportunity to comment and make suggested revisions to the programs, and TxDOT will give consideration to these suggested revisions. If TxDOT does not fully implement the revisions suggested by TPWD, TxDOT will provide a written explanation to TPWD.

(10) TPWD document commentary. Comments received by TxDOT from TPWD in the coordination process shall, when applicable, include:

(A) guidance as to what species may be present within the project area that may require special considerations in terms of those species and their habitat;

(B) suggested mitigation measures; and

(C) recommendations for protection of natural resources under TPWD jurisdiction, as defined in Parks and Wildlife Code, §12.001 and §12.0011.

(e) Special provisions relating to information exchange.

(1) TxDOT and TPWD shall cooperate in the maintenance and enhancement of a computer-based information system detailing the distribution of species listed as threatened or endangered (including state and federal listings), or those which are of concern and are being considered for listing.

(2) TxDOT and TPWD shall cooperate to develop a protocol addressing the transfer of the computer-based information on locations of protected species and/or habitats of concern, the use and distribution of this information, and the security of the information. The level of information provided by TPWD will be consistent with protocol established to protect confidentiality of site specific data collected on private lands pursuant to Parks and Wildlife Code, §12.0251 and §12.103.

(f) Review of MOU. This MOU shall be reviewed and updated, at a minimum, every fifth year beginning January 1, 2002, and TxDOT and TPWD by rule shall adopt the MOU and all revisions to the MOU.

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 December 21, 1998.

TRD-9818479
Richard Monroe
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: January 31, 1999
For further information, please call: (512) 463–8630

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## Chapter 9. Contract Management

## Subchapter C. Contracting for Architectural, Engineering, and Surveying Services

**43 TAC §§9.30, 9.31, 9.33–9.39, 9.41, 9.43**

The Texas Department of Transportation proposes amendments to §§9.30, 9.31, 9.33-9.39, 9.41, and 9.43, concerning contracting for architectural, engineering, and surveying services.

EXPLANATION OF PROPOSED AMENDMENTS

The proposed amendments to these sections are necessary to shorten the selection process and clarify several work category requirements.

The amendments to §9.30 cross-reference changes to §9.33(b)(3) which clarify that prime providers and subproviders must be precertified unless they will be performing work that is shown to be less than 5.0% of any individual work category of the contract, or the work category is not listed in this subchapter.

Section 9.31 is amended to clarify existing terms, reflect the reorganization of the department, and add the definition for "department project manager."

Section 9.33 is amended by expanding the information that a prime provider must furnish with the letter of interest. In order to expedite and shorten the selection process, it is necessary to amend §9.33 to allow the department to decide that a written proposal will not be required when additional information is not necessary. In that case, only an interview will be held, therefore, necessitating that more information be included with the letter of interest. The amendments also provide that if the work category is not listed in this subchapter, the notice will list the type of work needed and its minimum qualifications. The amendments no longer require a provider or subprovider to be precertified in a work category if the work performed is less than 5.0% of the contract. This change will expand the number of firms that may be used for small amounts of work. The amendments allow the department to waive the precertification requirement for a contract that is anticipated to be less than $250,000 if the department determines that precertification is not necessary. The notice will identify whether the precertification will be waived. If the department waives the precertification requirement, then a provider or subprovider that is not precertified must submit an attachment with the Letter of Interest (LOI) describing how the firm meets the minimum requirements or how it possesses the knowledge and skill to perform the work in those categories so that the department will have the necessary evaluation information. If the firm is precertified, it must submit a LOI, but is not required to submit an attachment describing its qualifications in precertified categories.

The amendments to §9.34 authorize the Consultant Selection Team (CST) to consider past department performance scores or references from other entities that are not contained in the database including the ability of the prime provider to meet deadlines over the past three years. This will encourage new firms to do business with the department and will also indicate whether a firm is able to meet deadlines. The section is revised to state that the prime provider must provide "similar" instead of "special" project related information because the word "similar" is more specific and relevant. Subsection (e) is amended to show that scores for the short list will be determined using relative importance factors for the criteria. The department will notify a firm whether it is selected for the short list. The Request for Proposal (RFP) packet will be distributed at the short list meeting. If there is no meeting, the department will mail the packets to the providers.

The amendments to §9.35 clarify when the RFP packet will be mailed and allow the department the option of requiring a written proposal. The short list meeting, if held, will include an explanation of the interview format and requirements. If no short list meeting will be held, the RFP packet will include the interview format and requirements. The amendments eliminate the advertisement of the minimum and preferred proposal qualifications and interview qualifications from the RFP to allow the provider to inform the department of its qualifications and experience. However, the minimum and preferred qualifications will be prepared prior to the release of the RFP packet. The proposal evaluation criteria will also include other Consultants Review Committee (CRC) approved criteria listed in the RFP. Scores for the short list will be determined using relative importance factors for the criteria.

The amendments to §9.36 eliminate the mandatory interview. The CST will have the option of also interviewing the providers on the short list for additional information when a written proposal is required. If a written proposal is not required, then an interview will be conducted. The CST may allow a provider team to make a written presentation. The CST may require a provider team to answer a predetermined written set of questions. The interview evaluation criteria will also include other CRC-approved criteria listed in the RFP. Scores for the interview will be determined using relative importance factors for the criteria.

The amendments to §9.37 revise the basis of final selection to accommodate the new choice between a proposal or an interview. Since there may not be an interview, the selection method for tie-breaking needed to be revised. The first tie breaker will be the score for the experience of the project manager and the project team. The second tie breaker will be the score for ability to meet the proposed project schedule. If there is still a tie, the provider will be chosen by random selection. The selected provider shall furnish evidence of compliance with the assigned DBE/HUB goal or evidence of a good faith effort. Failure to do so will be considered non-responsive. The amendments allow the executive director instead of the deputy executive director to designate a responsible individual for the procedural review and to accept a written complaint. The deputy executive director would be included as a possible designee. In order to expedite the selection procedure, the amendments change the signing date of the contract from 35 to 30 days, and shorten the two negotiating extensions from 30 working days to 10 working days. To ensure that the department hires a qualified provider, if the negotiations end with the first provider, the department will negotiate only through the third ranked highest provider. If a contract is not awarded within the appropriate time frame, the contract will be canceled.

The amendments to §9.38 revise the references to the business opportunity rules to correlate with changes being made to their section numbers. The amendments allow the CRC to authorize a prime provider to perform less than 30% of the contracted work with its own work force if the work is so specialized that the prime provider cannot perform it. The amendments move the responsibility of managing the contract from the district engineers and division or office directors to the department project manager, because the district engineers do not have the time to manage every contract. In order for the department to obtain a more comprehensive evaluation and encourage new ways to solve problems, the prime provider will be evaluated on innovation and firm expertise in addition to management, cost administration, quality, and timeliness. Currently, the department evaluates performance in contracts that are longer than 18 months. The amendments allow the department to evaluate performance in all contracts, regardless of duration, so that assessment of the quality of work may be used in the selection of later projects.

The amendments to §9.39 remove the two year limitation from multiple contracts in order to expand the use of these

contracts in longer projects. This section provides that instead of providers being chosen on a random basis, providers will be chosen in the order of ranking in the evaluation process. Selecting by rank will more accurately utilize the scores from the selection process. The amendments clarify that the multiple contracts are to be used for similar types of projects to reduce the cost of advertisement. The amendments also add indefinite delivery contracts which may be used for an individual contract or multiple contracts. The indefinite delivery contracts are for contracts with defined scope of work. The typical type of work will be described in the notice. The initial work order shall not exceed $500,000 per contract. The total of the contract initial work authorization shall not exceed $2,000,000. The indefinite delivery contract may not be longer than two years.

The amendments to §9.41 require precertification unless the anticipated work in an individual category is less than 5.0% of the contract, or the department has waived the precertification requirements for a contract that is anticipated to be less than $250,000. The amendments clarify that a prime provider or subprovider may be precertified in a technical category if the firm has current employees possessing the skills and experience to meet the requirements. These amendments clarify the wording of the current section to state that a prime provider or subprovider is not precertified based on the firm's experience. As before, an individual employee's precertification will transfer with the employee if the employee leaves the firm and joins another firm. The employee will not then have to submit a new application. The department will review a prime provider or subprovider to evaluate whether the support, equipment, and other resources necessary to do the work are provided to the employee. A written complaint may be sent to the executive director or designee, instead of the deputy executive director. To allow the providers and the department extra time to apply for and process the renewals, the renewal time has been extended from 60 to 90 days prior to the renewal date.

The amendments to §9.43 clarify that the experience used to meet requirements may be either prior to or after licensure and clarify some of the wording in the section. The minimum requirements of categories 1.1.1, 1.2.1, 1.3.1, and 1.4.1 have been broadened to allow planners as well as professional engineers to be certified if they possess the requisite skills and knowledge. Category 2.6.1 has been clarified to state that it includes the determination of the potential presence or absence of a protected species or important habitat. The minimum requirements of categories 2.6.1, 2.6.2, 2.6.3, 2.8.1, 2.10.1, and 2.14.1 have been broadened because they were too restrictive and prevented precertification of individuals who were highly qualified under federal law but not under state law. The requirements under category 2.13.1 were very general, so additional wording has been added for clarification. The minimum requirements for categories 5.1.1, 5.2.1, 5.3.1., 5.4.1, 10.5.1, and 11.2.1 require that the structural bridge design experience must be after licensure as a professional engineer to protect the safety of the traveling public. The requirements in category 6.1.1 and 6.2.1 have been revised to reflect the requirements of the American Association of State Highway Transportation Officials. In order to allow more firms the opportunity to compete, the category 10.4.1 has been divided into the three specific categories of 10.4.1, 10.4.2, and 10.4.3. The description of work category 15.2.1 has been broadened to include gathering survey data, cross-sections, and topography during design or construction.

FISCAL NOTE

Frank J. Smith, Director, Finance Division, has determined that for the first five-year period the amendments are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments, except that the state may realize a decrease in paperwork due to the option of requiring a written proposal or interview. There are no anticipated economic costs for persons required to comply with the sections as proposed, except that some providers may realize a decrease in cost from reduced paperwork and travel. The decrease in costs for state and providers cannot be determined because the department cannot predict how many projects will no longer require both an interview or written proposal.

Robert L. Wilson, Director, Design Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the sections.

PUBLIC BENEFIT

Mr. Wilson has determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of the amendments will be to expedite the time required between the publication of notice and the execution of a contract with a provider, to reduce unnecessary paperwork, and to ensure the competence and capabilities of providers. There will be no effect on small businesses.

PUBLIC HEARING

Pursuant to the Administrative Procedure Act, Government Code, Chapter 2001, the Texas Department of Transportation will conduct a public hearing to receive comments concerning the proposed amendments. The public hearing will be held at 9:00 a.m. on January 14, 1999, in the first floor hearing room of the Dewitt C. Greer State Highway Building, 125 East 11th Street, Austin, Texas and will be conducted in accordance with the procedures specified in 43 TAC §1.5. Those desiring to make comments or presentations may register starting at 8:30 a.m. Any interested persons may appear and offer comments, either orally or in writing; however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views and identical or similar comments through a representative member when possible. Comments on the proposed text should include appropriate citations to sections, subsections, paragraphs, etc. for proper reference. Any suggestions or requests for alternative language or other revisions to the proposed text should be submitted in written form. Presentations must remain pertinent to the issues being discussed. A person may not assign a portion of his or her time to another speaker. A person who disrupts a public hearing must leave the hearing room if ordered to do so by the presiding officer. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are requested to contact Eloise Lundgren, Director, Public Information Office, 125 East 11th Street, Austin, Texas 78701-2483, (512)463-8588

at least two working days prior to the hearing so that appropriate services can be provided.

SUBMITTAL OF COMMENTS

Written comments on the proposal may be submitted to Mr. Robert L. Wilson, Director, Design Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701. The deadline for receipt of written comments is 5:00 p.m. on February 1, 1999.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation; and Government Code, Chapter 2254, Subchapter A, the Professional Services Procurement Act, which sets forth requirements for selection and contracting of professional services providers.

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

*§9.30. Purpose.*

This subchapter establishes standard procedures for selection and contract management of architectural, professional engineering, and land surveying service providers in accordance with Government Code, Chapter 2254, Subchapter A, the Professional Services Procurement Act and Transportation Code, §223.041. This subchapter only applies to a contract which requires a professional engineer, registered architect, or registered professional land surveyor. Prime providers and subproviders shall [~~Subproviders may~~] be precertified for contracts which require architectural, engineering, or surveying services, except as described in §9.33(b)(3) of this title (relating to Notice and Letter of Interest).

*§9.31. Definitions.*

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

(1) AASHTO–American Association of State Highway and Transportation Officials.

(2) Administrative qualification–A department process conducted to determine if a prime provider or subprovider meets the requirements of 23 Code of Federal Regulations (CFR) 172.5(c) concerning the administration of engineering and design related service contracts.

(3) Available personnel–The total number of personnel employed by the provider proposed to be used on the advertised contract.

(4) Business opportunity programs section of the Construction Division (CSTB) [~~office (BOP)~~]–The department section [~~chief administrating office for DBEs and HUBs which~~] that certifies DBEs and administers the DBE and HUB programs [~~that a DBE meets the criteria to be a DBE~~].

(5) CCIS–Consultant Certification Information System.

(6) Close out–The actions required to close out or complete the contract, including receipt and acceptance of deliverables, resolution of audit findings, receipt of outside approvals if applicable, resolution of other contract-related issues, and issuance of final payment.

(7) Constructability–The ability of a project to be accurately constructed from information presented in plans and specifications.

(8) Construction engineering–The interpretation of plans and specifications and formulation of engineering decisions during the period that the project is under construction.

(9) Construction inspection–Inspection of construction methods and materials [~~used~~] by inspectors who report directly to the department's project manager [~~professional engineer in responsible charge of the project under construction~~].

(10) Construction management–Construction engineering performed by the professional engineer in responsible charge of the construction project to direct the contractor concerning changes, additions, or deletions to the project.

(11) Consultants review committee (CRC)–The department committee that oversees the provider review process.

(12) Consultant selection team (CST)–The department's managing office team that selects the long list and short list and evaluates proposals and interviews.

(13) Disadvantaged business enterprise (DBE)–As defined in 49 CFR §23.62, a small business concern, certified by CSTB [~~BOP~~], which is 51% owned by one or more minorities, women, or others that can prove social and economic disadvantages, or in the case of a publicly owned business, at least 51% of the stock is owned by one or more minorities, women, or others that can prove social and economic disadvantages, and whose management and daily business operations are controlled by one or more such individuals.

(14) DBE/HUB goal participation–The percentage goal of participation by DBE/HUB providers determined by the percentage of work performed by the DBE/HUB providers.

(15) DBE/HUB special provision–A special provision to the provider contract that identifies good faith effort, and the procedure to demonstrate that good faith effort was attempted if the DBE/HUB goal could not be fulfilled.

(16) Debarment certification–A certification that the provider and its principals are not debarred from participation and not under consideration for debarment anywhere, and are eligible to perform the contract.

(17) Department–The Texas Department of Transportation.

(18) Department project manager–The department employee designated in the contract as the official contact for all correspondence between the department and the provider.

(19) [~~(18)~~] FHWA–The Federal Highway Administration.

(20) [~~(19)~~] FONSI–Finding of No Significant Impact.

(21) [~~(20)~~] Good faith effort–A provider must demonstrate to the department's satisfaction, that sufficient effort on its part was made to obtain DBE/HUB participation. Good faith effort is identified in the DBE/HUB Special Provision to the contract.

(22) [~~(21)~~] Graduate engineer–An individual who meets the educational requirements for registration as provided in the Texas Engineering Practice Act.

(23) [~~(22)~~] Historically underutilized business (HUB)–Any business so certified by the General Services Commission.

(24) [~~(23)~~] IESNA–The Illuminating Engineering Society of North America.

(25) [~~(24)~~] Indefinite delivery contract–A contract that contains a general scope of services, maximum contract amount, and contract termination date in which contract rates are negotiated prior to contract execution and work is authorized as needed.

(26) [~~(25)~~] ITS–Intelligent Transportation System.

(27) [~~(26)~~] Long list–The list of qualified providers submitting a letter of interest for a contract.

(28) [~~(27)~~] Lower tier debarment certification (form 1734)–A debarment certification form that is completed by subproviders or other lower tier participants.

(29) [~~(28)~~] Lower tier participant–A subprovider or other participant in the contract, other than the state, that is not the prime provider.

(30) [~~(29)~~] Managing office–The division, [~~special~~] office, or district with the responsibility for awarding and managing the contract.

(31) [~~(30)~~] Managing officer–The division director, [~~special~~] office director, or district engineer of the managing office.

(32) [~~(31)~~] Overhead guidelines–Instructions prepared by the department's Audit Office to assist the provider in administrative qualification.

(33) [~~(32)~~] Prime provider–The provider awarded a department provider contract.

(34) [~~(33)~~] Professional engineer–An individual licensed to practice engineering in the state or states that he or she performs professional services [~~State of Texas~~].

(35) [~~(34)~~] Professional services provider (provider)–An individual or entity that provides engineering, architectural, or surveying services.

(36) [~~(35)~~] Project specific contract–A contract that contains a specific scope of services, maximum contract amount, and contract termination date and authorizes the provider to perform the entire scope of work.

(37) [~~(36)~~] Registered architect–An individual licensed to practice architecture in the state or states that he or she performs professional services [~~State of Texas~~].

(38) [~~(37)~~] Registered professional land surveyor–An individual licensed to perform land surveying in the state or states that he or she performs professional services [~~State of Texas~~].

(39) [~~(38)~~] Request for proposal (RFP)–A request for submittal of a technical proposal from a provider that demonstrates competence and qualifications to perform the requested services, and shows an understanding of the specific contract.

(40) [~~(39)~~] Relative importance factor (RIF)–The numerical weight of each evaluation criterion as it relates to a particular contract.

(41) [~~(40)~~] Short List–The list of providers [~~selected~~] from the long list, selected by the CTS, that best meet the requirements indicated by the letter of interest [~~for further consideration on a department contract~~].

(42) [~~(41)~~] Short list meeting–A meeting held with the providers on the short list to answer questions regarding the contract and distribute the RFP prior to submittal of proposals or interviews.

(43) [~~(42)~~] Small business concern–A small business as defined in the Small Business Act, codified in 15 United States Code §632, and relevant regulations.

(44) [~~(43)~~] Subprovider–A provider proposing to perform work through a contractual agreement with the prime provider.

(45) [~~(44)~~] Team–The provider and all proposed subproviders who will be working on a particular contract.

(46) [~~(45)~~] Technical precertification–A review process conducted by the department to determine if a prime provider or subprovider meets the technical requirements to perform work identified in a work category.

*§9.33. Notice and Letter of Interest.*

(a) Notice.

(1) Electronic notice. Not less than 21 days before the letter of interest due date, the department will post on an electronic bulletin board a notice identifying [~~the~~]:

(A) the proposed contract or RFP number;

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

(D) the general description of the project and work to be done;

(E) the [~~a~~] due date for providers to send letters of interest to the department; [~~and~~]

(F) if the work type is not listed as a category in §9.43 of this title (relating to Qualification Requirements by Work Group), the type of work needed and its minimum requirements; and

(G) whether the department has waived the precertification requirement of §9.41 of this title (relating to Precertification) when the total contract fee for professional services is anticipated to be less than $250,000 on an individual contract.

(2) Newspaper notice. Not less than 21 days before the letter of interest due date, the department will publish a notice in a local newspaper within the geographical area of the district, division, or special office in which the work will be performed [~~a notice~~]. If the newspaper fails to print the notice, the department will consider the notice posted. The notice will contain [~~the~~]:

(A) the proposed contract or RFP number;

(B) the general description of the project and work to be done;

(C) the due date for providers to send letters of interest to the department;

(D) the contact person; [~~and~~]

(E) the location of the electronic bulletin board that contains more information;

(F) if the work category is not listed in §9.43 of this title (relating to Qualification Requirements by Work Group); the type of work needed and its minimum qualifications; and

(G) whether the department has waived the precertification requirement of §9.41 of this title (relating to Precertification) when the total contract fee for professional services is anticipated to be less than $250,000 on an individual contract.

(3) (No change.)

(b) Letter of interest (LOI).

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

(3) To be considered:

(A) a prime provider or a subprovider that will be performing work in any individual work category which is 5.0% or more of the contract must be precertified by the deadline for receiving the letter of interest in accordance with §9.41 of this title (relating to Precertification) unless the work category is not listed in §9.43 of this title (relating to Qualification Requirements by Work Group); [~~and~~]

(B) a prime provider or subprovider must demonstrate in an attachment to the LOI how it meets the minimum qualifications for work that does not fall within any work category outlined in §9.43 (The attachment may be in addition to the maximum pages allowed for the LOI.);

(C) if the work in any individual work category as shown in the notice is less than 5.0% of the contract, a provider or subprovider that is not precertified must demonstrate in an attachment to the LOI how it meets the minimum requirements or how it possesses the knowledge and skill to perform the work in those categories (The attachment may be in addition to the maximum pages allowed for the LOI.);

(D) if the total contract fee for professional services is anticipated to be less than $250,000 on an individual contract and the department has waived the precertification requirement of §9.41 of this title (relating to Precertification), then a provider or subprovider that:

*(i)* is not precertified must submit an attachment with the LOI which describes how the firm meets the minimum requirements or how it possesses the knowledge and skill to perform the work in those categories (The attachment may be in addition to the maximum pages allowed for the LOI.); or

*(ii)* is precertified must submit a LOI, but is not required to submit an attachment describing its qualifications in precertified categories (If the firm proposes to do work in categories in which it is not been precertified, then it must submit an attachment describing how the firm meets the minimum requirements or how it possesses the knowledge and skill to perform the work in those categories); and

(E) [~~(B)~~] the proposed team must demonstrate that they have a professional engineer, architect, or surveyor registered in Texas who will sign and/or seal the work to be performed on the contract.

(4) The letter of interest shall include;

(A) the contract or RFP number;

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

[~~(D) similar project related experience;~~]

(D) [~~(E)~~] evidence of compliance with the assigned DBE/HUB goal through the prime provider or subproviders identified on the team, or a written commitment to make a good faith effort to meet the assigned goal;

(E) [~~(F)~~] similar project related experience that is not already included in the [~~performed since~~] precertification database; and

(F) [~~(G)~~] other pertinent information addressed in the notice.

*§9.34. Determination of the Short List.*

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

(c) Criteria. The CST will consider the following criteria in its review of all interested providers:

(1) past performance scores contained in the database for contracts completed for the department or [~~and~~] references from other entities including the ability of the prime provider to meet deadlines over the past three years;

(2) (No change.)

(3) similar [~~special~~] project œrelated experience identified in the letter of interest or [~~and~~] contained in the database; and

(4) other CRC approved criteria listed in the notice [~~evidence of compliance with the assigned DBE/HUB goal through the team identified in the letter of interest or a written commitment to make a good faith effort to meet the assigned goal if selected~~].

(d) Score. The CST will assign a RIF weight to each criterion. The RIF total for all criteria will equal 100. Each criterion will be scored separately on a 0-10 point scale with 10 considered the best qualified. The maximum possible score that a CST member may give is 1000 points.

(e) [~~(d)~~] Contract selection. The CST will prepare a short list containing a minimum of three of the most highly qualified providers for further consideration on an individual contract selection, unless [~~(provided that no~~] fewer than three qualified providers submitted a letter of interest[~~)~~ ~~for further consideration on an individual contract selection~~]. For multiple contract selections, the short list shall contain a minimum number of providers equal to the desired number of contracts plus three for further consideration on multiple contract selections, unless fewer than three qualified providers submitted a letter of interest [~~providers, provided that no fewer than this number of qualified providers submitted a letter of interest~~].

(f) [~~(e)~~] Notification. The department will notify a firm [~~all firms~~] submitting a letter of interest that it was or was [~~were~~] not selected for the short list. If a firm is selected for the short list, the department will either notify it that a meeting will be held, or if a meeting is not held, the department will provide a RFP information packet.

*§9.35. Short List Meeting, Proposals, and Evaluation.*

(a) Short list meeting. The managing office may require, or offer the opportunity to conduct, a short list meeting which will include an explanation of the interview format and requirements. The RFP packet [~~RFPs~~] will be furnished by the department to providers on the short list either prior to or at the short list meeting [~~for use in preparation for proposal submittal or interview~~]. If a short list meeting is held, the department will not accept proposals from or conduct interviews with providers that did not have a representative at the short list meeting. [~~If a short list meeting is not held, the managing office will mail the RFP packet to the members on the short list.~~]

(b) Request for proposals. The RFP packet will include:

(1) instructions for:

(A) written proposal preparation[~~;~~] and/or interview process; and

(B) submittal of the packet [~~and interview~~];

(2)-(5) (No change.)

[~~(6) minimum and preferred proposal qualifications;~~]

[~~(7) minimum and preferred interview qualifications;~~]

(6) [~~(8)~~] a debarment certification form;

(7) [~~(9)~~] a lower tier debarment certification form;

(8) [~~(10)~~] a lobbying certification/disclosure form; [~~and~~]

(9) [~~(11)~~] any special contract requirements; and

(10) the interview format and requirements if no short list meeting will be held.

(c) Proposal format. When a [~~A~~] written proposal is required, the [~~. The~~] proposal shall be limited to the specific length and information outlined in the RFP packet.

(d) Receipt of proposals. A proposal must be received by the date, time, and place specified in the RFP packet. The department will not accept a proposal by electronic facsimile.

(e) Proposal evaluation criteria. The CST will evaluate proposals based on the following criteria:

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

(3) ability to meet the project schedule; [~~and~~]

(4) unique or innovative methods of approaching the proposed work that may save time or money, or result in a better quality product; and

(5) other CRC approved criteria listed in the RFP.

(f) Proposal evaluation scale. The CST will assign a RIF weight to each criterion. The RIF total for all criteria will equal 100. Each criterion will be scored separately on a 0-10 point scale with 10 considered the best qualified. The maximum possible score that a CST member may give is 1000 points [~~a numerical value to each evaluation criteria based upon scale of 0 to 3 points per criterion~~]

[~~(1) 0=does not meet minimum qualifications;~~]

[~~(2) 1=meets minimum qualifications;~~]

[~~(3) 2=meets minimum qualifications and at least half of the preferred qualifications; and~~]

[~~(4) 3=meets minimum qualifications and meets or exceeds all preferred qualifications~~].

*§9.36. Interviews and Evaluation.*

(a) Interviews. The CST may [~~will~~] conduct interviews with the providers on the short list if a written proposal is required. If a written proposal is not required, then an interview will be conducted. The CST may elect to perform telephone interviews. In order for a member of the CST to score a provider, the member must be present for all interviews. The prime provider's project manager is required to be present for the interview. Lack of attendance by the project manager may be reason to consider the provider nonresponsive, and dropped from further consideration.

(b) Interview structure. The interview allows the providers to demonstrate their understanding of the project and knowledge of applicable rules, regulations, codes, and special information to be gathered. The CST may allow a provider team to make a presentation with written material for the CST to reference in evaluating the interview. The CST may require a provider team to answer a predetermined written set of questions in the interview.

(c) Evaluation criteria. The CST will consider the following criteria in its evaluation of the provider's interview:

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

(4) unique or innovative methods of approaching the proposed work that may save time or money, or result in a better quality product; [~~and~~]

(5) responses to interview questions; and

(6) other CRC approved criteria listed in the RFP.

(d) Interview evaluation [~~Evaluation~~] scale. The CST will assign a RIF weight to each criterion. The RIF total for all criteria will equal 100. Each criterion will be scored separately on a 0-10 point scale with 10 considered the best qualified. The maximum possible score that a CST member may give is 1000 points. [~~The CST will prepare a numerical interview evaluation matrix to evaluate the interview based upon the following scale of 0 to 3 points:~~]

[~~(1) 0=does not meet minimum qualifications;~~]

[~~(2) 1=meets minimum qualifications;~~]

[~~(3) 2=meets minimum qualifications and at least half of the preferred qualifications; and~~]

[~~(4) 3=meets minimum qualifications and meets or exceeds all preferred qualifications~~].

*§9.37. Selection.*

(a) Basis of final selection.

(1) If a proposal and interview are both required, the final selection will be made by using the CST proposal score for 30% of the total score and the interview score for 70% of the total score.

(2) If an interview is not required, the final selection will be made by using the written proposal score.

(3) If a written proposal is not required, the final selection will be made by using the interview score.

[~~(a) Evaluation criteria. The CRC will establish weighting factors for each evaluation criterion. In its evaluation of the provider, the CST will consider:~~]

[~~(1) the CST proposal score, which comprises 30% of the total score; and~~]

[~~(2) the CST interview score, which comprises 70% of the total score.~~]

(b) Tie scores. In the event of a tie, the managing officer will break the tie using the following method.

[~~(1) The first tie breaker will be the CST interview score.~~]

(1) [~~(2)~~] The first [~~second~~] tie breaker, if needed, will be the [~~interview~~] score for the experience of the project manager and the project team.

(2) [~~(3)~~] The second [~~third~~] tie breaker, if needed, will be the [~~interview~~] score for ability to meet the proposed project schedule.

(3) If there is still a tie, the provider will be chosen by random selection.

(c) DBE/HUB Goals. The selected provider shall furnish evidence of compliance with the assigned DBE/HUB goal or evidence, acceptable to the department, of a good faith effort to meet the assigned goal. Failure to do so shall be reason to consider the proposal non-responsive, and the department will select the next highest scored provider meeting these requirements.

(d) [~~(c)~~] Selection summary [~~Summary~~]. The CST will prepare a contract evaluation summary containing the scores of the prime providers on the short list, for consideration by the managing officer.

(e) [~~(d)~~] Submittal of selection. The managing officer will submit the contract evaluation summary, evaluation documentation,

certification that the procedures provided by this subchapter were used and recommendation for selection to the CRC for review. [~~After review, CRC will advise the deputy executive director, or designee, if approved procedures were followed in the selection.~~] If the procedural review is acceptable, the [~~deputy~~] executive director or his or her designee will concur with the selection.

(f) [~~(e)~~] Notification. The department will:

(1) prepare a letter to notify the provider selected for contract negotiation and arrange a meeting to begin contract negotiations;

(2) prepare a letter to each of the [~~remaining short list of~~] providers remaining on the short list that were not selected, naming the provider that was [~~one or ones~~] selected; and

[~~(3) set up a meeting with the selected provider to begin contract negotiations; and~~]

(3) [~~(4)~~] publish the short list and the provider [~~providers~~] selected for a contract [~~contracts~~] on an electronic bulletin board.

(g) [~~(f)~~] Negotiations.

(1) Selected provider. The department will enter into negotiations with the selected provider. The provider shall submit the information required for the contract, including a work outline, work schedule, and cost proposal. If the information is not submitted to the department prior to selection, the provider shall meet requirements for administrative qualification in accordance with §9.42 of this title (relating to Administrative Qualification) to determine the fairness and reasonableness of the contract price. State funded architectural contracts are based on percentage of construction cost as provided in the General Appropriations Act. Pursuant to 23 CFR [~~C.F.R.~~] §172.9, federally funded contracts are not based on percentage of construction cost.

(2) Contract execution. The provider shall sign the contract within 30 [~~35~~] working days from the date of notification to the provider. The CRC may grant a 10 working [~~30 working~~] days extension. Upon request from the managing officer, the [~~The deputy~~] executive director may authorize one [~~an~~] additional extension, for a period not to exceed 10 working [~~30~~] days. An extension must be authorized before the expiration of the negotiation period or previous extension.

(3) Selection of alternative providers. If the department is unable to execute a satisfactory contract containing a fair and reasonable price within the allotted time period with the selected provider, negotiations shall formally end with that provider and negotiations shall, upon written approval of the managing officer, begin with the provider ranked next highest. Negotiations shall be undertaken in this sequence through the third highest ranked provider. If a contract is not awarded to any of the three highest ranked providers within the time frame specified in this section, the contract will be canceled [~~until a contract is awarded or canceled~~].

(4) (No Change.)

(h) [~~(g)~~] Appeal. A provider may file a written complaint concerning the selection process with the [~~deputy~~] executive director or his or her designee.

*§9.38. Contract Management.*

(a) DBE/HUB participation.

(1) DBE/HUB program goals may be satisfied by the prime provider. DBE/HUB participation opportunities are more specifically addressed in subchapter D [~~§§9.50-9.61~~] of this title (relating to Business Opportunity Programs).

(2) (No change.)

(b) Subcontracts.

(1) A prime provider shall perform at least 30% of the contracted work with its own work force. No subprovider may perform a higher percentage of the work than the prime provider, unless approved by the CRC when the work is so specialized that the prime provider cannot perform at least 30% of the work.

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

(c) Operations.

(1) Management responsibility. The department's project manager who requested [~~managing officer requesting~~] the provider contract will manage the contract.

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

(5) Payment on provider contracts. Payment for eligible costs will be made within 30 days after receiving a correct invoice. Payment may be withheld pending verification of satisfactory work performed. To receive payment for services, the provider shall submit to the department project manager:

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

(C) a DBE/HUB report (The CSTB [~~BOP~~] may require proof of DBE/HUB use, including submittal of canceled checks that are properly identified by department project number or contract number).

(6) (No change.)

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

(g) Provider performance evaluations.

(1) The [~~If the contract duration is greater than 18 months, the~~] department project manager will evaluate the prime provider's or subprovider's performance upon completion of a phase, upon exemplary performance, on an interim basis, and on completion of the contract. The interim basis evaluation will occur at least once every 12 months, or when the managing office determines that the work is behind schedule or not being performed according to the contract. An evaluation of constructability will be performed on an interim basis at least every 12 months and upon completion of the construction contract, if applicable.

(2) The department will evaluate a prime provider, using a numerical score, in the categories of management, cost administration, quality, innovation, firm expertise, and timeliness. The prime provider will also receive an overall contract evaluation in each of the evaluation categories.

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

*§9.39. Selection Types.*

The department will perform four [~~three~~] types of contract selections.

(1) (No change.)

(2) Multiple contract selection. More than one contract[~~,~~] of similar work types [~~and estimated amounts not to exceed $500,000 per contract,~~] will result from the contract notice. [~~The duration of the contract may not be for longer than two years.~~] The notice will indicate the number and type of contracts to result from the advertisement, and specify a range of scores for prime providers that will be considered [~~equally~~] qualified to perform the work.

(A) If more prime providers fall within the specified range than the anticipated number of contracts, prime providers will

be selected in order of ranking in the evaluation process [~~on a random basis~~].

(B) (No change.)

(3) Indefinite delivery contract selection. This contract may be for an individual contract or for multiple contracts. The typical type of work will be described in the notice. The initial work authorizations for this contract shall not exceed $500,000 each. The total of the contract initial work authorizations shall not exceed $2,000,000. The contract duration, in which initial work authorizations may be issued, may not be longer than two years.

(4) [~~(3)~~] Emergency Selection. If the executive director of the department or his or her designee certifies in writing that there is good cause to believe that an emergency situation exists, including safety hazards [~~to safety~~] and imminent expiration of a contract on an incomplete project, he or she will authorize the CST to select a provider on an emergency basis.

*§9.41. Precertification.*

(a) Eligibility. To be eligible to perform work in the categories described in §9.43 of this title (relating to Qualification Requirements by Work Group), a prime provider and a subprovider must be precertified in accordance with this section unless:

(1) the anticipated work in a individual work category is 5.0% or less of the contract; or

(2) the department has waived the precertification requirements for a contract that is less than $250,000.

(b)-(c) (No change)

(d) Precertification deadline. When precertification is required as described in subsection (a) of this section, prime [~~Prime~~] providers and subproviders must be precertified in the technical categories by the deadline for receipt of the letter of interest to be eligible for selection. The department will not delay the consultant selection process or contract execution for a prime provider or subprovider that has not been precertified.

(e) (No change.)

(f) Technical precertification.

(1) A prime provider or subprovider may be precertified in a technical category if the firm has current employees possessing the skills and experience to meet the requirements. A prime provider or subprovider is not precertified based on the firm's experience.

(2) A precertification will transfer with the employee if the employee leaves the firm.

(3) The department will review a prime provider or subprovider to evaluate whether the support, equipment, and other resources necessary to do the work are provided to the employee. [~~Prime providers and subproviders may be precertified in multiple technical categories.~~]

(4) A prime provider or subprovider with one employee who meets the appropriate requirements of multiple technical categories may be precertified in those categories. When required, prime [~~Prime~~] providers and subproviders must be precertified in the categories of work they will be performing; however, a provider or subprovider is [~~, and are~~] not required to be precertified in every category of work involved in the contract, unless it will be performing all of the work.

(5) The department will not precertify joint ventures. [~~For a specific contract, prime providers may propose to use subproviders precertified in the other identified categories to supplement their own qualifications by indicating this in the letter of interest.~~]

(g) Precertification review.

(1) A prime provider or subprovider [~~Prime providers and subproviders~~] will be precertified within 60 days of receipt of complete and accurate information for the submittal or notified in writing within the same time period that they did not meet the requirements for precertification or that additional submittals will be required for review.

(2) If the submittal is incomplete, a prime provider or subprovider will be requested to submit additional information for review.[~~,~~] The [~~the~~] prime provider or subprovider shall submit such information within 30 days of receipt of the department's request for such information. If the information is not provided within 30 days after receipt of the request, the application for precertification will be processed with the information available. The department will make a determination on precertification status within 60 days of receipt of the additional information.

(3) (No change.)

(h) Annual renewal. Prime providers and subproviders will be assigned an annual renewal date by the department. Prime providers and subproviders must apply for renewal of precertification between 90 [~~60~~] and 30 days prior to their annual renewal date. The precertification of a prime provider or subprovider that fails to submit an application for renewal at least 30 days prior to its annual renewal date will expire and the prime provider or subprovider will be ineligible to submit a letter of interest for new contracts until it is precertified.

(i) Appeal. A prime provider or subprovider may appeal denial of precertification by submitting additional information within 30 days of receipt of written notification of denial to the CRC in Austin. This information shall justify why the prime provider or subprovider meets the requirements for precertification. The CRC will review the information and make a determination regarding precertification. A provider may file a written complaint regarding selection for precertification with the [~~deputy~~] executive director or his or her designee.

*§9.43. Qualification Requirements by Work Group.*

(a) Requirements.

(1) (No change.)

(2) Experience. The experience used to meet requirements may be either prior to or after licensure unless otherwise stated in a specific category. For the purpose of experience for precertification, the professional provider may be licensed to practice in any state for which that experience is recognized by the:

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

(3) (No change.)

(b) Work Categories.

(1) Group 1-transportation systems planning.

(A) Category 1.1.1-policy planning. This category includes the investigation and development of transportation planning and strategies to meet current or future needs at the state or local level. The firm must employ [~~a minimum of~~]:

*(i)* (No change.)

*(ii)* [~~one professional engineer with proficiency in civil engineering and~~] one planner with training and experience in areas directly related to policy planning.

(B) Category 1.2.1-systems planning. This category includes development of state or local transportation plans to create complete integrated systems to support movement of people and goods. The firm must employ [~~a minimum of~~]:

*(i)* (No change.)

*(ii)* [~~one professional engineer with proficiency in civil engineering and~~] one planner with training and experience in areas directly related to systems planning.

(C) Category 1.3.1-subarea/corridor planning. This category includes the study of the feasibility of all modes of transportation corridors at the state or local level to determine the cost effectiveness of the various alternatives to meet specific goals and may include actual route location as a final product. The firm must employ [~~a minimum of~~]:

*(i)* (No change.)

*(ii)* [~~one professional engineer with proficiency in civil engineering and~~] one planner with training and experience in areas directly related to subarea/corridor planning.

(D) Category 1.4.1-land planning/engineering. This category includes planning and engineering in support of assessing the impacts that proposed transportation improvements may have on public and private property. The firm must employ [~~a minimum of~~]:

*(i)* (No change.)

*(ii)* [~~one professional engineer with proficiency in civil engineering and~~] one planner with training and experience in comprehensive planning or areas directly related to assessing impacts to private property.

(E) Category 1.5.1-feasibility studies. This category includes investigation of programs or specific projects to determine if they are cost effective and meet the department's desired goals. The firm must employ [~~a minimum of~~] one professional engineer who has [~~with~~]:

*(i)* (No change.)

*(ii)* completed [~~completion of~~] a minimum of two feasibility studies.

(F) Category 1.6.1-major investment studies. This category includes the investigation of modal and financing alternatives for major transportation projects at the state or local level. The firm must employ [~~a minimum of~~]:

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

(2) Group 2-environmental studies.

(A) Category 2.1.1-traffic noise analysis. This category includes the performance of a traffic noise analysis for a roadway project. The firm must employ one person with:

*(i)* (No change.)

*(ii)* demonstrated [~~demonstration of~~] experience in use/application of Traffic Noise Guidelines, traffic noise modeling software, and appropriate sound measuring equipment through the accurate completion of a traffic noise analysis for a minimum of two highway projects at the FONSI level or above.

(B) Category 2.2.1-air quality analysis. This category includes the performance of an air quality analysis for a roadway project. The firm must employ one person with:

*(i)* (No change.)

*(ii)* demonstrated [~~demonstration of~~] experience in use/application of air quality guidelines and air quality modeling software through the accurate completion of an air quality analysis for a minimum of two highway projects at the FONSI level or above.

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

(E) Category 2.5.1-water pollution abatement plan. This category includes geologic field assessment and the preparation of pollution abatement plans as they relate [~~it relates~~] to the Edwards Aquifer Rules. The firm must employ one person with:

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

(F) Category 2.6-protected species coordination. This category includes the following types of biological issues and coordination.

*(i)* Category 2.6.1-protected species determination (habitat). This category involves the determination of the potential presence or absence of a protected species or important habitat. The firm must employ one person with knowledge of currently protected species and/or habitats, and a demonstrated ability to perform basic inventory work sufficient to comply with FHWA National Environmental Protection Act (NEPA) requirements [~~the Federal Endangered Species Act, who possesses the required state and federal permits, experience in determining the presence or absence of a protected species, and informal consultation experience and coordination with the U.S. Fish and Wildlife Service~~].

*(ii)* Category 2.6.2-impact evaluation [~~biological~~] assessments. This category requires demonstrated ability to use habitat and species determination and biological survey data to analyze impacts to biological resources [~~includes the preparation of biological assessments~~]. The firm must employ one person with demonstrated ability to prepare a biological impact analysis for NEPA documentation or to support the Federal Endangered Species Act (ESA) Section 7 consultations, including the preparation of a biological assessment, or ESA Section 10.a. permit applications [~~a bachelor's degree in the natural sciences or a related field, working knowledge of the Federal Endangered Species Act, experience including preparation of biological assessments and formal consultation, experience in negotiating with people and resource agencies, and working knowledge of federal, state, and local regulations~~].

*(iii)* Category 2.6.3-biological surveys. This category requires demonstration of ability to conduct biological resource field studies. The firm must employ one person:

*(I)* with demonstrated ability to survey the project site and classify the vegetation community, list animal species associated with that community, and identify special habitat features within the community;

*(II)* who has required state and federal permits; and

*(III)* with experience in appropriate survey protocols for specific protected species [~~a bachelor's degree in the natural sciences or a related field and working knowledge of federal, state, and local regulations, and/or one person with knowledge in habitat recognition, including direct field experience with or as a recognized expert for the species/habitat of concern, and working knowledge of federal, state, and local regulations~~].

(G) Category 2.7.1-§4(f) (Title 23, United States Code of Federal Regulations, §771.135) and/or §6(f) (Title 49, United States Code, §303) evaluations. This category includes §4(f) evaluations, identified in the Department of Transportation Act of 1966, which are conducted when right of way is acquired from publicly owned parks, recreation areas, wildlife or waterfowl refuges, or historic sites, and §6(f) evaluations which apply [~~applies~~] when federal land and water conservation funds are used for improvements to the site. The firm must employ one person:

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

(H) Category 2.8.1-surveys, research and documentation of historic buildings, structures, and objects. This category includes surveys, research, and documentation efforts carried out in accordance with the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation (Volume 48 of the Federal Register, 44716) to comply with §106 (Title 16, United States Code, §470f) of the National Historic Preservation Act of 1966, as amended, and other state and federal historic preservation related laws and regulations. Associated activities include: delineation of the area of potential effects for projects with the potential to affect historic properties; field surveys and photographic and written documentation on historic properties located within a project's area of potential effects; development of historic contexts that provide an organizational and thematic format for evaluating historic properties; determination [~~determinations~~] of National Register eligibility for identified historic properties; preparation of historic documentation on affected properties in accordance with the documentation requirements of the Historic American Buildings Survey and the Historic American Engineering Record; evaluation of the effect of projects on significant properties; and the development of management and preservation plans for historic properties. The firm must employ one person with experience working with the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation (Volume 48 of the Federal Register, 44716), 36 CFR Part 800, and documentation requirements of the Historic American Buildings Survey and Historic American Engineering Record and:

*(i)* a master's degree in architectural history, historic preservation or a closely-related field, with course work in American architectural history and a minimum of one year of direct experience performing surveys, research or documentation of historic buildings, structures, and objects; [~~or~~]

*(ii)* a bachelor's degree in architectural history, historic preservation or a closely-related field, with course work in American architectural history and a minimum of two years of direct experience performing surveys, research or documentation of historic buildings, structures, and objects; or

*(iii)* a minimum of ten years of direct experience performing surveys, research, or documentation of historic buildings, structures, and objects, including scholarly publications and presentations at professional meetings.

(I) Category 2.9.1-historic architecture. This category includes architectural work to ensure compliance with the Secretary of the Interior's Standards for Historic Preservation projects (Volume 48 of the Federal Register, 44716). Associated activities include detailed investigations of historic structures, preparation of historic structure research reports, preparation of plans and specifications for historic preservations projects, development of management plans for individual properties, and preparation of measured drawings for affected historic properties. The firm must employ a registered architect:

*(i)* (No change.)

*(ii)* with a minimum of one year of full-time experience managing historic preservation projects and completion of a minimum of [~~at least~~] one year of graduate study in preservation architecture.

(J) Category 2.10.1-archeological [~~archaeological~~] surveys, documentation, excavations, testing reports and data recovery plans. This category includes: reconnaissance or intensive archeological surveys performed in accordance with the criteria listed in the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation (1982), Reports Relating to Archeological Permits in the Rules of Practice and Procedure for the Antiquities Code of Texas, and performance standards as outlined in the Council of Texas Archaeologists (CTA) Guidelines; documentation of operations that use archeological techniques to obtain and record evidence of human activity or behavior important in history or prehistory; testing and preparation of testing reports to describe the results of work following the investigation and evaluation of archeological sites and/or other historic properties; and data recovery plans that address appropriate strategies and methodologies for excavation and data recovery. The firm must employ a principal investigator:

*(i)* with a master's degree in archeology [~~archaeology~~], anthropology, or closely-related field, who has a minimum of one year of full-time professional experience or equivalent specialized training in archeological [~~archaeological~~] research or administration;

*(ii)* who has a minimum of one year of supervised field and analytic experience in archeology [~~archaeology~~];

*(iii)* who is a professional archeologist [~~archaeologist~~] who meets the standards of a principal or co-principal investigator, as defined by state standards, with a minimum of one year of full-time professional experience at a supervisory level in archeological [~~archaeological~~] resources;

*(iv)* who has served as principal or co-principal investigator on [~~successfully completed~~] a minimum of five archeological [~~archaeological~~] projects, of equivalent scope that were successfully completed under the jurisdiction of the National Historical Preservation Act, the Antiquities Code of Texas, or an equivalent law in another state [~~, under state permit~~]; and

*(v)* (No change.)

(K) Category 2.11.1-historical and archival research. This category includes historical and archival research on historic properties or historic archeological sites, the development of research designs to guide historical research efforts, and the development of historic contexts to provide an organizational and thematic format for further research and evaluation of historic properties and historic archeological [~~archaeological~~] sites. The firm must employ one person with:

*(i)* a master's degree in history or a closely related field with a minimum of one year of full-time experience in historical research, writing, teaching, or other demonstrated [~~demonstrable~~] professional historical activity and archival research and documentation; or

*(ii)* a bachelor's degree in history or a closely related field with a minimum of two years of full-time experience in research, writing, teaching, interpretation, or other demonstrated [~~demonstrable~~] professional activity with an academic institution, historical organization or agency, museum, or other professional

institution, and a minimum of one year of experience managing historical and archival research.

(L) Category 2.12.1-socio-economic and environmental justice analyses. This category includes: analyzing U.S. Census data for the affected area; identifying changes in land use, land values, and the local tax base; identifying impacts to the business environment to include relocations, construction period impacts, accessibility issues, and effects to employees and customers; estimating the number and type of residential relocations; identifying the availability of comparable replacement housing in accordance with the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970; identifying impacts to community cohesion and the effects to public facilities and services; and identifying and addressing disproportionately high and adverse health and environmental impacts to minority populations and low-income populations in accordance with Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-income Populations (February 11, 1994). The firm must employ one person with:

*(i)* a bachelor's degree in sociology, economics, urban planning, engineering, or a related field described in this category;

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

(M) Category 2.13.1-hazardous materials initial site assessment. This category includes the performance of an initial site assessment to identify known or possible hazardous materials and determine the potential for encountering them during project development. The assessment shall be in general accordance with the American Society for Testing and Materials Environmental Site Assessment standard practices, [~~environmental site assessments performed in accordance with protocol established in~~] ASTM 1528 and ASTM 1527, or satisfy due diligence and appropriate inquiry requirements under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). The appropriate level of inquiry for assessing existing and previous land use, regulatory databases (list search) and files, site visit and/or field surveys, and interviews shall be made with consideration of project design and right of way requirements. This category also includes the determination of whether additional research or investigation is necessary during subsequent stages of project development [~~, and may also include provision of intrusive sampling of soil and groundwater, typically referred to as a Phase II site assessment~~]. The firm must employ one person with:

*(i)* a minimum of one year of experience [~~in hazardous materials assessment;~~] performing Phase I environmental site assessments/hazardous material assessments; and

*(ii)* working knowledge of pertinent federal, state and local environmental laws and regulations, ASTM standard practices for environmental site assessments, and hazardous material assessments/investigations [~~the necessary equipment and expertise to perform ASTM 1528 Transaction Screen and ASTM 1527 Phase I Site Assessments~~].

(N) Category 2.14.1-environmental document preparation. This category includes the preparation of environmental documents for transportation projects as identified in §2.43(c), (d) and (e) of this title (relating to Highway Construction Projects - State Funds). The firm must employ one person:

*(i)* with a bachelor's degree or equivalent experience in environmental studies, urban planning, civil or environmental engineering, or a related field, and with knowledge of pertinent federal, state, and local environmental regulations;

*(ii)* in responsible charge of the review and preparation of, and/or participation in any management that developed five or more moderate to large projects which were approved as environmental assessment-FONSI; or

*(iii)* in responsible charge of the review and preparation of, and/or participation in any management that developed 10 or more small to moderate projects which were approved as environmental assessment-FONSI; or

*(iv)* in responsible charge of the review and preparation of, and/or participation in any management that developed one project which was approved as an environmental impact statement

~~*[(ii)* in responsible charge of the preparation of environmental documents for a minimum of two transportation projects through the issuance of the FONSI;]~~

~~*[(iii)* with participation in the preparation of and management of environmental documents for a minimum of one environmental impact statement through the Record of Decision; and]~~

~~*[(iv)* with knowledge of pertinent federal, state, and local environmental regulations].~~

(3) Group 3-schematic development. The firm must employ sufficient production staff to perform the work described in the following categories.

(A) Category 3.1.1-route studies & schematic design - minor roadways. This category includes the preliminary alignment and layout of minor roadways as described in Category 4.1.1. The firm must employ [~~a minimum of~~] one professional engineer with a minimum of three years experience in:

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

(B) Category 3.2.1-route studies & schematic design-major roadways. This category includes the preliminary alignment and layout of major roadways as described in Category 4.2.1. The firm must employ [~~a minimum of~~] one professional engineer with a minimum of three years experience in:

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

(C) Category 3.3.1-route studies & schematic design-complex highways. This category includes the preliminary alignment and layout of complex highways as described in Category 4.3.1. The firm must employ [~~a minimum of~~] one professional engineer with a minimum of:

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

(D) Category 3.4.1-minor bridge layouts. This category includes the preliminary alignment and layout of minor bridges as described in Category 5.1.1. The firm must employ [~~a minimum of~~] one professional engineer with a minimum of three years experience in:

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

(E) Category 3.5.1-major bridge layouts. This category includes the preliminary alignment and layout of major bridges as described in Category 5.2.1. The firm must employ [~~a minimum of~~] one professional engineer with a minimum of:

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

(F) Category 3.6.1-multi-level interchange and exotic bridge layout. This category includes the preliminary alignment and layout of multi-level interchanges as described in Category 5.3.1

and 5.4.1. The firm must employ [a ~~minimum of~~] one professional engineer with a minimum of:

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

(4) Group 4-roadway design. The firm must employ sufficient production staff to perform the work described in the following categories.

(A) Category 4.1.1-minor roadway design. This category includes the design of small urban and rural roadways involving repair, resurfacing, and rehabilitation that do not include major reconstruction, and urban and rural roadways that involve substantial capacity improvements [~~through a previously undeveloped area~~]. Associated activities include utility relocation and miscellaneous minor design services. The firm must employ [a ~~minimum of~~] one professional engineer with a minimum of three years of roadway design experience on two projects.

(B) Category 4.2.1-major roadway design. This category includes design of urban and rural roadways that involve major reconstruction or substantial capacity improvements through a developed area. Associated activities include utility relocation plans, stormwater permits, maintenance of traffic plans, and traffic engineering applications. The firm must employ [a ~~minimum of~~] one professional engineer with a minimum of three years of roadway design experience on two separate projects.

(C) Category 4.3.1-complex highway design. This category includes the design of expressways, limited access facilities, diamond interchanges, freeways, and new roadway and reconstruction work on complex projects including complex geometrics. Associated activities include substantial drainage evaluation and design features, traffic engineering applications, utility relocation plans, and maintenance of traffic plans. The firm must employ [a ~~minimum of~~] one professional engineer with a minimum of four years experience in complex highway design on two separate projects.

(D) Category 4.4.1-major freeway interchanges and direct connectors. The firm must employ [a ~~minimum of~~] one professional engineer with a minimum of five years experience in design of a minimum of two separate projects involving major freeway interchanges and direct connectors.

(5) Group 5-bridge design. The firm must employ sufficient production staff to perform the work described in the following categories.

(A) Category 5.1.1-minor bridge design. This category includes the design of conventional, non-complex bridges, bridge replacements, simple bridge widening, railroad overpasses, non-standard retaining walls, and pedestrian bridges. The firm must employ [a ~~minimum of~~] one professional engineer with a minimum of two years structural bridge design experience after licensure as a professional engineer.

(B) Category 5.2.1-major bridge design. This category includes the design of bridges with complex geometry, complexity of design, spans less than 350 feet, non-conventional substructures, substructures requiring ship impact design, design of dolphins for bridge pier protection, railroad underpasses, complex bridge widening, steel truss spans, and concrete arch bridges. The firm must employ [a ~~minimum of~~] one professional engineer with a minimum of five years of structural bridge design experience after licensure as a professional engineer.

(C) Category 5.3.1-multi-level interchange design. This category includes design of bridges with three levels or more. The firm must employ [a ~~minimum of~~] one professional engineer with a minimum of seven years of structural bridge design experience in multi-level interchanges after licensure as a professional engineer.

(D) Category 5.4.1-exotic bridge design. This category includes the design of bridges with spans greater than 350 feet, suspension bridges, cable-stayed bridges, precast, post-tensioned segmental bridges, bridges requiring unique analytical methods, and movable bridges. The firm must employ [a ~~minimum of~~] one professional engineer with a minimum of seven years of structural bridge design experience in exotic bridge design after licensure as a professional engineer.

(6) Group 6-bridge inspection. The firm must employ sufficient National Highway Institute (NHI) trained bridge inspectors and other technical personnel as required to perform inspection of bridges included in this category.

(A) Category 6.1.1-routine bridge inspection. This category includes the inspection of on-system and off-system bridges, inspection and load rating for culverts, prestressed beam bridges, cast-in-place concrete bridges, steel girder bridges, steel truss bridges, and timber bridges. The firm must employ:

*(i)* a project manager who is a registered professional engineer, is qualified for registration as a professional engineer under the laws of a state, or has a minimum of 10 years experience in [a ~~minimum of one professional engineer, to serve as project manager, with six years of~~] bridge inspection assignments in a responsible capacity [~~or design experience appropriate to this category,~~] and [~~who~~] has completed the comprehensive NHI training course "Safety Inspection of In-service Bridges;" and

*(ii)* a [~~graduate engineer or a professional engineer to serve as the inspection~~] team leader who has the qualifications specified for the project manager in subdivision (i) of this subparagraph, or a minimum of five years of experience in bridge inspection assignments in a responsible capacity [~~or design experience appropriate to this category,~~] and has completed the comprehensive NHI training course "Safety Inspection of In-service Bridges," or is currently certified as a Level III or IV Bridge Safety Inspector under the National Institute [~~Society of Professional Engineer's program for National~~] for Certification in Engineering Technologies (NICET) [~~(The project manager may serve as inspection team leader, if only one team is required)~~].

(B) Category 6.2.1-complex bridge inspection. This category includes the inspection of on-system and off-system bridges, inspection and load rating for precast segmental structures, steel arch structures, cable stayed structures, fracture critical inspections, and movable bridges. The firm must employ:

*(i)* [a ~~minimum of~~] one professional engineer, to serve as project manager, with a minimum of seven years of bridge inspection or design experience, including one year of inspection or design of bridges included in this category, and who has completed the comprehensive NHI training course "Safety Inspection of In-service Bridges;" and

*(ii)* a person [~~a graduate engineer or a professional engineer~~] to serve as the inspection team leader who has a minimum of six years of experience in bridge inspection or design, including one year of inspection or design of bridges included in this category, and who has completed the comprehensive NHI training course "Safety Inspection of In-service Bridges" [~~or current certification as a Level III or IV Bridge Safety Inspector under the National Society of Professional Engineer's program for National Certification in Engineering Technologies (The project manager may serve as inspection team leader, if only one team is required)~~].

(7) Group 7-traffic engineering and operations studies.

(A) Category 7.1.1-traffic engineering studies. This category is defined as the study of the traffic operations of a roadway. Associated activities include preparation of or performance of traffic counts, signal warrants, collision diagrams, travel time and delay, capacity and level of service analysis, intersection analysis, signing, and pavement marking. The firm must employ [~~a minimum of~~] one professional engineer with demonstrated experience performing traffic engineering studies.

(B) Category 7.2.1-highway-rail grade crossing studies. This category includes the study of the operations of highway-rail grade crossings. Associated activities include preparation of or performance of corridor analysis, diagnostic inspections to determine appropriate type and location of active warning devices, advance warning signs and pavement markings, and other geometric or operational improvements. The firm must employ [~~a minimum of~~] one professional engineer with demonstrated experience performing highway-rail grade crossing studies.

(C) Category 7.3.1-traffic signal timing. This category includes analysis, development, and implementation of timing for traffic signals. Associated activities include data collection, intersection analysis, computerized timing programs (development of phase intervals and sequence), and timing implementation. A firm must employ:

*(i)* [~~a minimum of~~] one professional engineer with demonstrated experience in traffic signal timing and the application and interpretation of traffic flow and signal timing models; and

*(ii)* (No change.)

(D) Category 7.4.1-traffic control systems analysis, design and implementation. This category includes the use of electrical engineering, electronics engineering, computer science and traffic engineering to analyze, design, and implement real-time traffic control systems. The firm must employ:

*(i)* [~~a minimum of~~] one professional engineer with experience in activities associated with traffic control systems; and

*(ii)* (No change.)

(E) Category 7.5.1 - Intelligent Transportation System. This category includes conducting ITS planning studies. Associated activities include the study of transportation systems, identification of ITS applications to mitigate transportation problems, development of short term and long term ITS implementation plans, and assessment of the impact of ITS projects on the transportation system. The firm must employ:

*(i)* [~~a minimum of~~] one professional engineer with a background in transportation engineering and experience in activities associated with the development of ITS; and

*(ii)* (No change.)

(8) Group 8-traffic operations design.

(A) Category 8.1.1-signing, pavement marking and channelization. This category includes the design and preparation of plans for signing, pavement marking, and channelization. The firm must employ [~~a minimum of~~] one professional engineer with a minimum of two years experience in this category.

(B) Category 8.2.1-illumination. This category includes the design and preparation of plans for continuous roadway lighting, safety lighting, underpass lighting, tunnel lighting, and high mast lighting. The firm must employ [~~a minimum of~~] one professional engineer with:

*(i)* [~~with~~] a minimum of two years experience in design and production of illumination plans meeting IESNA and AASHTO guidelines; and

*(ii)* (No change.)

(C) Category 8.3.1-signalization. This category includes the design and preparation of plans for traffic signalization. The firm must employ [~~a minimum of~~] one professional engineer with a minimum of two years experience in the design and production of traffic signalization.

(D) Category 8.4.1-ITS control systems analysis, design, and implementation. This category of work includes the use of transportation engineering, electronics engineering, and computer science to analyze, design and implement transportation control systems. Associated activities include system performance and cost analysis, system hardware and software design, communication system design, development of management plans, supervision of system installation and operation, system testing and debugging, preparation of system documentation, and the training of operations personnel. The firm must employ:

*(i)* [~~a minimum of~~] one professional engineer, with a background in electrical engineering, system engineering, or software engineering, with a minimum of two years experience in either the design and production of ITS plans or the operation of ITS; and

*(ii)* (No change.)

(E) Category 8.5.1-highway-rail grade crossings. This category includes the design and preparation of plans for active warning devices, advance warning signs, pavement markings, and other geometric or operational improvements at highway-rail crossings. The firm must employ [~~a minimum of~~] one professional engineer with a minimum of two years experience in this category.

(9) Group 9-bicycle and pedestrian facilities. Category 9.1.1-bicycle and pedestrian facility development includes the design of bicycle and pedestrian facilities. The firm must employ:

(A) [~~a minimum of~~] one professional engineer with a minimum of one year [~~of~~] experience in the design of bicycle and pedestrian facilities, and with knowledge of drainage design; and

(B) (No change.)

(10) Group 10-hydraulic design and analysis.

(A) Category 10.1.1-hydrologic studies. This category includes rainfall, runoff determination, reservoir routing, and channel routing. The firm must employ [~~a minimum of~~] one professional engineer with a minimum of two years experience in analysis of complex watersheds.

(B) Category 10.2.1-basic hydraulic design. This category includes storm drain systems, culverts, sedimentation filtration systems, and detention/retention ponds. The firm must employ [~~a minimum of~~] one professional engineer with a minimum of two years experience in hydrologic analysis, hydraulic design, and storm water quality evaluation.

(C) Category 10.3.1-complex hydraulic design. This category includes hydraulic design of bridges over waterways, flood plain analysis, and channel modifications. The firm must employ [~~a minimum of~~] one professional engineer with a minimum of two years experience in river geomorphology, sediment transport and scour

analysis, flood plain analysis, river training techniques, and federal and state regulations and permit compliance.

(D) Category 10.4.1-pump stations-hydraulics [~~pump stations~~]. This category includes the design of pump stations for conveyance of storm waters. The firm must employ[~~;~~]

*~~f(i)~~* ~~a minimum~~] of one professional engineer with a minimum of two years experience in hydrologic analysis and storm drain and pump station design[~~;~~]

*~~f(ii)~~* ~~a minimum of one professional engineer with proficiency in electrical engineering and with a minimum of two years experience in pump system switching and pump configurations; and~~]

*~~f(iii)~~* ~~sufficient support staff for producing electrical and structural details~~].

(E) Category 10.4.2-pump stations-electrical. This category includes the design of pump motor control centers, controls, generators, and large distribution equipment stations for conveyance of storm water. The firm must employ one professional engineer with a minimum of five years experience in the design of large motor control centers and generating equipment, the National Electrical Code, and control systems.

(F) Category 10.4.3-pump stations-structures. This category includes the structural design of walls, roofs, foundations, and wells of pump stations for conveyance of storm water. The firm must employ one professional engineer with a minimum of two years of structural pump stations design experience.

(G) [~~(E)~~] Category 10.5.1-bridge scour evaluations and analysis. This category includes hydrologic analysis, channel and bridge hydraulic analysis and sediment transport modeling for evaluating the potential for scour of bridges. The firm must employ [~~a minimum of~~] one professional engineer with a minimum of two years experience, after licensure as a professional engineer, in river geomorphology, sediment transport and scour analysis, and flood plain analysis.

(11) Group 11-construction management. The firm must employ sufficient technical personnel with construction engineering inspection experience to staff projects under this category of work.

(A) Category 11.1.1-roadway construction management and inspection. This category includes the performance of construction management duties for all categories of roadways and highways, and minor bridges as described in Category 5.1.1. The firm must employ [~~a minimum of~~] one professional engineer with a minimum of two years of responsible charge experience as a project engineer on roadway and bridge construction projects.

(B) Category 11.2.1-major bridge construction, management, and inspection. This category includes the performance of construction management duties for major bridges, multi-level interchanges, and exotic bridges as described in Category 5.2.1. The firm must employ one professional engineer with a minimum of two years demonstrated major bridge construction experience, after licensure as a professional engineer.

(12) Group 12-materials inspection and testing.

(A) Category 12.1-material testing. The firm must have available in-house equipment and employ qualified, certified staff necessary to perform the work specified in this category.

*(i)* Category 12.1.1-asphaltic concrete. This category includes testing of asphaltic concrete material. The firm must employ [~~a minimum of~~] one professional engineer with a minimum of three years of experience in testing roadway construction materials and a minimum of one person with the proper Hot Mix Asphalt Specialist Certification (Level 1A minimum).

*(ii)* Category 12.1.2-portland cement concrete. This category includes testing of portland cement concrete. The firm must employ [~~a minimum of~~] one professional engineer with a minimum of three years of experience in testing roadway and bridge construction materials, and [~~a minimum of~~] one person with the proper concrete certification (ACI certification Grade 1).

(B) Category 12.2.1-plant inspection and testing. This category includes inspection of the following types of facilities and inspection of materials and finished products within these facilities: fabrication plants, mines and quarries, mills, refineries, processors, and producers. The firm must employ:

*(i)* [~~a minimum of~~] one professional engineer with a minimum of three years of responsible experience in inspection and testing bridge and roadway construction materials; and

*(ii)* (No change.)

(13) Group 14-geotechnical services.

(A) Category 14.1.1-soil exploration. This category includes acquisition and reporting of subsurface material to be used for the planning, design, construction, and performance of transportation facilities. The field classification of materials and acquisition of soil and rock samples is also included. The firm must:

*(i)* employ [~~a minimum of~~] one professional engineer with a minimum of [~~at least~~] one year demonstrated experience in the activities normally associated with the category under consideration; and

*(ii)* (No change.)

(B) Category 14.2.1-geotechnical testing. This category includes sampling and conducting tests on soil and rock according to the department's approved procedures for the purpose of classifying materials and/or identifying their physical properties. The firm must:

*(i)* employ [~~a minimum of~~] one professional engineer with a minimum of [~~at least~~] one year demonstrated experience in the activities normally associated with the category under consideration; and

*(ii)* (No change.)

(C) Category 14.3.1-transportation foundation studies. This category includes producing reports which contain selection of the type and depth of foundation for bridges, retaining walls, signs, and other types of transportation foundations. Working with bearing capacity, predicted settlement, stabilization, and construction on soft ground will be required. The firm must employ [~~a minimum of~~] one professional engineer with a minimum of [~~at least~~] three years demonstrated experience in the activities normally associated with this category.

(D) Category 14.4.1-building foundation studies. This category includes producing reports which contain selection of the type and depth of foundation for buildings. Working with bearing capacity, predicted settlement, stabilization and construction on soft ground will be required. The firm must employ [~~a minimum of~~] one professional engineer with a minimum of [~~at least~~] three years demonstrated experience in the activities normally associated with this category.

(14) Group 15-surveying and mapping.

(A) Category 15.1-right of way surveys. This category includes the performance of on the ground surveys and preparation of parcel maps, legal descriptions, and right of way maps. The firm must employ [a ~~minimum of~~] one registered professional land surveyor and two technical personnel, all with demonstrated experience in the applicable category of work and the following subcategories:

*(i)* (No change.)

*(ii)* Category 15.1.2-parcel plats [~~maps~~];

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

(B) Category 15.2.1-design and construction survey. This category includes performance of surveys associated with the gathering of survey data for topography, cross-sections, and other related work in order to design a project, or during layout and staking of projects for construction. The firm must:

*(i)* employ [a ~~minimum of~~] one registered professional land surveyor with a minimum of one year experience in roadway construction staking;

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

(C) (No change.)

(D) Category 15.4.1 - horizontal and vertical control for aerial mapping. This category involves the establishment of the horizontal and vertical control for aerial mapping. The firm must:

*(i)* employ [a ~~minimum of~~] one registered professional land surveyor;

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

(E) Category 15.5.1-state land surveying. This category includes the performance of land surveying associated with "the location or relocation of original land grant boundaries and corners; the calculation of area and the preparation of field note descriptions of both surveyed and unsurveyed land or any land in which the state or the public free school fund has an interest; the preparation of maps showing such survey results; and the field notes and/or maps of which are to be filed in the General Land Office," as quoted in the Surveyors Act. The firm must employ [a ~~minimum of~~] one registered professional [~~licensed state~~] land surveyor with demonstrated experience in state land surveying as defined in the category description.

(15) Group 16-architecture. The firm must employ sufficient project management and technical staff to provide services normally associated with this type of work.

(A) Category 16.1.1-architecture-buildings. This category includes architectural services for buildings. The firm must employ [a ~~minimum of~~] one registered architect with a minimum of two years experience in the areas identified.

(B) Category 16.1.2-architecture-other structures. This category includes architectural services for structures other than buildings. The firm must employ [a ~~minimum of~~] one registered architect with a minimum of two years experience in the areas identified.

(16) Group 18-miscellaneous. Category 18.1.1-value engineering. This category includes the study of transportation related projects or selected processes by multidisciplined teams to determine the most cost effective use of resources to accomplish the given functions. The firm must employ:

(A) [a ~~minimum of~~] one professional engineer who:

*(i)* is a certified value specialist with experience in the value engineering process and team leadership related to transportation projects as evidenced by having conducted a minimum of [~~at least~~] five transportation related value engineering studies, including one freeway project exceeding $20 million initial estimated cost;

*(ii)* has taught a minimum of two transportation related value engineering classes in the last five years; and

*(iii)* (No change.)

(B) (No change.)

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

Filed with the Office of the Secretary of State, on December 21, 1998.

TRD-9818481
Richard Monroe
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: January 31, 1999
For further information, please call: (512) 463–8630

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## Subchapter F. Contracts for Scientific Services

**43 TAC §§9.80-9.88**

The Texas Department of Transportation proposes new §§9.80-9.88, concerning contracts for scientific services. Proposed new Subchapter F outlines the procedures for selection of scientific and technical experts to provide scientific services including environmental and cultural studies, analyses, and document preparation required by state or federal law for transportation projects within the authority or jurisdiction of the department.

EXPLANATION OF PROPOSED RULES

In order to obtain the highest quality scientific services in an efficient and effective manner, Transportation Code, Chapter 223, Subchapter D, provides that the department may follow a procedure using competitive sealed proposals to procure the services of archeologists, biologists, geologists, historians or other technical experts to conduct environmental and cultural assessments for transportation projects within the authority or jurisdiction of the department. To procure services under new §§9.80-9.88, the department must first determine that competitive sealed bidding or informal competitive bidding is not practical or is disadvantageous to the state. The department shall solicit proposals by a request for proposals following the same notice procedures it uses in procuring services under Government Code, Chapter 2254, Subchapter A. Transportation Code, Chapter 223, Subchapter D, provides that the department may adopt rules for the implementation of this subchapter. This new subchapter is necessary to comply with Transportation Code, Chapter 223, Subchapter D, which authorized the department to use competitive sealed proposals to procure the services of archeologists, biologists, geologists, historians or other technical experts to conduct environmental and cultural assessments.

New §9.80 explains the purpose of the new subchapter, which establishes standard procedures for selection of technical experts to provide scientific services including environmental and

cultural studies, analyses, and document preparation required by state or federal law for a transportation project within the authority or jurisdiction of the department. The selection process has been developed in order that the department may obtain scientific services in the most appropriate and efficient manner and to provide for an open and fair method of selection, resulting in obtaining the best possible services for the state.

New §9.81 provides definitions of words and terms used in the subchapter.

New §9.82 states that the department will use competitive sealed proposals to procure scientific services including but not limited to those of an archeologist, biologist, geologist, historian, architectural historian, or other technical expert to conduct environmental or cultural studies, analyses, and document preparation required by state or federal law for a transportation project within the authority or jurisdiction of the department.

In order that information concerning scientific services shall be available to potential providers to the maximum extent possible, new §9.83 provides for an electronic notice and a newspaper notice to be posted and published not less than 10 days before the letter of interest is due and specifies the contents of the electronic and newspaper notices. The section also establishes that the department will publish a quarterly statewide list of projected contracts for scientific services and will provide upon request or make available on the department's Web site, a copy of the list to community, business, and professional organizations for dissemination to their membership. The section provides that the technical expert shall notify the department of his or her interest in submitting a proposal no later than the deadline published in the notice. The department will accept a letter of interest by electronic facsimile.

New §9.83 also states that the department shall send each technical expert submitting a letter of interest a copy of the Request for proposal (RFP) packet including the requirements for a responsive proposal and mandatory provider qualifications, which are the qualifications the technical expert must demonstrate he or she meets in order for the proposal to be considered responsive. The section also provides for a proposal meeting, to be held at the discretion of the department, which will provide an opportunity for the technical expert to seek clarification of questions concerning the contract. If the meeting is mandatory, the department will not accept proposals from technical experts not represented at the meeting.

New §9.84 describes: the proposal format; receiving proposals; opening proposals; and non-responsive proposals. The proposal will be limited to the contents specified in the RFP packet plus the offeror's price for the required technical services. Proposals must be received by the date, time and place specified in the RFP packet and proposals submitted by electronic facsimile will not be accepted. The department will open proposals and conduct evaluations in confidence. There will be no disclosure of contents to competing offerors during the negotiation process. After the contract is awarded, all proposals shall be open for public inspection except as provided in Government Code, Chapter 552. A proposal which does not include all the requirements set forth in the RFP will be rejected as non-responsive and will not be considered further.

In order to insure an open and fair method of selection, which would result in obtaining the best possible services for the state, new §9.85 provides that the department will evaluate responsive proposals based on: professional qualifications of technical experts; experience of the firm and the technical experts; technical or scientific merits of the proposal including unique or innovative methods for performing the work, if applicable; ability to commit personnel, time, and other resources to the project; demonstrated understanding of the scope of services to be provided, including which type of work will be provided by a sub-provider, if any; demonstrated understanding of applicable rules, regulations, policies, and other requirements associated with the environmental or cultural studies, analyses, or document preparation to be performed; ability to meet department scheduling requirements; and reasonableness of fee. The department will assign a numerical weighting value to each evaluation criterion and score the criterion based upon a scale of 0 to 10 points per criterion with 10 points being the best qualified. The department will evaluate each responsive proposal using an individual proposal evaluation matrix.

New §9.86 provides for discussions for best and final offer. When it is determined to be in the best interests of the state, the department may elect to include discussions for responsive offerors' best and final offer prior to selection. Discussions for best and final offer will occur following completion of the steps outlined in §§9.82-9.85 of this title. Provision is made for the department to give each responsive offeror an equal opportunity to discuss and revise his or her proposal after all responsive proposals have been evaluated. The department will not disclose any information derived from proposals submitted by competing offerors during these discussions. Discussions will include identification of any portion of the responsive proposal not meeting minimum qualifications or meeting only minimum qualifications, in order to assess an offeror's ability to meet the RFP requirements. Discussions may include reasonableness of fee. Offerors whose responsive proposals do not meet minimum qualifications or who only meet minimum qualifications shall be given the opportunity to demonstrate an understanding of the project and provided with an opportunity to remedy the proposal's deficiencies. The department will permit any offeror to revise his or her proposal in order to obtain the best and final offer. After completing discussions with offerors, the department will send written notification to each offeror to submit a best and final offer. The proposals will be reevaluated using the criteria in §9.85(a) of this subchapter. The evaluation will be made in writing and shall include the individual proposal evaluation matrix as specified in §9.85(c).

New §9.87 provides that the department shall perform three types of contract selection: individual contract selection with one contract resulting from the contract notice; multiple contract selection with more than one contract resulting from the contract notice; and indefinite delivery contract selection, with selection of one or multiple providers to perform work, as authorized by the department, under a general scope of services. Under the indefinite delivery contract option, the contract shall specify the contract period and a maximum contract amount, not to exceed $500,000.00. Services shall be authorized by individual work orders, on an as needed basis, and all work orders shall be issued within two years of the effective date of the contract

New §9.88 provides that the department shall make the award to the technical expert submitting the highest-ranked proposal and shall notify the other offerors of the selection. For multiple awardees under a single RFP, the department shall make awards to the highest ranked offerors. If the department finds that none of the proposals is acceptable, the department will reject all proposals.

FISCAL NOTE

Frank J. Smith, Director, Finance Division, has determined that for the first five-year period the new sections are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the new sections, except that the state may realize a decrease in paperwork and time needed to obtain the services. The economic costs for persons required to comply with the sections as proposed cannot be estimated due to the variability in the types of services provided for, except that some providers may realize a decrease in costs from reduced paperwork and increased flexibility in competing for contracts to provide these services. The decrease in costs for the state and providers cannot be determined because the department cannot predict how many projects can be accommodated by the provisions of these sections.

Dianna F. Noble, P.E., Director, Environmental Affairs Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the new sections.

PUBLIC BENEFIT

Consistent with the department's commitment to provide environmentally sensitive transportation systems, Ms. Noble has also determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing or administering the new section will be increased effectiveness and efficiency in obtaining scientific and technical services needed for environmental and cultural studies, analyses and document preparation necessary to provide for comprehensive environmental consideration and coordination for all transportation projects in a manner consistent with federal and state laws, regulations and guidelines. The department will realize cost savings and other benefits of competition by procuring scientific and technical services for assessments and studies performed under these rules and will realize a savings of both time and money in the performance of environmental studies required for transportation projects. There will be no effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed new sections may be submitted to Dianna F. Noble, P.E., Director, Environmental Affairs Division, 125 East 11th Street, Austin, Texas, 78701-2483. The deadline for receipt of comments will be 5:00 p.m. on February 1, 1999.

STATUTORY AUTHORITY

The new sections are proposed under Transportation Code, §2001.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation, and Transportation Code, Chapter 223, Subchapter D, which authorized the department to adopt rules governing the selection of scientific and technical experts.

No statutes, articles, or codes are affected by these proposed new sections.

*§9.80. Purpose.*

Transportation Code, Chapter 223, Subchapter D, provides that the department may follow a procedure using competitive sealed proposals to procure the services of technical experts including archeologists, biologists, geologists, historians, or other technical experts to conduct environmental and cultural assessments for transportation projects within the authority or jurisdiction of the department. This subchapter, which implements Chapter 223, Subchapter D of the Transportation Code, establishes standard procedures for selection of technical experts to provide scientific services including environmental and cultural studies, analyses, and document preparation.

*§9.81. Definitions.*

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

(1) Competitive sealed proposals–A procurement method in which offers are solicited from a number of sources, and selection is made using criteria other than cost, although reasonableness of cost is a selection criterion.

(2) Department–The Texas Department of Transportation.

(3) Indefinite delivery contract–A contract that contains a general scope of services, maximum contract amount, and contract termination date in which contract rates are negotiated prior to contract execution, and work is authorized as needed.

(4) Mandatory provider qualifications–Those qualifications listed in the request for proposals that the technical expert must demonstrate it meets in order for the proposal to be considered responsive.

(5) Provider–The technical expert awarded a department provider contract.

(6) Request for proposals (RFP)–A request for submittal of a technical proposal that demonstrates competence and qualifications of the technical expert to perform the requested services and shows an understanding of the specific project.

(7) Subprovider–A provider proposing to perform work through a contractual agreement with the provider.

(8) Technical expert–An archeologist, biologist, geologist, historian, architectural historian, or other non-engineering expert in a natural, social, or environmental science qualified to conduct an environmental or cultural study required by state or federal law for a transportation project. This definition includes a firm or institution employing one or more technical experts.

*§9.82. Use of Technical Experts.*

The department may use competitive sealed proposals to procure scientific services including those of an archeologist, biologist, geologist, historian, architectural historian, or other technical expert to conduct environmental or cultural studies, analyses, and document preparation required by state or federal law for a transportation project within the authority or jurisdiction of the department.

*§9.83. Notice and Letter of Interest.*

(a) Notice. When the department elects to use competitive sealed proposals to procure scientific services, notice will be given as follows.

(1) Electronic and newspaper notice. Not less than 10 days before the letter of interest due date, the department will post a notice on an electronic bulletin board and publish a notice in selected newspapers. The notice will contain the:

(A) proposed contract or RFP number;

(B) type of selection in accordance with §9.87(a) of this title (relating to Selection Types);

(C) general description of the project and work to be done;

(D) due date for providers to send letters of interest to the department;

(E) contact person; and

(F) location of the electronic bulletin board that contains more information.

(2) Organizations. The department will publish a quarterly statewide list of projected contracts for scientific services and will provide upon request, or make available on the department's Web site, a copy of the list to community, business, and professional organizations for dissemination to their membership.

(b) Letter of interest.

(1) The technical expert shall send a letter of interest to the department notifying the department of the provider's interest in the contract. This letter of interest must be received by the department no later than the deadline published in the notice.

(2) The department will accept a letter of interest by electronic facsimile.

(c) Requests for proposals. The department will send each technical expert submitting a letter of interest a copy of the RFP packet. The RFP packet will include:

(1) the requirements for a responsive proposal including:

(A) date, time, and location for submittal of the proposal;

(B) an outline of the required proposal format and content; and

(C) mandatory provider qualifications.

(2) scope of services to be provided by the department;

(3) scope of services to be provided by the technical expert;

(4) proposed contract duration;

(5) proposed method of payment;

(6) any constraints directly relating to the performance of the contract, if applicable;

(7) description of the evaluation criteria including numerical weighting values of evaluation criteria and minimum and preferred qualifications;

(8) a copy of the evaluation matrices;

(9) type of contract selection;

(10) a copy of the proposed contract, with all attachments; and

(11) any special contract requirements.

(d) Proposal meeting. The meeting may be either mandatory or optional at the discretion of the department. If the meeting is mandatory, the department will only accept proposals from technical experts represented at the meeting. Every technical expert submitting a letter of interest will be notified of the date and time of the proposal meeting, if one is to be held. The proposal meeting provides an opportunity for the technical expert to seek clarification of questions concerning the contract.

*§9.84. Proposals.*

(a) Proposal format. The proposal shall be limited to the contents specified in the RFP packet plus the offeror's price for the required technical services.

(b) Receiving proposals. All proposals must be received by the date, time, and location specified in the RFP packet. Proposals will not be accepted by electronic facsimile.

(c) Opening proposals. The department will open proposals and conduct evaluations in confidence, and there will be no disclosure of contents to competing offerors during the negotiation process. After the contract is awarded, all proposals shall be open for public inspection except as provided in Government Code, Chapter 552.

(d) Non-responsive proposals. A proposal which does not include all the requirements set forth in the RFP will be rejected as non-responsive and will not be considered further.

*§9.85. Evaluation.*

(a) Evaluation criteria. The department will evaluate responsive proposals based on the following criteria:

(1) professional qualifications of technical experts;

(2) experience of the firm and the technical experts;

(3) technical or scientific merits of the proposal, including unique or innovative methods for performing the work, if applicable;

(4) ability to commit personnel, time, and other resources to the project (technical experts cannot be removed from association with the contract without prior consent by the department);

(5) demonstrated understanding of the scope of services to be provided, including identifying which type of work will be performed by a subprovider, if any;

(6) demonstrated understanding of applicable rules, regulations, policies, and other requirements associated with the environmental or cultural studies, analyses, or document preparation to be performed;

(7) ability to meet department scheduling requirements; and

(8) reasonableness of fee.

(b) Evaluation scale. The department will assign a numerical weighting value to each evaluation criterion and then score each criterion based upon a scale of 0 to 10 points per criterion with 10 points being the best qualified.

(c) Evaluation matrix. The department will evaluate each responsive proposal using an individual proposal evaluation matrix.

*§9.86. Discussions For Best and Final Offer.*

(a) When it is determined to be in the best interests of the state, the department may elect to include discussions for responsive offerors' best and final offer prior to selection. Discussions for best and final offer will occur following completion of the steps in §§9.82-9.85 of this subchapter, relating to contracts for scientific services.

(b) If the department elects to conduct discussions as provided in subsection (a) of this section, each responsive offeror shall be given an equal opportunity to discuss and revise his or her proposal. The department will not disclose any information derived from proposals submitted by competing offerors during these discussions. Discussions will include identification of any portion of the responsive proposal not meeting minimum qualifications or meeting only minimum qualifications in order to assess an offeror's ability to meet the RFP requirements, and an opportunity for the offeror to demonstrate

an understanding of the project and remedy the proposal's deficiencies. Discussions may include reasonableness of fee.

(c) After completing discussions with offerors, the department will send written notification to each offeror to submit a best and final offer. The proposals will be reevaluated using the criteria in §9.85(a) of this title (relating to Evaluation). The evaluation shall be made in writing and shall include the individual proposal evaluation matrix as specified in §9.85(c) of this title.

*§9.87. Selection.*

The department will perform three types of contract selections.

(1) Individual contract selection. One contract will result from the contract notice.

(2) Multiple contract selection. More than one contract, of similar work types and estimated amounts not to exceed $500,000 per contract, will result from the contract notice. The notice will indicate the number and type of contracts to result from the advertisement.

(3) Indefinite delivery contract selection. This contract selection may be for award of contracts to single or multiple providers to perform work under a general scope of services. The typical type of work will be described in the contract notice. Specific services shall be authorized by individual work orders on an as-needed basis. The maximum contract amount shall be specified and shall not exceed $500,000 per contract. The contract period shall be specified. All work orders under an indefinite delivery contract shall be issued within two years of the effective date of the contract.

*§9.88. Award.*

(a) The department will make the award to the technical expert submitting the highest-ranked proposal and will notify the other offerors of the selection. For multiple awardees under a single RFP, the department will make awards to the highest ranked offerors.

(b) If the department finds that none of the proposals are acceptable, the department will reject all proposals.

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 December 21, 1998.

TRD-9818482
Richard Monroe
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: January 31, 1999
For further information, please call: (512) 463–8630

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## Chapter 27. Toll Projects

## Subchapter B. Texas Turnpike Authority

The Texas Department of Transportation proposes the repeal of §§27.20-27.26, and new §§27.11-27.20, concerning projects of the Texas Turnpike Authority Division.

EXPLANATION OF PROPOSED REPEALS AND NEW SECTIONS

Senate Bill 370, 75th Legislature, 1997, amended Transportation Code, Chapters 361 and 362 to abolish the former Texas Turnpike Authority and to create the Texas Turnpike Authority Division within the Texas Department of Transportation, and to impose additional requirements relating to commission approval of activities of the authority. Transportation Code, Chapters 361 and 362 require the approval of the Texas Transportation Commission or the department for certain activities of the Texas Turnpike Authority Division, or for certain phases of the development of turnpike projects constructed, maintained, and operated by the Texas Turnpike Authority Division. Existing §§27.20-27.26 are proposed for repeal because they are no longer necessary due to the proposed adoption of the re-enacted subject matter in an amended form in new §§27.11-27.17.

Section 27.20 is being replaced with new §27.11, which describes the purpose of the subchapter, which is to define the policies and procedures governing commission and department approval or disapproval of certain phases of the development of turnpike projects constructed, maintained, and operated by the authority.

Section 27.21 is being replaced with new §27.12, which provides definitions for words and terms used in this subchapter.

Section 27.22 and §27.23 are being replaced with new §27.13 and §27.14, which remain unchanged from the existing rules except for the renumbering of the sections.

Section 27.24 is being replaced with new §27.15, which is being changed to clarify that the commission will consider the existing criteria in deciding whether to approve a project.

Section 27.25 is being replaced with new §27.16, which is being changed to clarify that, pursuant to Transportation Code, §361.282, the authority may lease, sell, or otherwise convey all or any portion of a turnpike project, and to clarify that the commission must find the existing factors are present in order to approve the lease, sale, or conveyance of a project.

To comply with amendments to Transportation Code, §362.0041, and to reflect that, as the authority acts for the department in constructing, maintaining, and operating turnpike projects on the state highway system, no removal of a segment of the state highway system is made, existing §27.26 is proposed for repeal and is being replaced with new §27.17, which removes the requirement that the authority reimburse the department for the cost of a highway transferred to the authority. This section also removes the requirement that the governor approve the transfer of an existing segment of a free state highway to the authority for development as a toll facility.

New §27.17 also clarifies that, in order to approve the conversion of a highway to a turnpike project, the commission must conclude that the project is projected to be capable of generating revenue from tolls at rates to be set by the authority sufficient to satisfy project related debt and maintenance and operating expenses allocable to the project, and that the conversion will have beneficial effects on regional mobility.

To implement Transportation Code, §361.135, allow for the expeditious completion of turnpike projects, and provide for adequate mobility on toll facilities and the safety of the traveling public, new §27.18 prescribes requirements for commission concurrence in the acquisition of real property by the board of directors of the authority through the use of condemnation. The power of condemnation may be used by the board of directors if: (1) the authority and the owner of the property cannot agree on a reasonable price for the property; or (2) the owner is legally incapacitated, absent, unknown, or unable to convey title.

In order for the commission to concur in the board's proposal to condemn real property, the written determination must show that the property is: (1) necessary or appropriate to construct or to efficiently operate a turnpike project; (2) necessary to restore public or private property that is damaged or destroyed; (3) necessary for access, approach, and interchange roads; or (4) necessary to otherwise carry out Transportation Code, Chapter 361.

Transportation Code, §361.189 requires commission approval of the authority's proposed use of surplus revenue of a turnpike project to pay the costs of another turnpike project. To implement that section, ensure that the commission has the information necessary to make an informed decision concerning approval, provide for the most efficient use of toll revenues, and protect the viability of existing and proposed turnpike projects, and the state's fiscal interests, new §27.19 prescribes requirements for the commission's approval of the authority's proposed use of surplus revenue.

New §27.19 requires the authority to submit a written request for approval to the executive director, accompanied by a summary of the expected impact of the proposed use or surplus revenues on the turnpike project from which the revenues are derived, a summary of the potential financial viability of the turnpike projects for which the surplus revenues are to be expended, and evidence of local support for the proposed project. These same factors will be considered by the commission when deciding whether to approve an authority proposal.

To implement the requirements of §361.189, ensure the authority can maximize the use of revenues generated by turnpike projects throughout the state, provide for the most efficient use of toll revenues, and protect the viability of existing and proposed turnpike projects, and the state's fiscal interests, surplus revenues must be used to pay the costs of another turnpike project, the use of the surplus revenues must be consistent with Chapter 361, must not violate, impair, or be inconsistent with any bond resolution, trust agreement, or indenture governing the use of those surplus revenues, and must be in the best interest of the state.

Transportation Code, §361.331 provides that the authority may, if approved by the commission, pool two or more turnpike projects wholly or partly located within the boundaries of a metropolitan planning organization after conducting a public hearing. To implement that section, ensure that the authority has the ability to maximize resources available to it, provide for the most efficient use of funding for turnpike projects, ensure the viability of existing and proposed turnpike projects, and provide for the expeditious development of public highways, new §27.20 prescribes requirements for the commission's approval of a proposed pooling of turnpike projects.

New §27.20 specifies that in order to approve a request to pool projects, the commission must find that the required public hearing has been conducted, pooling will not have a material adverse effect on the development of any of the pooled projects, pooling of the projects is consistent with the purposes of Chapter 361, and the proposed pooling is in the best interest of the state. In considering a request, the commission will consider whether pooling will help to expedite the development and construction of a public highway.

FISCAL NOTE

Frank J. Smith, Director, Finance Division, has determined that for the first five-year period the repeals and new sections are in effect, there will not be any fiscal implications for state or local governments as a result of enforcing or administering the repeals and new sections. There are no anticipated economic costs for persons required to comply with the sections as proposed.

Alvin R. Luedecke, Jr., P.E., Director, Transportation Planning and Programming Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the repeals and new sections.

PUBLIC BENEFIT

Mr. Luedecke has also determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing or administering the repeals and new sections will be to provide for the expeditious development of state highway system projects, thereby maximizing the use of scarce state highway funds and the safety of the traveling public. There will be no effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed repeals and new sections may be submitted to Alvin R. Luedecke, Jr., P.E., Director, Transportation Planning and Programming Division, 125 East 11th Street, Austin, Texas, 78701-2483. The deadline for receipt of comments will be 5:00 p.m. on February 1, 1999.

**43 TAC §§27.11–27.20**

STATUTORY AUTHORITY

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

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

*§27.11. Purpose.*

Transportation Code, Chapter 361 and Chapter 362, Subchapter B, require the approval of the Texas Transportation Commission and the Texas Department of Transportation for certain phases of the development of turnpike projects constructed, maintained, and operated by the Texas Turnpike Authority Division of the department. This subchapter prescribes the policies and procedures governing commission and department approval or disapproval.

*§27.12. Definitions.*

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

(1) Authority–The Texas Turnpike Authority Division of the Texas Department of Transportation.

(2) Board–The board of directors of the authority.

(3) Commission–The Texas Transportation Commission.

(4) Department–The Texas Department of Transportation.

(5) Executive director–The chief administrative officer of the department or designee.

(6) Feasibility study–Collectively, all evaluations and analyses necessary to ascertain the financial, technical, and envi-

ronmental viability of a proposed project, including route location, environmental and financial investment studies.

(7) Metropolitan planning organization–An organization designated by the governor to carry out the transportation planning process in prescribed urbanized areas as required by Title 23, United States Code, §134.

(8) Turnpike project–A project of the Texas Turnpike Authority Division of the Texas Department of Transportation, as defined by Transportation Code, Chapter 361.

*§27.13. Texas Turnpike Authority Feasibility Study Fund.*

Transportation Code, §361.182, provides that project feasibility studies funded from the Texas Turnpike Authority Feasibility Study Fund require approval of the commission. To secure approval the authority shall submit a written request to the executive director prior to initiating such a study. When acting on the authority's request, the commission shall consider the potential for environmental impact and the project's general compatibility with the adopted state transportation plan and, if pertinent, the regional transportation plan adopted by a metropolitan planning organization having jurisdiction in the project area.

*§27.14. Environmental Review.*

(a) Requirement. Transportation Code, §361.103, provides that the environmental review of a turnpike project must be approved by the commission before construction of that project begins.

(b) Request. To secure approval under this section, the authority must submit a written request for approval to the executive director. An environmental review submitted for approval under this section shall be conducted in accordance with the rules of the authority concerning environmental review of its projects.

(c) Approval. The commission will approve the authority's environmental review if it finds that the review has complied with the requirements of this section. When acting on the authority's request for environmental review approval, the commission will consider applicable provisions of state and federal laws, rules, and regulations.

*§27.15. Project Approval.*

(a) Requirements. Transportation Code, §361.101, authorizes the authority to construct, maintain, repair, and operate turnpike projects within the state as may be determined by the authority subject to approval as to location by the commission. Transportation Code, §361.043, authorizes the authority to designate the location, and establish, limit, and control such points of ingress and egress, for each project as may be necessary and desirable in the judgment of the authority and the department to ensure the proper operation and maintenance of the project. Transportation Code, §362.051 provides that certain governmental entities may not begin construction of a toll road, toll bridge, or turnpike without the approval of the commission if the project is to become part of the state highway system.

(b) Request. To secure approval under this section the authority shall submit a written request for approval to the executive director. The request must be accompanied by:

(1) a summary of the anticipated financing plan for purposes of seeking the approval described in subsection (c)(2) of this section;

(2) a detailed schematic indicating the location of interchanges, mainlanes, and ingress and egress ramps;

(3) a report identifying relocations or reconstruction to state highway system facilities anticipated in connection with the proposed project; and

(4) an evaluation of the project's integration into the state highway system.

(c) Approval. In deciding whether to approve a project, the commission will consider whether:

(1) the project may be effectively integrated into the state highway system;

(2) the department is able to construct any connecting roads necessary for the project to generate sufficient revenue to pay the debt incurred for its construction; and

(3) points of ingress and egress are designed in a manner that ensures the proper operation and maintenance of the project.

*§27.16. Transfer of Turnpike Projects.*

(a) Requirements. Transportation Code, §361.282, authorizes the authority to lease, sell, or otherwise convey all, or any portion of, a turnpike project to certain entities if the authority, the commission, and the governor approve the transfer of the project as being in the best interests of the state and the entity receiving the turnpike project.

(b) Request. To secure approval under this section, the authority must submit a written request for approval to the executive director. Such request must be accompanied by:

(1) a written commitment to the commission from the receiving entity to maintain the facility in a safe and efficient manner; and

(2) an evaluation of the impact of such action on regional mobility and project financial viability.

(c) Approval. In order to approve the lease, sale, or conveyance of a project, the commission must find that such transfer:

(1) is in the best interests of the state;

(2) is in the best interests of the entity receiving the project; and

(3) will not adversely affect:

(A) the financial viability of the project; or

(B) regional mobility.

*§27.17. Conversion of Existing Public Highways.*

(a) Purpose. Transportation Code, §362.0041, provides that if the commission finds that the conversion of an existing segment of the free state highway system to a toll facility is the most feasible and economic means to accomplish necessary expansion improvements, or extensions to the state highway system, that segment may be converted by order of the commission to a turnpike project.

(b) Public involvement. Prior to converting an existing segment of the state highway system to a turnpike project, the commission will conduct a public hearing for the purpose of receiving comments from interested persons concerning the proposed conversion. Notice of the hearing will be published in the *Texas Register*, one or more newspapers of general circulation, and a newspaper, if any, published in the county or counties in which the involved segment of highway is located. The department will prepare a summary of the public hearing and all comments received in response to the hearing.

(c) Criteria. The commission may, upon request of the authority, convert an existing highway to a turnpike project and transfer it to the authority, provided that:

(1) the authority agrees, through binding written commitment, to accept the highway for maintenance and operation in good

condition and repair while protecting and preserving the state's investment in the facility;

(2) the commission concludes that based on existing and/or forecasted traffic volumes the project is projected to be capable of generating revenue from tolls at rates to be set by the authority sufficient to satisfy project-related debt (including, if applicable, commission reimbursement) and maintenance and operating expenses allocable to the project;

(3) the conversion and transfer will have beneficial effects on regional mobility;

(4) construction of the necessary expansion improvements, or extension can be accomplished efficiently and expeditiously; and

(5) if the converted segment or a facility of which it will become a part is to be improved or extended by the authority, the requirements of §27.14 of this title (relating to Environmental Review) and §27.15 (relating to Project Approval) are satisfied.

(d) Conversion. If the commission finds that the conversion of a segment of the existing state highway system to a turnpike project is the most feasible and economic means to accomplish necessary expansion improvements, or extensions to the state highway system and that such conversion is in the best interest of the State of Texas, that segment may be converted by order of the commission to a turnpike project. If the converted segment is to be transferred to the authority, the authority shall, coincident with the conversion, assume all responsibility and liability for maintenance and operation of the facility.

*§27.18. Condemnation of Real Property.*

(a) Purpose. Transportation Code, §361.135, provides that the board, with the concurrence of the commission, may acquire public or private real property in the name of the state by the exercise of the power of condemnation under the laws applicable to the exercise of that power on property for public use if:

(1) the authority and the owner cannot agree on a reasonable price for the property; or

(2) the owner is legally incapacitated, absent, unknown, or unable to convey title.

(b) Concurrence. In order for the commission to concur with the board's proposal to condemn real property, the commission must concur with the authority's determination that such condemnation is:

(1) necessary or appropriate to construct or to efficiently operate a turnpike project;

(2) necessary to restore public or private property damaged or destroyed;

(3) necessary for access, approach, and interchange roads; or

(4) necessary to otherwise carry out the purposes of Transportation Code, Chapter 361.

*§27.19. Authority Use of Surplus Revenue.*

(a) Requirements. Transportation Code, §361.189, provides that, subject to approval by the commission, the authority may use surplus revenue of a turnpike project to pay costs of financing, construction, maintenance, operation, improvements, extension or expansion of another turnpike.

(b) Request. To secure approval under this section, the authority must submit a written request for approval to the executive director. The request must be accompanied by:

(1) a statement of the expected impact on the turnpike project from which the revenues are derived;

(2) a statement of the potential financial viability of the turnpike project for which surplus revenues are to be expended; and

(3) evidence of local support for the proposed turnpike project.

(c) Approval.

(1) The commission may approve a request under this section if it finds that:

(A) the proposed use of surplus revenues will not violate, impair, or be inconsistent with any bond resolution, trust agreement, or indenture governing the use of surplus revenue; and

(B) the proposed use of surplus revenue is in the best interest of the state.

(2) In considering whether to approve a request under this subsection, the commission will consider:

(A) the impact of the proposed use of surplus revenues on the turnpike project from which the surplus revenues are derived;

(B) the potential financial viability of the turnpike project on which the surplus revenues are to be expended; and

(C) local support for the turnpike project on which surplus revenues are to be expended.

*§27.20. Pooling of Turnpike Projects.*

(a) Requirements. Transportation Code, §361.331 provides that the authority may designate two or more turnpike projects that are wholly or partly located in an area within a metropolitan planning organization as a pooled turnpike project after conducting a public hearing in each affected county and obtaining approval of the commission.

(b) Request. To secure approval under this section, the authority must submit a written request for approval to the executive director.

(c) Approval.

(1) In order to approve the request, pursuant to Section 361.331, Texas Transportation Code, the commission must find that:

(A) a public hearing has been conducted in each affected county;

(B) the pooling of two or more turnpike projects will not have a material adverse affect on the development of any of the pooled projects;

(C) pooling of the projects is consistent with the purposes of Chapter 361 of the Transportation Code; and

(D) the proposed pooling of turnpike projects is in the best interest of the state.

(2) In considering a request from the authority to pool two or more turnpike projects, the commission will consider whether pooling will help to expedite the development and construction of a public highway.

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 December 21, 1998.

TRD-9818483
Richard Monroe
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: January 31, 1999
For further information, please call: (512) 463–8630

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**43 TAC §§27.20–27.26**

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

STATUTORY AUTHORITY

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

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

*§27.20. Purpose.*

*§27.21. Definitions.*

*§27.22. Texas Turnpike Authority Feasibility Study Fund.*

*§27.23. Environmental Review.*

*§27.24. Project Approval.*

*§27.25. Transfer of Turnpike Projects.*

*§27.26. Transfer of Existing Public Highways.*

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 December 21, 1998.

TRD-9818484
Richard Monroe
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: January 31, 1999
For further information, please call: (512) 463–8630

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# WITHDRAWN RULES

An agency may withdraw a proposed action or the remaining effectiveness of an emergency action by filing a notice of withdrawal with the ***Texas Register***. The notice is effective immediately upon filling or 20 days after filing as specified by the agency withdrawing the action. If a proposal is not adopted or withdrawn within six months of the date of publication in the ***Texas Register***, it will automatically be withdrawn by the office of the Texas Register and a notice of the withdrawal will appear in the ***Texas Register.***

# TITLE 30. ENVIRONMENTAL QUALITY

## Part I. Texas Natural Resource Conservation Commission

### Chapter 106. Exemptions from Permitting

### Subchapter A. General Requirements

**30 TAC §§106.1, 106.2, 106.4–106.6**

The Texas Natural Resource Conservation Commission has withdrawn from consideration for permanent adoption the repeal to §§106.1, 106.2, 106.4–106.6, which appeared in the September 11, 1998, issue of the *Texas Register* (23 TexReg 9251).

Filed with the Office of the Secretary of State on December 18, 1998.

TRD-9818450
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Effective date: December 18, 1998
For further information, please call: (512) 239–1966

♦ ♦ ♦

**30 TAC §§106.1–106.8**

The Texas Natural Resource Conservation Commission has withdrawn from consideration for permanent adoption the new §§106.1–106.8, which appeared in the September 11, 1998, issue of the *Texas Register* (23 TexReg 9256).

Filed with the Office of the Secretary of State on December 18, 1998.

TRD-9818451
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Effective date: December 18, 1998
For further information, please call: (512) 239–1966

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### Chapter 116. Control of Air Pollution by Permits for New Construction or Modification

### Subchapter F. Standard Permits

**30 TAC §116.620**

The Texas Natural Resource Conservation Commission has withdrawn from consideration for permanent adoption the amendment to §116.620, which appeared in the September 11, 1998, issue of the *Texas Register* (23 TexReg 9258).

Filed with the Office of the Secretary of State on December 18, 1998.

TRD-9818452
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Effective date: December 18, 1998
For further information, please call: (512) 239–1966

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# ADOPTED RULES

An agency may take final action on a section 30 days after a proposal has been published in the ***Texas Register***. The section becomes effective 20 days after the agency files the correct document with the ***Texas Register***, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

# TITLE 1. ADMINISTRATION

## Part XV. Texas Health and Human Services Commission

### Chapter 351. Coordinated Planning and Delivery of Health and Human Services

**1 TAC §351.11**

The Health and Human Services Commission adopts new §351.11 without changes to the proposed text published in the October 2, 1998, issue of the *Texas Register* (23 TexReg 9880).

The new rule clarifies the information to be included in the quarterly report and the report format used by the executive head of each health and human services agency to the governing body of that agency and to the Health and Human Services Commission on that agency's efforts to streamline and simplify the delivery of services.

The commission received no comments regarding adoption of the new rule.

This new rule is adopted under the Texas Government Code, §531.033, which authorizes the Commissioner of Health and Human Services to adopt rules necessary to carry out the Commission's duties under Chapter 531. The rule affects Texas Government Code §531.0243, which governs reports on delivery of health and human services.

This new rule implements Government Code, §531.0243.

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 December 14, 1998.

TRD-9818341
Marina S. Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Effective date: January 3, 1999
Proposal publication date: October 2, 1998
For further information, please call: (512) 424–6576

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# TITLE 7. BANKING AND SECURITIES

## Part I. Finance Commission of Texas

### Chapter 1. Consumer Credit Commissioner

### Subchapter A. Regulated Loan Licenses

### Division 5. Refund

**7 TAC §§1.91, 1.92, 1.94**

The Finance Commission of Texas (the commission) adopts the repeal of §§1.91, 1.92, and 1.94. This repeal is necessary as the sections that are proposed for repeal relate to the procedures for refunds of Chapter 3 loans due to prepayment or acceleration. Chapter 3, Tex. Civ. Stat., Art. 5069-3.01 *et seq*., was repealed by the 75th Legislature (1997). Moreover, these rules are being replaced by a new set of rules for Chapter 3A, a new chapter of the *Texas Credit Title* which encompasses old Chapter 3 through 5. This repeal is adopted without changes to the proposal as published in the October 23, 1998, issue of the *Texas Register* (23 TexReg 10769).

The agency received no comments regarding the proposal.

The repeal is adopted under Tex. Civ. Stat., Art. 5069-3A.901, which authorizes the Finance Commission to adopt rules to enforce new Chapter 3A. The repeal will not be adopted until the proposed replacement sections are adopted.

The statutory provisions (as currently in effect) affected by the proposed repeal are Tex. Civ. Stat., Art. 5069, Chapter 3A, Subchapter H.

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 December 14, 1998.

TRD-9818343
Leslie L. Pettijohn
Commissioner
Finance Commission of Texas
Effective date: January 3, 1999
Proposal publication date: October 23, 1998
For further information, please call: (512) 936–7640

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### Subchapter G. Interest and Other Charges on Secondary Mortgage Loans

**7 TAC §§1.701–1.708**

The Finance Commission of Texas (the commission) adopts new §§1.701–1.708, concerning the methods for calculating maximum interest and other charges, additional interest for default and deferment under Subchapter G, Chapter 3A, Texas Civ. Stat., Art. 5069. The sections are adopted with non-substantive changes to the proposed text as published in the October 23, 1998, issue of the *Texas Register* (23 TexReg 10769).

Section 1.701 describes the manner for determining the maximum rate or amount of interest by type of transaction.

Section 1.702 details the treatment of odd periods of time, those less than a month in the first installment period, for calculating interest.

Section 1.703 clarifies the procedures for assessing and collecting default charges in connection with a Subchapter G loan.

Section 1.704 explains the method and procedures for calculating and collecting a deferment charge on a Subchapter G loan.

Section 1.705 enumerates additional charges that may be assessed on a Subchapter G loan after consummation of the loan.

Section 1.706 enumerates additional charges that may be collected on or before closing of a Subchapter G loan.

Section 1.707 discusses the treatment and applicability of other fees in the context of a Subchapter G loan.

Section 1.708 addresses contracting for balloon payments on a Subchapter G loan.

The rule adoption is necessary in order to provide basic procedures concerning the methods for calculating maximum interest and other charges, additional interest for default and deferment under Subchapter G, Chapter 3A, Tex. Civ. Stat., Art. 5069.

The agency received one comment from the Independent Bankers Association of Texas concerning the proposed language on attorneys' fees as prescribed by art. 5069- 3A.507(2) and 3A.852(b)(2). The proposed language in the rule addressing attorney fees has been omitted.

The new sections are adopted under Tex. Civ. Stat., Art. 5069-3A.901, which authorizes the Finance Commission to adopt rules to enforce new Chapter 3A.

Texas Civil Statutes, Article 5069-3A, Subchapter G is affected by these proposed new sections.

*§1.701. Maximum Interest Charge.*

(a) Precomputed secondary mortgage loan. In a precomputed secondary mortgage loan, an authorized lender may contract for, charge, or receive an amount of interest that does not exceed the applicable simple interest rate authorized by Tex. Rev. Civ. Stat., Article 5069-Chapter 1D, Subchapter A. Prepaid interest is not permitted unless expressly authorized by statute (*e.g.*, an administrative loan fee).

(b) Interest-bearing loan. In an interest-bearing secondary mortgage loan, an authorized lender may contract for, charge, or receive any rate of interest that does not exceed the applicable amount authorized by Tex. Rev. Civ. Stat., Article 5069- Chapter 1D, Subchapter A, as calculated under the true daily earnings method or the scheduled installment earnings method. Prepaid interest in the form of points, such as origination or discount points, may be contracted for, charged, or received by an originating lender, so long as the total amount of interest contracted for, charged, or received, when spread over the full term of the loan as permitted by Tex. Rev. Civ. Stat., Art. 5069-1C.101, does not exceed the applicable interest limit in Tex. Rev. Civ. Stat., Art. 5069-1D, Subchapter A.

(c) Method of calculation. An authorized lender making loans under Article 5069-3A.501(c) may calculate the rate and amount of interest by any method of calculation as long as the amount of interest charged does not exceed the maximum rate or amount of interest set forth in Article 5069-3A.501 calculated using the specified earnings methods contained in Article 5069-3A.501.

*§1.702. Treatment of Periods Less Than a Full Month.*

(a) To calculate a period of time less than a full month on a precomputed loan:

(1) any period before the first installment due date that includes a part of a month longer than 15 days may be treated as a full month for interest calculation purposes;

(2) any period before the first installment due date that includes a part of the month that is 15 days or less may not be treated as a full month for interest calculation purposes. The amount of interest for the period of 15 days or less must be calculated under the true daily earnings method. This amount may be added to the first installment or, alternatively, it may be allocated among all of the installments.

(b) In respect to counting the additional odd days in a first installment period, an authorized lender, on a regular transaction, may utilize one of the methods listed below so long as the method utilized is consistently applied to all applicable loan transactions initiated by the authorized lender.

(1) *Texas Credit Title* method. Under this method, the odd days are determined by counting the number of days beyond one month from the date of the loan to the scheduled installment due date.

(2) *Regulation Z* method. Under this method, the odd days should be determined in accordance with *Regulation Z - Truth-in-Lending*, 12 C.F.R. Part 226, Appendix J. The odd days are determined by first ascertaining the one month anniversary date preceding the first scheduled installment due date. After determining the one month anniversary date preceding the first scheduled installment due date, the odd days are determined by counting the number of days between the date of the loan and the one month anniversary date.

(c) An authorized lender may not contract for or charge more than the maximum rate authorized by Art. 5069-Chapter 1D, Subchapter A in calculating the interest charge for the additional odd days in the first installment period.

*§1.703. Default Charges.*

(a) Precomputed loan. Additional interest for default may be charged in a precomputed secondary mortgage loan, whether regular or irregular, or on a secondary mortgage loan that employs the scheduled installment earnings method, to the extent it is authorized by Tex. Rev. Civ. Stat., Art. 5069-3A.502 or Art. 5069- 3A.505.

(b) Interest-bearing loan. No additional interest for default may be charged on an interest-bearing secondary mortgage loan except for a loan contracted for on the scheduled installment earnings method.

(c) Contract required. No default charge may be assessed, imposed, charged, or collected unless contracted for in writing by the parties.

(d) Default period. A default charge may not be assessed until the10th day after the installment due date. For example, if the installment due date is the 1st, a default charge may not be assessed until the 12th.

(e) Missed payment covered by insurance. If any payment or partial payment in default is later paid by some form of insurance, such as credit disability insurance or collateral protection insurance, any prior assessment of additional interest for default must be waived.

(f) Pyramiding prohibited. An authorized lender seeking to assess additional interest for default in a precomputed secondary mortgage loan under Tex. Rev. Civ. Stat., Article 5069-3A.502 or Article 5069-3A.505 must comply with the prohibition on the pyramiding of late charges set forth in the Federal Trade Commission Credit Practices Rule at 16 C.F.R. §444.4 or in Regulation AA, 12 C.F.R. Part 227, promulgated by the Board of Governors of the Federal Reserve Board, as applicable.

*§1.704. Deferment.*

(a) Definition. The term deferment means the postponement of the due date of a scheduled installment. A deferment charge prescribed by this section may occur in a loan transaction that employs either the precomputed or the scheduled installment earnings method of calculation. A separate deferment charge is not applicable to a loan transaction that employs the true daily earnings method since an extension of time would be calculated on elapsed daily charges and the parties may agree to modify the terms of the transaction as long as the modification conforms to the requirements of Subchapter G.

(b) Bilateral or mutual deferment. A borrower and a lender may mutually agree to defer any scheduled installment. There is no limit on the number of bilateral deferments that can be made during the time that a loan contract is in effect. Bilateral or mutual deferments must be agreed upon in writing.

(c) Deferment notice. Each deferment must be noted on the account record at the time the deferment is made. A written notice containing the conditions of the deferment must be furnished to the borrower. The deferment notice shall include the name of the lender, the name of the borrower, the loan number, the date of the deferment, the installment or installments being deferred, the deferment period, the amount of the deferment charge, the balance on the account, and the date and amount of the next installment due. The signature of the borrower denotes the borrower's agreement to a bilateral deferment.

(d) Computation of deferment charge for a regular transaction. Each deferment charge on a regular loan transaction shall be computed in accordance with the method prescribed by the loan contract. If the loan contract does not provide for a deferment charge, then no deferment charge may be assessed or collected. A lender may employ any of the prescribed computational methods described in Chapter 3A so long as the computational method employed is consistently utilized throughout the term of the loan.

(1) If the first installment is to be deferred, the interest for the deferment may be no more than the difference between the refund that would be required for prepayment in full on the first installment due date, if it were one month from the date of the loan, and the total interest charged subject to being refunded (*e.g.*, administrative loan fee).

(2) If any installment subsequent to the first installment is deferred, the deferred installment period will be determined by dividing the remaining precomputed balance owed on the account by the regular scheduled installment amount. The dollar amount associated with the deferred installment period must be rounded down to the nearest whole integer. Additionally, no deferred installment period may have a default charge assessed against the deferred installment period. After the determination of the deferred installment period, the additional interest for the deferment may not exceed the difference between the refund that would be required for prepayment in full for the determined deferred installment and the refund that would be required for the prepayment in full of the next succeeding installment. The resulting difference shall be multiplied by the number of months in the deferment period. For example, the terms of a precomputed Art. 5069-3A.501(a) loan are as follows: Date of loan: 09/01/1997; First payment due date: 10/01/1997; Cash Advance: $2,766.48; Finance Charge: $833.52; Total of Payments: $3,600.00; Term: 36 months; Monthly Installment: $100; Refunding method: Sum of the periodic balances; and Annual Percentage Rate: 18%. Assume a deferment is agreed to roughly six months into the contract and, at that time, the remaining precomputed balance owed on the account was $3,095.00 and the regularly scheduled installment amount was $ 100.00. The nearest whole integer for the dollar amount associated with the deferred time period would be 30 ($3,095.00 divided by $100 = 30.95, rounded down to the nearest whole integer, 30). If a default charge had already been assessed on the 30th remaining installment, the nearest whole integer would be 29. Assuming no default charge had been assessed on the 30th remaining installment, the additional interest charge for the deferment would be the difference between the interest refund of the 30th and the 29th installments. This difference would be $37.54 (interest refund as of the 30th installment = $581.96; interest refund as of the 29th installment = $544.42; $581.96 - $544.42 = $37.54). A scheduled installment earnings refund method would yield a slightly different result of $36.69.

(3) In lieu of computational methods one and two, a lender may take the difference between the amount of the refund of unearned interest as if a full prepayment of the loan occurred as of the date of the deferment and the amount of the refund of unearned interest for a full prepayment of the loan one full month prior to the date of the deferment. The results of the computed interest for deferment charge under this subsection should be multiplied by the number of months in the deferred installment period.

(e) No deferment when payment applied to account balance. If a payment has been applied to reduce an account balance, no deferment of any prior balance or installments may be made. This does not preclude the collection of a deferment fee previously assessed but not collected.

(f) No deferment when a default charge has already been collected. No installment may be deferred if a default charge has already been collected on the account or if a partial payment in any amount has been credited to any installment. If an amount equal to one whole installment has already been credited to an account, this entry cannot be altered in order to credit part of the installment to a deferment charge.

(g) Accounting of payment. If a payment is submitted from which a deferment charge is taken, the excess of the amount necessary to bring the account current shall be applied to the remaining balance of the loan. However, any difference that exceeds three dollars shall be returned to the borrower upon the borrower's request.

(h) Noncompliance. Deferment fees not assessed or collected in accordance with the requirements of this rule are subject to refund to the borrower. In the event deferment fees are refunded to the borrower, no rescheduling of the loan contract is permitted.

*§1.705. Amounts Authorized To Be Charged after Consummation.*

(a) Generally. A secondary mortgage loan contract may provide for any one or more of the four listed categories of charges set forth in Tex. Rev. Civ. Stat., Art. 5069- 3A.507. These charges may then be assessed and collected by an authorized lender after consummation of the loan if appropriately included in the contract.

(b) Check return fee. An authorized lender may contract for, assess, or collect the fee authorized by Tex. Rev. Civ. Stat., Art. 9022 in a secondary mortgage loan.

*§1.706. Amounts Authorized To Be Collected on or before Closing.*

(a) Generally. On or before the closing of a secondary mortgage loan, an authorized lender may collect any one or more of the eight categories of charges set forth in Tex. Rev. Civ. Stat., Art. 5069-3A.508(a).

(b) Administrative loan fee. An authorized lender may collect an administrative loan fee pursuant to Acts 1997, 75th Legislature, Chapter 164 on interest bearing and pre- computed loans.

(1) To determine the maximum amount of the administrative fee, an authorized lender should ascertain the amount of the cash advance of the loan. If the cash advance is more than one thousand dollars, then the authorized lender may contract for, charge, or receive $25. If the cash advance is one thousand dollars or less, then the authorized lender may contract for, charge, or receive $10.

(2) An administrative fee may not be contracted for, charged, or received by an authorized lender directly or indirectly on a renewal or modification of an existing obligation more than once in any 180 day period. The administrative fee may be contracted for, charged, or received in a renewal or modification if the authorized lender did not contract for, charge, or receive the administrative fee on any previous obligation within the 180 day period.

(3) Interest may not be assessed, charged, or received on an administrative fee if the assessment causes the total amount of interest to exceed the maximum amount authorized under Chapter 3A.

(c) Appraisal fees. An appraisal fee may be charged when an appraisal has been performed by an appraiser, certified or licensed by the Texas Appraiser Licensing and Certification Board pursuant to Tex. Rev. Civ. Stat., Art. 6573a.2., and who is not a salaried employee of the lender.

(d) Cost of credit report. An authorized lender may collect the cost paid to a credit reporting agency to obtain a credit report pursuant to Tex. Rev. Civ. Stat., Art. 5069-3A.508(a)(5) but may not charge an additional fee for reviewing or evaluating a credit report.

(e) Survey fees. A survey fee may be charged when a survey has been performed by a surveyor, registered or licensed by the Texas Board of Professional Land Surveying pursuant to Tex. Rev. Civ. Stat., Art. 5282c., and who is not a salaried employee of the lender.

(f) Flood zone determination fees. An authorized lender may collect a flood zone determination fee when a flood zone determination is required by a federal agency.

*§1.707. Other Fees.*

(a) Generally. Fees not otherwise permitted by 7 T.A.C. §1.705 or §1.706 may not be charged or collected in a secondary mortgage loan transaction.

(b) Examples of unauthorized fees. Fees not authorized by either 7 T.A.C. § 1.705 or §1.706 include, but are not limited to, commitment fees, those broker fees not covered by subsection (d) of this section, pay-off statement fees, prepayment penalties, fax fees, courier fees, and escrow management fees.

(c) Escrow services. An authorized lender making a secondary mortgage loan may require a borrower to make payments into an escrow trust account for payment of anticipated tax and property insurance expenses. A fee may not be charged for managing an escrow trust account.

(d) Broker fees. An authorized lender may pay a broker fee in a secondary mortgage loan if the consideration paid by the borrower in the loan which involves a broker does not exceed the consideration paid by the borrower in a loan which does not involve a broker.

(1) Example 1: A prospective borrower is quoted a contract rate of 12% plus a 2% origination fee when he makes his inquiry directly to an authorized lender. On this same individual, a broker quotes a contract rate of 12% plus a 4% origination fee for a loan of the same amount from the same authorized lender. The charge for an additional 2% origination fee is an unauthorized charge.

(2) Example 2: A prospective borrower is quoted a finance charge of 12% plus a 2% origination fee when the borrower makes the inquiry directly to an authorized lender. On this same individual, a broker quotes a contract rate of 12% plus a 2% origination fee for a loan of the same amount from the same authorized lender. The loan was then consummated with the authorized lender paying a 2% fee to the broker for originating the loan. Since the authorized lender has absorbed the expense of the fee, no unauthorized charge has been assessed, charged, or received.

(e) Seller's points. Seller's points are treated as interest. Seller's points are aggregated with other interest charges for the purposes of a usury calculation.

(f) Discount points. Discount points are treated as interest. Discount points are aggregated with other interest charges for the purposes of a usury calculation.

(g) Origination fees. An origination fee is treated as interest. An origination fee is aggregated with other interest charges for the purposes of a usury calculation.

*§1.708. Balloon Payments.*

Balloon payments are authorized in a secondary mortgage loan unless prohibited by other applicable law (for example, the high cost mortgage rules of Truth in Lending, Regulation Z, 12 C.F.R. §226.32(d)(1)).

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 December 14, 1998.

TRD-9818342
Leslie L. Pettijohn
Commissioner
Finance Commission of Texas
Effective date: January 3, 1999
Proposal publication date: October 23, 1998
For further information, please call: (512) 936–7640

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## Subchapter H. Refunds in Precomputed Loans

**7 TAC §§1.751–1.761**

The Finance Commission of Texas (the commission) adopts new §§1.751–1.761, concerning the methods for computing refunds of unearned interest due to prepayment or acceleration

of Subchapter E, F, or G transactions that are precomputed as provided in Subchapter H, Chapter 3A, Article 5069. The sections are adopted without changes to the proposed text as published in the October 23, 1998, issue of the *Texas Register* (23 TexReg 10773)

Section 1.751 explains the scope and applicability of the subchapter.

Section 1.752 prescribes the method for calculating refunds of interest of Subchapter E and G loans.

Section 1.753 explains the method for refunding interest in Subchapter E and G loans when prepayment occurs before the first installment due date.

Section 1.754 explains the method for refunding interest in Subchapter E and G loans with a term of sixty months or less.

Section 1.755 explains the method for refunding interest in Subchapter E & G loans with a term of more than sixty months and for which prepayment occurs before the first installment due date.

Section 1.756 explains the method for refunding interest in Subchapter E and G loans with a term of more than sixty months.

Section 1.757 explains the methods for refunding interest in irregular Subchapter E and G loans.

Section 1.758 explains the charges subject to refunding in Subchapter F loans.

Section 1.759 explains the method for refunding installment account handling charges and acquisition charges on Subchapter F loans for which prepayment occurs before the first installment due date.

Section 1.760 explains the method for refunding installment account handling charges and acquisition charges in Subchapter F loans.

Section 1.761 details the situation in which a lender provides excess refunds to a borrower and the applicable procedures for handling the situation.

The rule adoption is necessary due to the repeal of the former Article 5069, Chapters 3, 4, and 5 and the adoption of new Article 5069-3A.001 *et seq.* Generally, these procedures are well established and are commonly used throughout the regulated industry. These rules should serve, however, to clarify the calculations and procedures.

The agency received no comments regarding the proposals.

The new sections are proposed under Tex. Civ. Stat., Art. 5069-3A.901, which authorizes the Finance Commission to adopt rules to enforce new Chapter 3A.

Texas Civil Statutes, Art. 5069-3A, Subchapter H is affected by these proposed new sections.

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 December 14, 1998.

TRD-9818344

Leslie L. Pettijohn

Commissioner

Finance Commission of Texas

Effective date: January 3, 1999

Proposal publication date: October 23, 1998

For further information, please call: (512) 936–7640

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# TITLE 16. ECONOMIC REGULATION

## Part I. Railroad Commission of Texas

## Chapter 3. Oil and Gas Division

### 16 TAC §3.41, §3.42

The Railroad Commission of Texas adopts amendments to §3.41 and §3.42 relating to application for new oil or gas field designation and/or allowable, and oil discovery allowable, without changes to the proposed text as published in the October 30, 1998 issue of the *Texas Register* (23 TexReg 11014). The amendments move the bottom-hole pressure requirement from §3.42 to §3.41, allow alternative methods of bottom-hole pressure determination, and clarify the requirements and the person(s) required to comply therewith.

Proposed amendments to §3.41 and §3.42 were originally published in the May 29, 1998 issue of the *Texas Register* (23 TexReg 5544). The originally proposed amendments were withdrawn, revised, and reproposed based on comments received to the originally proposed text. No comments to the reproposed amendments (published October 30, 1998) were received.

Comments to the originally proposed amendments were received from two associations: the Texas Oil and Gas Association ("TxOGA") and the Texas Independent Producers & Royalty Owners Association ("TIPRO"). TxOGA indicated that it supports the intent of the amendments, but recommended two specific changes to §3.41 as published.

First, TxOGA noted that the preamble to the originally proposed amendments stated that the amendments exempted certain low volume (15 barrels of oil per day or less) discovery oil wells from the bottom-hole test requirement. However, the originally proposed amendments to §3.41(a)(3) provided that ". . . The commission staff may grant an exception to the requirement of reporting bottom-hole pressure for oil wells that have a potential production test of 15 barrels of oil per day or less."

TxOGA contended that there is a distinct difference between being exempted from a requirement and having to obtain an exception to the requirement. The commission agrees, but declines to adopt TxOGA's proposed language for reasons discussed in response to the TIPRO comments discussed later in this preamble.

Second, TxOGA suggested that the commission make the proposed exemption more meaningful to both operators and the state by extending it to all wells with potential production of 50 barrels of oil per day or less. However, the commission declines to make this suggested change for reasons discussed below and because it would exempt approximately 40 percent of all new oil discoveries, and thus eliminate 40 percent of all new oil discovery bottom- hole pressure data collected by the commission. The commission believes that the importance of the bottom-hole pressure data collected from wells with potential tests in the range between 15 and 50 barrels per day, which are relatively good producers, outweighs the one-time monetary

expenses incurred in obtaining the test data, especially since the adopted amendments allow for additional, less expensive testing methods.

TIPRO, in its comments to the previously proposed amendments, agreed with all of the suggested changes except one: TIPRO contended that no oil wells should be exempted from the bottom- hole pressure test requirements, no matter how marginal a producer, because such exemption would deny the public information that may prove valuable in the future in developing the state's remaining oil resources.

TIPRO further asserted that such bottom-hole pressure data are needed to identify new field discoveries, and that without the data, operators will be unaware of the pressure characteristics of reservoirs discovered by low-volume wells.

Finally, TIPRO suggested that the bottom-hole pressure tests range in costs from $250 to $600 each. TIPRO therefore believes that a single erroneous decision based on the lack of bottom-hole pressure information might cost the industry substantially more than the savings, and thus, it remains in the long-term interest of the state to continue to require such bottom-hole pressure data.

The commission suggested to TxOGA and TIPRO that they discuss their differing positions in an attempt to reach a consensus regarding the proposed exemption, which they did. The two associations now agree that the proposed exemption to the requirement of reporting bottom-hole pressures for new oilfield discovery wells with a potential production test of 15 BOPD or less should be deleted to preserve the historical availability of the information within the public domain for use by oil operators. The commission agrees that such preservation of well information is in the public interest and, accordingly, the adopted amendments delete the exemption for oil wells that have a potential production test of 15 barrels of oil per day or less.

The amendments move the bottom-hole pressure requirement from §3.42 to §3.41, and permit additional bottom-hole pressure test methods other than pressure build-up tests. Additionally, some amendments reword existing subsections without changing any substantive provisions in order to better clarify the requirements and the person(s) required to comply.

The amendments to §3.41 add revised paragraph (3) to subsection (a) requiring bottom-hole pressure data for oil wells to be included on the application for new oil field designation and/or allowable. The bottom-hole pressure test requirement, currently in §3.42, is being moved to §3.41 to better facilitate applications for new oil or gas designation and/or allowable. Moving the bottom-hole test requirement to §3.41, and thus requiring that the bottom-hole pressure data be included on the application for new oil or gas field designation and/or allowable, will ensure that bottom-hole pressure data are available to the commission staff when reviewing new field discovery applications.

In addition, the amendments to §3.41(a)(3) give operators of discovery oil wells the option to determine bottom-hole pressures by methods which are generally less costly than pressure build-up tests.

The remaining amendments to §3.41 renumber paragraphs (3) through (5) of subsection (a) and reword them, without changing the substantive provisions, in order to clarify the regulations.

The amendments to §3.42 reword subsection (a), without changing any substantive provisions, to clarify the rule. In addition, the amendments to §3.42 delete subsection (c), which contained the subsurface pressure test requirement, and redesignate §3.42(d) as §3.42(c).

The commission adopts the amendments pursuant to Texas Natural Resources Code §§81.051, 81.052, 85.042, 85.201, 85.202, 86.041, and 86.042, which authorize the commission to prevent waste of oil and gas and to protect correlative rights.

The Texas Natural Resources Code, §§85.053, *et seq.*, and 88.051, are affected by the adopted amendments to these sections.

Issued in Austin, Texas on December 15, 1998.

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 December 15, 1998.

TRD-9818376
Mary Ross McDonald
Deputy General Counsel
Railroad Commission of Texas
Effective date: January 4, 1999
Proposal publication date: October 30, 1998
For further information, please call: (512) 463–7008

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# Chapter 7. Gas Utilities Division

## Subchapter A. Procedural Rules

### 16 TAC §7.4

The Railroad Commission of Texas adopts amendments to §7.4, relating to procedure for abandonment or discontinuance of service by gas utilities, with changes to the proposal published in the September 11, 1998, issue of the *Texas Register* (23 TexReg 9194). Section 7.4 sets forth procedures and standards for consideration of an application to abandon or discontinue service at a city gate or local distribution company, or to residential and commercial customers.

The amendments enhance and clarify the process by which a gas utility must file an application for abandonment or permanent discontinuance of service. The amendments will improve the effectiveness and efficiency of the regulation of gas utilities by providing more detailed guidance as to the filing requirements related to an application for abandonment and by setting out specific time lines within which the commission must act on the application.

The amendments improve the current rule in several ways. First, subsection (a) establishes specific guidelines for abandonment or permanent discontinuance of service to city gate or local distribution companies, and subsection (b) establishes the guidelines for abandonment or permanent discontinuance of service to residential and commercial customers. The current rule addresses only abandonment of service at a city gate or to a local distribution company.

Second, the amendments expand the information to be filed with the application for abandonment. The current rule requires that a gas utility file with its abandonment application the number

of affected customers in each class, the names and addresses of all affected customers, the specific reasons for the proposed abandonment, the alternative energy sources available to the affected customers, and any previous notice provided to the affected customers. In addition to the information now required to be filed, the amendments require an application for abandonment of service to a city gate or a local distribution company to contain a description, age, and condition of the pipeline or plant proposed for abandonment; the revenue from and cost to continue the existing service; the cost of the alternative energy sources on an equivalent MMBtu basis; a statement that the application is subject to commission approval; and a statement of the right of the city gate or local distribution company to intervene. For abandonment of residential and commercial customers, the amendment further requires the cost per customer of each conversion to an alternative energy source; the terms of any agreements, including qualifying offers, for the conversion to an alternative energy source; copies of any consents to abandon from the affected customers; and instead of a statement of the right to intervene, a statement of the right of the affected customers to protest the application and the procedure for doing so.

Third, the amendments establish time lines for the commission to act on abandonment applications. For abandonment of city gate or local distribution companies, the amendments specify that a formal hearing be held within 60 days after the application is filed if another party participates or intervenes, or the Director of the Gas Services Division will act on the application administratively within 45 days if no participation or intervention is granted to other parties. For abandonment of residential and commercial customers, the amendments specify that a formal hearing be held within 60 days after the application is filed if a customer files a protest within 30 days after the application is filed, or the Director of the Gas Services Division will act on the application administratively within 45 days if not all customers consent to the abandonment or receive a qualifying offer, but none file a protest within 30 days after the application is filed. Also, the Director of the Gas Services Division will act on the application administratively within 30 days if all customers consent to the abandonment or receive a qualifying offer, but none file a protest within 15 days after the application is filed. In any case where the Director of Gas Services denies an application for abandonment, the amendments specify that the gas utility may request a formal hearing be held within 60 days after the date the application was denied. The current rule requires a formal hearing be held if another party intervenes in an application, and allows the application to be handled administratively if there are no intervenors, but the rule sets no other time lines to act either formally or administratively.

Fourth, the amendments define a qualifying offer as an offer to convert all of a residential or commercial customer's gas burning facilities to the lowest cost available alternative energy source, including a tank filled once with a liquid alternative energy source. The amendments allow the customer to elect to receive the cash equivalent of the cost of conversion to the lowest cost alternative energy source.

Fifth, the amendments require that if any residential or commercial customers become affected customers as a result of an application to abandon or permanently discontinue service to a city gate or local distribution company, then the local distribution company must file an application for abandonment of the residential and commercial customers.

Sixth, the amendments explicitly delegate authority to the Director of the Gas Services Division to act administratively on applications to abandon or permanently discontinue service, subject to the conditions set forth in the amendments.

Seventh, the amendments clarify the exemption for filing an application under emergency conditions. The concept of an emergency abandonment under the existing rule is replaced with the concept that a temporary termination of service due to a pipeline safety emergency is not to be considered abandonment of service. If a gas utility determines not to resume service after a pipeline emergency, the amendments establish a time line for the gas utility to file an abandonment application 30 days after the temporary termination of service.

Eighth, the amendments explicitly state that the gas utility has the burden of proof to show that the proposed abandonment is reasonable and necessary and is not contrary to the public interest. The amendments establish conditions the commission will consider when evaluating an application, including whether continued service is no longer economically viable for the gas utility; whether the potentially abandoned customers have any alternatives and, if so, how many, and at what cost; whether any customer has made investments in reliance on continued availability of natural gas, where an alternative energy source is not viable; whether the gas utility has failed to properly maintain the facilities proposed for abandonment, rendering them unsalvageable due to neglect; and any other considerations affecting the potentially abandoned customers.

The commission received one comment on the proposed amendments, filed by the Association of Texas Intrastate Natural Gas Pipelines (ATIP). ATIP initially filed a petition for rulemaking to amend §7.4, and worked with commission staff to develop final proposed amendment language. ATIP supports the amendments as proposed, but suggested a clarifying change to the wording in subsection (a)(3). This subsection addresses the instance in which abandonment of service to a local distribution company (LDC) affects service to the LDC's residential or commercial customers. ATIP's suggested change is consistent with the intent of the proposed amendment, does not alter the effect of the subsection, and provides clearer wording. The suggested change has been incorporated into the adopted amendments.

The commission adopts the amendments under Texas Utilities Code, §104.001, which authorizes the commission to determine the classification of customers and services and to ensure that gas utilities comply with the obligation of the Code, and §121.151, which authorizes the commission to establish rules for the control and supervision of gas pipelines in their relations with the public; and under Texas Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

Texas Utilities Code, §§104.001 and 121.151, and Texas Government Code, §2001.004, are affected by the amendments.

Issued in Austin, Texas, on December 15, 1998.

*§7.4. Procedure for Abandonment or Discontinuance of Service.*

(a) Service to a Local Distribution Company or City Gate Customer. A gas utility shall obtain written commission approval prior to the abandonment or permanent discontinuance of service to any local distribution company or city gate customer that involves the removal or abandonment of facilities other than a meter.

(1) Except in pipeline safety emergencies, the gas utility shall file an application to abandon or permanently discontinue service to a local distribution company or city gate customer with the Director of the Gas Services Division at least 60 days prior to the proposed effective date of the proposed abandonment or permanent discontinuance of service. In addition to the information required in §1.25 of this title (relating to Form and Content of Pleadings), the application shall state the following:

(A) the number of affected customers in each class;

(B) the names and addresses of the local distribution company or city gate customer affected;

(C) the specific reasons for the proposed abandonment or permanent discontinuance of service;

(D) a description, age, and condition of the pipeline or plant that the gas utility proposes to abandon or through which it proposes to permanently discontinue service;

(E) the revenue from and cost to continue the existing service to the affected local distribution company or city gate customers;

(F) all reasonable alternative energy sources available to the affected local distribution company or city gate customers, and the cost of such energy sources on an MMBtu equivalent basis;

(G) the cost per customer of each conversion to available alternative energy sources;

(H) any previous notice provided by the utility to the affected local distribution company or city gate customer,

(I) a statement that the application is subject to commission approval; and

(J) a statement of the affected local distribution company or city gate customer's right to intervene in the application.

(2) The gas utility shall send a copy of the application to the affected local distribution company or the affected city gate customer on the same day that the gas utility files the application to abandon or discontinue service with the Director of the Gas Services Division.

(A) If a person files a statement of intent to participate or motion to intervene with the commission within 30 days from the date of the filing of the application, and party status is thereby subsequently established, a formal hearing shall be held within 60 days following the date on which the application is filed.

(B) If the commission does not receive and grant a timely-filed statement of intent to participate or intervention pleading, then the Director of the Gas Services Division shall act administratively on the application to abandon or permanently discontinue service within 45 days following the date on which the gas utility filed the application. In the event that the director denies the application administratively, the gas utility may request that a formal hearing be held within 60 days following the date on which the director denies the application. The gas utility shall file any request for a formal hearing within 30 days of the date the director administratively denies an application to abandon or permanently discontinue service.

(3) If, upon the granting of the application to abandon or permanently discontinue service, the local distribution company would no longer provide service to any residential or commercial customer because of such abandonment, then the local distribution company shall file an application to abandon or permanently discontinue service under subsection (b) of this section.

(4) The Director of the Gas Services Division or the director's delegate shall have the authority to act administratively on abandonment or permanent discontinuance applications that satisfy the conditions of this subsection. The term Director of the Gas Services Division when used in this section shall mean the Director of the Gas Services Division or the director's delegate.

(5) Temporary termination of service due to a pipeline safety emergency shall not be considered to be abandonment or permanent discontinuance of service under the terms of this section. If the gas utility determines not to resume service as a result of a pipeline safety emergency, then the gas utility shall file an application under this section within 30 days of the temporary termination of service.

(6) The gas utility shall have the burden of proof to show that the proposed abandonment or permanent discontinuance of service is reasonable and necessary and is not contrary to the public interest. The conditions to be considered when making a determination regarding an application for abandonment or permanent discontinuance of service shall include:

(A) whether continued service is no longer economically viable for the gas utility;

(B) whether the potentially abandoned customers have any alternatives, how many, and at what cost;

(C) whether any customer has made investments or capital expenditures in reliance on continued availability of natural gas, where use of an alternative energy source is not viable;

(D) whether the utility has failed to properly maintain the facilities proposed for abandonment, rendering them unsalvageable due to neglect; and

(E) any other considerations affecting the potentially abandoned customers.

(b) Service to Residential and Commercial Customers. A gas utility shall obtain written commission approval prior to the abandonment or permanent discontinuance of service to any residential or commercial customer that involves the removal or abandonment of facilities other than a meter. This subsection shall not apply to discontinuance of service to residential or commercial customers for any of the reasons set forth in §7.45 of this title (relating to Quality of Service).

(1) Except in pipeline safety emergencies, the gas utility shall file an application to abandon or permanently discontinue service with the Director of the Gas Services Division at least 60 days prior to the proposed effective date of the proposed abandonment or permanent discontinuance of service to any residential or commercial customer involving the removal or abandonment of facilities other than a meter. In addition to the information required in §1.25 of this title (relating to Form and Content of Pleadings), the application shall state the following:

(A) the number of directly affected customers in each class of service;

(B) the names and addresses of all directly affected customers;

(C) the specific reasons for the proposed abandonment or permanent discontinuance of service;

(D) a description, age, and condition of the pipeline or plant that the gas utility proposes to abandon or through which it proposes to permanently discontinue service;

(E) the revenue from and cost to continue the existing service to the directly affected customers;

(F) all reasonable alternative energy sources available to the directly affected customers, and the cost of such energy sources on an MMBtu equivalent basis;

(G) the cost per customer of each conversion to available alternative energy sources;

(H) the terqualifying offers, to, directly affected customers by the gas utility for the conversion of customers' appliances to enable the use of alternative energy sources;

(I) copies of any consents to abandonment or permanent discontinuance obtained by the utility from directly affected customers;

(J) any previous notice provided by the utility to the directly affected customer,

(K) a statement that the application is subject to commission approval; and

(L) a statement of the directly affected customer's right to protest the application and the procedure for filing such a protest.

(2) The gas utility shall send a copy of the application to all directly affected customers on the same day that the gas utility files the application to abandon or permanently discontinue service with the Director of the Gas Services Division.

(A) If any of the directly affected customers files a protest within 30 days following the date on which the application is filed, a formal hearing shall be held within 60 days following the date on which the application is filed.

(B) If all of the directly affected customers have not consented to the abandonment or permanent discontinuance of service and if the gas utility has not given all of the directly affected customers a qualifying offer, as defined in paragraph (3) of this subsection, but none of the directly affected customers files a protest within 30 days following the date on which the application is filed, the Director of the Gas Services Division shall act administratively on the application within 45 days following the date on which the application is filed. The director may seek additional information from the directly affected customers to determine whether they have received adequate information regarding the consequences of the proposed abandonment. In the event that the director denies the application administratively, the gas utility may request that a formal hearing be held within 60 days following the date on which the director denies the application. The gas utility shall file any request for a formal hearing within 30 days of the date the director administratively denies an application to abandon or permanently discontinue service.

(C) The Director of the Gas Services Division shall act administratively on the application within 30 days following the date on which the gas utility files the application if either all of the directly affected customers consent to the abandonment or permanent discontinuance of service and none of the directly affected customers files a protest within 15 days following the date on which the gas utility files the application; or the gas utility has given all of the directly affected customers a qualifying offer, as defined in paragraph (3) of this subsection and none of the directly affected customers files a protest within 15 days following the date on which the gas utility files the application. In the event that the director denies the application administratively, the gas utility may request that a formal hearing be held within 60 days following the request for a hearing. The gas utility shall file any request for a formal hearing within 30 days of the date the director administratively denies an application to abandon or permanently discontinue service.

(3) A qualifying offer for the purposes of this section means an offer to convert all of the residential or commercial customers' gas burning facilities to the lowest cost available alternative energy source, including, at a minimum, a single tank of normal size for the customer's premises filled once with any liquid alternative energy source. At the customer's election, the qualifying offer shall be the cash equivalent of the cost of conversion to the lowest cost available alternative energy source.

(4) The Director of the Gas Services Division or the director's delegate shall have the authority to act administratively on abandonment or permanent discontinuance applications that satisfy the conditions of this subsection. The term Director of the Gas Services Division when used in this section shall mean the Director of the Gas Services Division or the director's delegate.

(5) Temporary termination of service due to a pipeline safety emergency shall not be considered to be abandonment or permanent discontinuance of service under the terms of this section. If the gas utility determines not to resume service as a result of a pipeline safety emergency, then the gas utility shall file an application under this section within 30 days of the temporary termination of service.

(6) The gas utility shall have the burden of proof to show that the proposed abandonment or permanent discontinuance of service is reasonable and necessary and is not contrary to the public interest. The conditions to be considered when making a determination regarding an application for abandonment or permanent discontinuance of service shall include:

(A) whether continued service is no longer economically viable for the gas utility;

(B) whether the potentially abandoned customers have any alternatives, how many, and at what cost;

(C) whether any customer has made investments or capital expenditures in reliance on continued availability of natural gas, where use of an alternative energy source is not viable;

(D) whether the utility has failed to properly maintain the facilities proposed for abandonment, rendering them unsalvageable due to neglect; and

(E) any other considerations affecting the potentially abandoned customers.

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 December 15, 1998.

TRD-9818375
Mary Ross McDonald
Deputy General Counsel
Railroad Commission of Texas
Effective date: January 4, 1999
Proposal publication date: September 11, 1998
For further information, please call: (512) 463–7008

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## Chapter 9. Liquefied Petroleum Gas Division

### Subchapter A. General Applicability and Requirements

**16 TAC §9.32, §9.34**

The Railroad Commission of Texas adopts amendments to §9.32 and §9.34, relating to LP-gas advisory committee and LP-gas (welding) advisory committee, without changes to the versions published in the November 6, 1998, issue of the *Texas Register* (23 TexReg 11265). Specifically, the Commission amends §9.32(b) and §9.34(b) to change the date on which each advisory committee is abolished in order to continue both committees in existence until August 31, 2002. The amendment in §9.32(a)(4) reflects organizational changes within the Commission.

The Commission received no comments on the proposal.

The amendments are adopted under the Texas Natural Resources Code, §113.051, which authorizes the Commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public.

Texas Natural Resources Code, §113.051, is affected by the adopted amendments.

Issued in Austin, Texas, on December 15, 1998.

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 December 16, 1998.

TRD-9818392
Mary Ross McDonald
Deputy General Counsel
Railroad Commission of Texas
Effective date: January 5, 1999
Proposal publication date: November 6, 1998
For further information, please call: (512) 463–7008

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## Chapter 13. Regulations for Compressed Natural Gas (CNG) and Liquefied Natural Gas (LNG)

### Subchapter G. General Applicability and Requirements

**16 TAC §13.2001**

The Railroad Commission of Texas adopts amendments to §13.2001 relating to the LNG advisory committee without changes to the version published in the November 6, 1998, *Texas Register* (23 TexReg 11266). Specifically, the Commission amends subsection (b) to extend the date on which the advisory committee is abolished in order to continue the committee in existence until August 31, 2002. Also, the amendment in subsection (a)(4) reflects organizational changes within the Commission.

The Commission received no comments on the proposal.

The amendment is adopted under Texas Natural Resources Code, §116.012, which authorizes the commission to adopt rules and standards relating to liquefied natural gas activities to protect the health, welfare, and safety of the general public.

The Texas Natural Resources Code, §116.012, is affected by the adopted amendment.

Issued in Austin, Texas, on December 15, 1998.

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 December 16, 1998.

TRD-9818391
Mary Ross McDonald
Deputy General Counsel
Railroad Commission of Texas
Effective date: January 5, 1999
Proposal publication date: November 6, 1998
For further information, please call: (512) 463–7008

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# Part II. Public Utility Commission of Texas

## Chapter 25. Substantive Rules Applicable to Electric Service Providers

### Subchapter D. Records, Reports, and Other Required Information

**16 TAC §25.84**

The Public Utility Commission of Texas (commission) adopts new §25.84, relating to Annual Reporting of Affiliate Transactions for Electric Utilities. The section is adopted with changes to the proposed text as published in the September 25, 1998, issue of the *Texas Register* (23 TexReg 9680). This section is adopted under Project Number 17549.

Project Number 17549, *Rulemaking to Address Affiliate Activities,* was established June 25, 1997, with a request from commission staff for all parties to file lists of issues to be included in a rulemaking on affiliate relationships. At the outset, the rulemaking encompassed both industries that the commission regulates, electric and telecommunications. A workshop was held on December 18, 1997, to discuss draft rule language. On February 13, 1998, the telecommunications portion of the rulemaking was severed into a separate rulemaking, Project Number 18811, *Rulemaking to Address Affiliate Activities for Telecommunications Utilities.* The electric rulemaking was restyled as *Code of Conduct for Electric Utilities and Their Affiliates* and retained Project Number 17549. In Project Number 17549, new rule §§25.84, 25.271-25.274 were published for comment in the *Texas Register* on May 22, 1998 (23 TexReg 5294). A public hearing was held on July 13, 1998, pursuant to the Administrative Procedure Act §2001.029, Texas Government Code Annotated (Vernon 1998) (APA) to solicit oral comments from interested parties. On August 20, 1998, the commission withdrew the proposed new rule sections. A new §25.84 was published in the *Texas Register* on September 25, 1998,

(23 TexReg 9680) and is the rule section presently under consideration. No party requested a public hearing on this matter pursuant to APA §2001.029.

A workshop was held on September 28, 1998, to consider draft report forms to be used by utilities to meet the requirements of §25.84. As stated in the preamble of the rule proposal, comments on the form and substance of the reports are being considered separately from the comments on the rule section itself. Prior to adoption of a reporting form or subsequent amendment to the form, the commission will consider comments on the proposed report form pursuant to §22.80 of this title (relating to Commission Prescribed Forms). Some parties filed comments on the reporting format within their comments on the rule language. To clarify the deadline for commenting on the draft report form, an amended notice was issued on November 6, 1998, requesting that parties file any written comments on the draft forms by November 16, 1998, if they had not already done so.

New §25.84 replaces the rule provision formerly located at §23.11(c) of this title (relating to General Reports) and requires that electric utilities report to the commission annually on affiliate activities.

The following parties filed initial comments: Brazos Electric Power Cooperative, Inc. (Brazos), Central and Southwest Corporation (CSW), El Paso Electric Company (EPE), Entergy Gulf States, Inc. (EGS), Houston Lighting and Power Company (HL&P), the Office of Public Utility Counsel (OPC), Southwestern Public Service Company (SPS), and Texas Electric Cooperatives, Inc. (TEC). Only OPC filed reply comments.

Brazos and TEC expressed concern regarding the interpretation of "affiliate" as defined in the Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001-63.063 (Vernon 1998) (PURA), and requested that the commission clarify whether percentages of ownership in a cooperative are "voting securities" so as to make distribution cooperatives "affiliates" of generation and transmission (G&T) cooperatives under PURA and the commission's rules.

The commission concludes that distribution cooperatives are affiliates of G&T cooperatives pursuant to PURA §11.003(2). The ordinary meaning of the word "security" is evidence of ownership or creditorship. Therefore, percentages of ownership in a cooperative constitute "voting securities" for the purpose of interpreting PURA §11.003(2), making distribution cooperatives "affiliates" of G&T cooperatives under PURA and the commission's rules. Additionally, the relationship is reciprocal; G&T cooperatives also are affiliates of distribution cooperatives.

Brazos, CSW, SPS, and TEC commented that the requirement for a utility to reduce to writing and file with the commission copies of any contracts or agreements with its affiliates is too burdensome. Brazos and TEC urged the commission to enumerate the type of contracts and agreements to be filed, so as to limit the total number required to be filed, and CSW and SPS requested that the requirement be deleted. OPC disagreed that filing of the agreements would be burdensome, but suggested that once an agreement is filed, refiling should not be necessary unless significant changes have taken place; such minor changes could be noted with an amendment sheet. EGS and HL&P did not object to the filing of service agreements.

The commission disagrees that filing of contracts between utilities and their affiliates is overly burdensome. Any reasonable, legitimate agreement between a utility and an affiliate should either be in writing already or should be able to be reduced to writing fairly readily, and the actual filing with the commission is a simple task with which utilities are intimately familiar because of their regular interaction with the commission. Furthermore, PURA §14.003(5)(A) gives the commission explicit authority to require the filing of "a contract or arrangement between a public utility and an affiliate," and PURA §14.003(6) gives the commission authority to require that contracts or arrangements be reduced to writing, if they are not already in writing, and filed with the commission. The commission agrees, however, with OPC's suggestion to simplify filing of contracts by allowing an amendment sheet to be filed in lieu of a new contract if the contract is essentially the same. Therefore, §25.84(d) of the rule is revised accordingly. In addition, the commission clarifies that such contracts or amendments should be filed concurrently with their annual filings of affiliate activities.

EPE, EGS, and SPS commented that information to be filed may be sensitive and therefore utilities should be able to file information confidentially. Similarly, TEC stated that there should be a provision for redacting trade secrets.

The commission concludes that information regarding trade secrets and the sale of electricity by an affiliate to a utility shall be treated in accordance with PURA §14.154, which protects such information from disclosure under Texas Government Code Annotated §§552.002-552.352. If a utility desires to maintain confidentiality over any other information provided in compliance with this rule, the utility should request a protective order in accordance with the commission's procedural rules. The utility should not assume, however, that all information supplied will be automatically designated as confidential. No change to the rule language in §25.84 is required to ensure that confidential information is protected in an appropriate manner.

EGS, HL&P, and SPS commented that the rule should distinguish between regulated and non-regulated affiliates because reporting of information about regulated affiliates is unnecessary. OPC disagreed with this view, because the vast majority of affiliate transactions occur between utilities and their service companies, which would mean that the commission would receive very little information about affiliate transactions under this rule.

The commission disagrees that reporting of affiliate information about regulated affiliates is unnecessary. In order for the commission to gain a full understanding of the transactions that are taking place between a utility and its affiliates, it must obtain information about transactions with all affiliates, regardless of whether this commission or another regulatory body has jurisdiction over one or more of the utility's affiliates. Therefore, the commission declines to revise the rule section to distinguish between regulated and non-regulated affiliates.

In their initial comments on the proposed rule language, several of the parties commented on the draft reporting forms which were filed in this project on September 10, 1998. These comments will be summarized in a separate document for consideration by the commission. TEC indicated a preference for the reporting format to be stated in the rule itself so that interested parties will have the opportunity to comment when changes to the forms are contemplated.

The commission declines to include the report format as part of the rule language so that future revisions of the format will be simplified and accomplished in a shorter time frame than that allowed by the standard rulemaking process. The commission notes, however, that any interested party will have notice and opportunity to comment on any future revisions to the report forms pursuant to §22.80 of this title (relating to Commission Prescribed Forms).

OPC commented that it is in favor of the rule. SPS stated that it supports the rule to the extent that it emulates the form and function of previous §23.11(c), but objected to certain provisions of the rule. Brazos, CSW, EPE, EGS, HL&P, and TEC did not explicitly oppose the rule section, but objected to certain provisions in it.

This new section is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated (Vernon 1998) (PURA) §§14.001, 14.002, 14.003, and 14.151. Section 14.001 grants the commission the general power to regulate and supervise the business of each utility within its jurisdiction. Section 14.002 provides the commission authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction. Section 14.003 grants the commission authority to require submission of information by the utility regarding its affiliate activities. Section 14.151 grants the commission authority to prescribe the manner of accounting for all business transacted by the utility.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.001, 14.002, 14.003, 14.151.

*§25.84. Annual Reporting of Affiliate Transactions for Electric Utilities.*

(a) Purpose. This section establishes annual reporting requirements for transactions between electric utilities and their affiliates.

(b) Application. This section applies to all electric utilities, as defined in the Public Utility Regulatory Act (PURA) §31.002(1), operating in the State of Texas, and to affiliates as defined in PURA §11.003(2) to the extent specified herein.

(c) Annual report of affiliate activities. A "Report of Affiliate Activities" shall be filed annually with the commission. Using forms approved and provided by the commission, an electric utility shall report activities among itself and its affiliates. The report shall be filed by June 1, and shall encompass the period from January 1 through December 31 of the immediately preceding year.

(d) Copies of contracts or agreements. An electric utility shall reduce to writing and file with the commission copies of any contracts or agreements it has with its affiliates. The requirements of this subsection are not satisfied by the filing of an earnings report. All contracts or agreements shall be filed by June 1 of each year as attachments to the Report of Affiliate Activities required in subsection (c) of this section. In subsequent years, if no significant changes have been made to the contract or agreement, an amendment sheet may be filed in lieu of refiling the entire contract or agreement.

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 December 21, 1998.

TRD-9818501
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Effective date: January 10, 1999
Proposal publication date: September 25, 1998
For further information, please call: (512) 936–7308

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# TITLE 19. EDUCATION

## Part II. Texas Education Agency

### Chapter 157. Hearings and Appeals

### Subchapter B. Hearings Held Under the Texas Proprietary School Act

**19 TAC §157.21**

The Texas Workforce Commission (Commission) adopts the repeal of 19 TAC §157.21, concerning Hearings Held under the Texas Proprietary School Act, without changes to the proposed text as published in the October 30, 1998 issue of the *Texas Register* (23 TexReg 11036).

The purpose of the repeal is to remove an obsolete rule from the Texas Administrative Code. The Proprietary School program was transferred to the Commission from the Texas Education Agency pursuant to the 74th Legislature, Regular Session, Chapter 655, §11.03. The Commission has adopted 40 TAC Chapter 823 regarding General Hearings as the procedure applicable to proprietary school hearings, which made the older Texas Education Agency rule, §157.21, obsolete.

The Commission received no comments on the proposed repeal.

The repeal of the rule is adopted under Texas Labor Code, §301.061 and §302.021, which provides the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of the Commission's programs.

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 December 17, 1998.

TRD-9818418
John Moore
Assistant General Counsel
Texas Workforce Commission
Effective date: January 6, 1999
Proposal publication date: October 30, 1998
For further information, please call: (512) 463–8812

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# TITLE 22. EXAMINING BOARDS

## Part VIII. Texas Appraiser Licensing and Certification Board

### Chapter 153. Provisions of the Texas Appraiser Licensing and Certification Act

**22 TAC §153.20**

The Texas Appraiser Licensing and Certification Board adopts an amendment to §153.20 relating to Guidelines for Revocation, Suspension or Denial of Licensure or Certification without change to the proposed text as published in the September 18, 1998, issue of the *Texas Register* (23 TexReg 9519) and will not be republished.

Specifically §153.20(e) was amended to restore language which was inadvertently deleted during rule revisions in the Spring of 1997. The reinstated language deals with requiring written complaints to initiate investigations, not accepting anonymous complaints, and the board's authority to initiate a complaint on its own motion.

No comments were received regarding the proposed amendment.

The amendment is adopted under the Powers and Duties of the Board, Texas Appraiser Licensing and Certification Act, §5 (Texas Civil Statutes, Article 6573a.2) which provides the Board with rulemaking authority.

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 December 14, 1998.

TRD-9818340
Renil C. Liner
Commissioner
Texas Appraiser Licensing and Certification Board
Effective date: January 3, 1999
Proposal publication date: September 18, 1998
For further information, please call: (512) 465–3950

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## Part XXIX. Texas Board of Professional Land Surveying

### Chapter 663. Standards of Responsibility and Rules of Conduct

### Subchapter B. Professional and Technical Standards

**22 TAC §663.17**

The Texas Board of Professional Land Surveying adopts an amendment to §663.17, concerning monumentation, without changes to the proposed text as published in the October 2, 1998, issue of the *Texas Register* (23 TexReg 9911) and will not be republished.

The amendment will provide a method for the public to identify the responsible registrant or associated employer who sets boundary corner monumentation.

Comments were received in favor and opposed to the rule as proposed. Those in favor of the proposed rule commented in regards to the type of mark required, which corners need such marked monumentation and/or clarification regarding the phrase, "Where practical".

The board's response to comments opposed to the proposed rule was "the surveyor must apply professional judgement to the fact situations presented with each surveyor to determine what is practical for the specific situation. Use of marked monumentation, where practical, will provide the public with a way to contact the surveyor if additional information is needed.

The amendment is adopted under Texas Civil Statutes, Article 5282c, §9, which provides the Texas Board of Professional Land Surveying with the authority to make and enforce all reasonable and necessary rules, regulations and bylaws not inconsistent with the Texas Constitution, the laws of this state, and this Act.

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

Filed with the Office of the Secretary of State on December 21, 1998.

TRD-9818492
Sandy Smith
Executive Director
Texas Board of Professional Land Surveying
Effective date: January 10, 1999
Proposal publication date: October 2, 1998
For further information, please call: (512) 452–9427

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# TITLE 30. ENVIRONMENTAL QUALITY

## Part I. Texas Natural Resource Conservation Commission

### Chapter 285. On-Site Sewage Facilities

The Texas Natural Resource Conservation Commission (commission) adopts amendments to §285.2, and §285.32 and adopts a new §285.8 concerning definitions, updating of testing criteria, and permitting and maintenance requirements for aerobic treatment systems. Section 285.32 are adopted with changes and §285. 2 and §285.8 are adopted without changes to the text as published in the September 25, 1998, issue of the *Texas Register* (23 TexReg 9701).

EXPLANATION OF ADOPTED RULE

These amendments will bring this chapter into conformity with House Bill (HB) 3059, passed by the 75th Legislature (1997), which amended Chapter 366 of the Health and Safety Code related to on-site sewage disposal systems. HB 3059 established that for single family residences in counties with a total population of less than 40,000 the regulatory authority for on-site may not condition the issuance of a permit to require the owner of an aerobic treatment system to have a maintenance contract. The amendment allows that in such situations the owner, after receiving the appropriate training, may either maintain the facility personally or enter into a maintenance contract. Also, HB 3059 modified the definition for on-site sewage disposal systems to allow the use of cluster-type systems and expanded the definition of local governmental entity to allow public health districts to become authorized agents under this program. Finally, these amendments reflect the latest version of the National Sanitation Foundation International (NSF) criteria for the testing of proprietary treatment systems.

The amendments to §285.2, relating to Definitions, are made to the definition for on-site sewage disposal system and local government entity in order to conform with the definition of HB 3059.

Adopted new section §285.8, relating to Maintenance Contracts, adds a section to the rules which addresses the limitation on when a permitting authority can require a maintenance contract for aerobic treatment systems.

Section 285.32(b)(4), related to Criteria for Sewage Treatment Systems, is amended to reflect the most current publication dates for the appropriate NSF International standards. This section contains a phrase which was repeated and it has been deleted as it is not contained in the current rule.

FINAL REGULATORY IMPACT ANALYSIS

Section 2001.0225 of the Texas Government Code requires a state agency to prepare a regulatory analysis of a major environmental rule in certain circumstances. The regulatory analysis must be prepared where the result of the adoption of the rule is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an expressed requirement of state law, unless the rule is specifically required by federal law; 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 adopt a rule solely under the general powers of the agency instead of under a specific state law. The commission has determined that this rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the act, and it does not meet any of the four applicability requirements listed in §2001.0225(a).

This rule does not meet the definition of a "major environmental rule" because the regulatory amendments proposed will bring the definition for on-site sewage disposal systems into conformance with the statutory change as well as to provide numerical numeration for all the definitions in Chapter 285 and incorporate the most recent dates for appropriate testing standards requirements. The only addition to the rules is in response to statutory directives regarding maintenance contracts in counties of less than 40,000 inhabitants. The specific intent of the changes in this rule package will not adversely affect in a material way the economy or a sector of the economy but rather will provide the regulated community greater clarity as to the requirements.

Also the rule does not adversely affect public health and safety as the changes in the rules regarding maintenance contracts provide that a homeowner must insure proper maintenance of aerobic treatment system. In addition, the rule does not meet any of the four applicability requirements listed in §2001.0225(a). There is no federal requirement or standard related to this program. These amendments are in accordance with applicable requirements of state law. There is currently no delegation agreement or contract between the state and any agency or representative of the federal government to perform these functions. State law under Chapter 366 of the Health and Safety Code specifically authorizes the commission to regulate on-site sewage facilities.

TAKINGS IMPACT ASSESSMENT

The "Texas Government Action Affecting Private Property Act" as found in Chapter 2007 of the Texas Government Code, applies to governmental actions which affect private property. This statute provides that the regulation of on-site sewage disposal systems is specifically exempted from the application of that chapter for political subdivisions. The specific exemption is found at Chapter 2007.003(b)(11)(B). The actions are for the purpose of bringing the rules into conformity with HB 3059 of the 75th Legislative Session and, the changes would not affect private property because the rules as originally promulgated were intended to prevent the occurrence of a nuisance condition. The changes include amendments to definitions, a reduction in the permitting requirements for specific systems in certain counties and incorporating the most current NSF International standards into the rules. These actions in themselves do not constitute a taking of private property.

COASTAL MANAGEMENT PLAN

The commission has prepared a consistency determination for the amendments pursuant to 31 TAC §505.22 and has found the adopted rulemaking is consistent with the applicable Coastal Management Plan (CMP) goals and policies. The following is a summary of that determination. CMP goals applicable to the amendments include §501.12 (1)(2)(5) and (10). CMP policies applicable to the amendments include §501.14(g)(3). Promulgation and enforcement of these amendments will not violate (exceed) any standards identified in the applicable CMP goals and policies because the amendments will maintain or enhance existing agency criteria utilized for management of on-site wastewater systems and will effectively maintain or enhance agency strategies for the protection of coastal natural resource areas.

PUBLIC HEARING AND COMMENTERS

A public hearing was held on October 22, 1998, in Austin. No one presented testimony at the public hearing. A total of two written comments to the proposed rules were submitted. Calhoun County Health Department expressed general opposition to the portion of the statute regarding maintenance of aerobic treatment units in counties less than 40,000 population that led to these proposed rules. Comments and questions about implementation were submitted by the Brazos County Health Department.

GENERAL COMMENTS

Subchapter A - General Provisions

Section 285.8. Maintenance Contract

Calhoun County Health Department stated that the portion of HB 3059 related to maintenance contracts should be rescinded. This would negate the need for these Section of the rules. The reasons given were: 1) enforcement on a homeowner will be more difficult than enforcing on an installer; 2) training of a homeowner will be difficult and there is no recourse for lack of training of the homeowner; 3) homeowner not required to receive the same level of training required for an installer; 4) homeowners will not submit the required testing paperwork and will not comply with rules; and 5) the County will be required to hire more staff to monitor homeowner compliance. Brazos County Health Department also stated that the requirement in the previous rules for a maintenance contract with a private contractor provides the best service and protection for a community than what was established by HB 3059.

Although the commission appreciates the comments and the concerns addressed in the letters, the intent of this rulemak-

ing process is to revise the state's minimum on-site sewage facility (OSSF) standards such that they reflect past legislative changes. Any revisions to Chapter 366 of the Health and Safety Code will need to be accomplished through the legislative process.

Brazos County Health Department questioned what will occur when a county of less than 40,000 grows to a population of greater than 40,000.

The commission believes that the language used is sufficient. If a county grows to a population greater than 40,000, this section would no longer apply and maintenance contracts would be required in order to obtain and/or maintain a permit.

Brazos County Health Department questioned whether a homeowner can repair or install an aerobic treatment unit.

The commission responds that in regards to homeowner installation, the rule changes in this proposal did not address, nor change, the existing language in §285.51 of the current rule, regarding a homeowner's ability to install a system. In response to the comment regarding homeowner repair of an aerobic system, in accordance with HB 3059, the rule provides that a homeowner, in a county with a population of 40,000 or less, may elect to maintain an aerobic system directly, but must receive appropriate training in order to do so.

Brazos County Health Department questioned whether a homeowner would provide biased sampling and reporting data.

The commission believes that the language used is sufficient. A homeowner is required to test and report at the same frequency as an installer. Failure to test and report could result in enforcement action against the homeowner.

## Subchapter A. General Provisions

**30 TAC §285.2, , §285.8**

STATUTORY AUTHORITY

These sections are adopted under the authority of Chapter 366 of the Texas Health and Safety Code relating to On-site Sewage Disposal Systems. These amendments will bring 30 TAC Chapter 285 into conformity with changes to Chapter 366 as made by the 75th Legislature through HB 3059.

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 December 18, 1998.

TRD-9818445
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Effective date: January 8, 1999
Proposal publication date: September 25, 1998
For further information, please call: (512) 239–4640

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## Subchapter D. Planning, Construction and Installation Standards for OSSFs

**30 TAC §285.32**

STATUTORY AUTHORITY The amendment is adopted under the authority of Chapter 366 of the Texas Health and Safety Code, relating to On-Site Sewage Disposal Systems. These amendments will bring 30 TAC Chapter 285 into conformity with changes to Chapter 366 as made by the 75th Legislature through HB 3059.

*§285.32. Criteria for Sewage Treatment Systems.*

(a) (No change.)

(b) Treatment processes - proprietary.

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

(4) Approval of proprietary aerobic treatment systems. All agency approved proprietary aerobic treatment systems will be identified and published in a list of approved systems which may be obtained from the executive director. Only treatment systems which have been tested by and are currently listed by NSF International as Class I systems under NSF Standard 40 (1996) or have been tested and certified as a Class I system in accordance with NSF Standard 40 (1996) by an American National Standard Institute (ANSI) or NSF International accredited testing institution shall be considered for approval by the executive director. All agency approved systems at the time of the effective date of this rule shall continue to be listed on the list of approved systems subject to retesting under the requirements of NSF Standard 40 (1996) and Certification Policies for Wastewater Treatment Devices (1997). The manufacturers of proprietary treatment systems and the accredited certification institution must comply with all the provisions of NSF Standard 40 (1996) and Certification Policies for Wastewater Treatment Devices (1997).

(5) (No change.)

(c) (No change.)

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 December 18, 1998.

TRD-9818444
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Effective date: January 8, 1999
Proposal publication date: September 25, 1998
For further information, please call: (512) 239–4640

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# Chapter 330. Municipal Solid Waste

## Subchapter P. Fees and Reporting

**30 TAC §§330.601–330.603**

The Texas Natural Resource Conservation Commission (commission) adopts amendments to §§330.601–330.603, concerning fees and reports. Amended §§330.601 and 330.602 are adopted with changes to the proposed text as published in the September 4, 1998, issue of the *Texas Register* (23 TexReg 8998). Section 330.603 is adopted without changes and will not be republished.

EXPLANATION OF ADOPTED RULES The purpose of the amendments is to delete §330.602(a)(8), which references

§330.804. Section 330.804, which related to a reduction in solid waste disposal fees for landfills that beneficially use tire shreds, expired on December 31, 1996, and has been repealed. Section 330.602(a)(8) also expired on December 31, 1996, but remained in the commission's rules. The amendments also clarify the method of reporting the amount of waste received at a solid waste disposal facility by defining "waste received for disposal" to ensure that the correct amount of fees is paid by all facility operators.

FINAL REGULATORY IMPACT ANALYSIS The commission has reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the act, and it does not meet any of the four applicability requirements listed in §2001.0225(a). Specifically, the rulemaking is not directly related to and does not result in any decrease in the protection of the environment or human health; rather, it only clarifies a requirement of state law. The rulemaking clarifies the process for the calculation of municipal solid waste fees as authorized by Texas Health and Safety Code, §361.013. The rulemaking is not the result of any federal law or mandate and is not the result of any delegation agreement or contract with an agency of the federal government. The purpose of the amendments is to delete §330.602(a)(8), which references 330.804.Section 330.804, which related to a reduction in solid waste disposal fees for landfills that beneficially use tire shreds, expired on December 31, 1996. The amendments would also clarify the method of reporting the amount of waste received at a solid waste disposal facility to ensure that the correct amount of fees is paid by all facility operators. No comments on the proposed regulatory impact analysis were received.

TAKINGS IMPACT ASSESSMENT The commission has prepared a Takings Impact Assessment for these rule amendments pursuant to Texas Government Code Annotated, §2007.043. The following is a summary of that assessment. The specific purpose of the amendments is to repeal an expired provision pertaining to the reduction of fees for the use of tire shreds for engineering purposes in landfill construction and to clarify the method of reporting the amount of waste received at a solid waste disposal facility to ensure that the correct amount of fees is paid by all facility operators. The rule amendments will substantially advance the specific purpose by deleting the expired provision and explicitly explaining that the reporting of the amount of waste received for disposal fee purposes must be consistent with the total amount of the waste (measured in tons or cubic yards, or determined by the population equivalent method specified in §330.603(a)(3)) received by a disposal facility at the gate, excluding only those wastes which are recycled or exempted from payment of fees by rule or law. Promulgation and enforcement of these rule amendments will not affect or create a burden on private real property because the amendments only provide clarification to municipal solid waste facility operators on how to properly calculate and report the amounts of waste received for disposal.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW The commission has reviewed the rulemaking and found that the rules are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Coastal Management Program (CMP), nor will affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the rule amendments are not subject to the CMP.

HEARINGS AND COMMENTERS The commission did not hold a public hearing on the proposed rule changes. The comment period for the proposed rules closed at 5:00 p.m., October 5, 1998. Comments were received from the Texas Chapter, National Solid Wastes Management Association (NSWMA); East Texas District, Olympic Waste Services (Olympic); and a district manager from Trinity Waste Services (Trinity).

NSWMA recommended, with respect to the proposed change in §330.601(b)(1), that the phrase "(measured in tons or cubic yards)" be added to clarify that disposal facility operators have the option to use weight or volume.

The commission agrees with the recommendation and has incorporated the change.

NSWMA recommended, with respect to the proposed changes in §330.602(a)(2) and (b)(2), that "The volume or weight reported on the quarterly solid waste summary report must be consistent with the volume or weight on which tipping fees were charged, or would have been charged in the ordinary course of business, at the receipt of the waste at the gate" be changed to "The volume or weight reported on the quarterly solid waste summary report must be consistent with the actual volume or weight of the waste received for disposal." It also recommended that language be added to both paragraphs requiring that a facility operator who charges tipping fees at the gate by a method other than volume or weight must weigh all waste received for disposal and report that weight on the quarterly solid waste summary report. NSWMA commented that the commission would be exceeding its statutory authority if it were to require a facility operator that charges for disposal either by weight or volume to report the amount of waste for calculating the state fee in the same unit of measurement as the operator charges for disposal services.

The commission believes that the general statutory authority under Health and Safety Code, §361.011, to exercise all powers necessary or convenient to carry out its responsibilities, gives the commission authority to establish the method for payment of fees. It also believes that the same authority exists for requiring that the waste be weighed when the facility operator charges tipping fees based on a method other than by weight or volume. However, the commission believes that with the changes being adopted, the desired effect will be achieved without requiring that the payment of fees be based on the same unit of measurement as the one used by the operator to charge for disposal services, or without requiring an operator to weigh the incoming waste when he charges tipping fees on a method other than by weight or volume which can readily be calculated from the amount of tipping fees charged. The commission believes that requiring the actual volume or weight to be reported and requiring an operator to weigh the incoming waste when he charges tipping fees on a method other than by volume or weight will establish a conflict with the flexibility now allowed for small landfill operators to report waste received on a population-equivalent basis. Therefore, instead of adopting all of the recommended language, the commission adopts as an alternative: "The volume or weight of the waste received for disposal shall be determined prior to disposal or processing of the waste." This will provide an operator the flexibility to select the unit of measure to report the waste received at the gate, maintaining the highest degree of accuracy. In connection

with this change, the text in §330.602(a)(3) and (b)(3) has been modified to more specifically identify the documentation required for reporting purposes.

Comments submitted by Olympic and Trinity were in support of the comments and recommendations submitted by NSWMA.

The commission's responses to the NSWMA comments and recommendations respond to the Olympic and Trinity comments.

STATUTORY AUTHORITY The amendments are adopted under Texas Water Code, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas; and the Solid Waste Disposal Act (Act), Texas Health and Safety Code, §361.024, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the Act, and §361.013(a), which establishes the rates and basis for solid waste disposal fees to be charged.

*§330.601. Purpose and Applicability.*

(a) (No change.)

(b) Applicability.

(1) Fees. Each operator of a municipal solid waste disposal facility or process for disposal is required to pay a fee to the commission based upon the amount of waste received for disposal. For the purpose of this subchapter, "waste received for disposal" means the total amount of the waste (measured in tons or cubic yards, or determined by the population equivalent method specified in §330.603(a)(3) of this title (relating to Reports)) received by a disposal facility at the gate, excluding only those wastes which are recycled or exempted from payment of fees under this subchapter or by law. For the purpose of these sections, landfills, waste incinerators, and sites used for land treatment or disposal of wastes, sites used for land application of sludge or similar waste for beneficial use, composting facilities, and other similar facilities or activities are determined to be disposal facilities or processes. Recycling operations or facilities that process waste for recycling are not considered disposal facilities. Source separated yard waste composted at a composting facility, including a composting facility located at a permitted landfill, is exempt from the fee requirements set forth and described in these sections. For the purpose of these sections, source separated yard waste is defined as leaves, grass clippings, yard and garden debris and brush, including clean woody vegetative material not greater than six inches in diameter, that results from landscape maintenance and land-clearing operations which has been separated and has not been commingled with any other waste material at the point of generation. The commission will credit any fee payment due under this subchapter for any material received and converted to compost product for composting through a composting process. Any compost or product for composting that is not used as compost and is deposited in a landfill or used as landfill daily cover is not exempt from the fee.

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

*§330.602. Fees.*

(a) Landfilling. Each operator of a facility in Texas that disposes of municipal solid waste by means of landfilling, including landfilling of incinerator ash, is required to pay a fee to the commission for all waste received for disposal. The fee rate for waste disposed of by landfilling is dependent upon the reporting units used.

(1) (No change.)

(2) Measurement options. The volume or weight reported on the quarterly solid waste summary report must be consistent with the volume or weight of the waste received for disposal, as defined in §330.601(b)(1) of this title (relating to Purpose and Applicability). The volume or weight of the waste received for disposal shall be determined prior to disposal or processing of the waste.

(A) The recommended method for measuring and reporting waste received at the gate is in short tons. The facility operator must accurately measure and report the number of cubic yards or tons of waste received at the gate.

*(i)* The fee for waste reported in short tons will be calculated by the commission at an amount equal to $1.25 per ton.

*(ii)* The fee for compacted waste reported in cubic yards will be calculated by the commission at an amount equal to $0.40 per cubic yard.

*(iii)* The fee for uncompacted waste reported in cubic yards will be calculated by the commission at an amount equal to $0.25 per cubic yard.

(B) If a landfill operator chooses to report the amount of waste received utilizing the population equivalent method authorized in §330.603(a)(3) of this title (relating to Reports), the fee for such waste received shall be calculated by the commission at an amount equal to $1.25 per ton.

(3) Fee calculation. The fee shall be calculated by the commission using information obtained from the quarterly solid waste summary report. The total cubic yards or tonnage reported to the commission in the quarterly solid waste summary report shall be derived from gate tickets (weight or volume) or invoices, except in the case of operators who are authorized to report utilizing the population equivalent method in §330.603(a)(3), and records of recycled materials or any other information deemed relevant by the executive director. A billing statement will be generated quarterly by the commission and forwarded to the applicable permittee/registrant or a designated representative.

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

(b) Incinerators and processes for disposal. Each operator of a facility that disposes of or processes municipal solid waste for disposal by means other than landfilling is required to pay a fee to the commission for all waste received for processing or disposal. Facilities and/or processes included in this category include, but are not limited to, incineration; composting; application of sludge, septic tank waste, or shredded waste to the land; and similar facilities or processes. Not included as a process for disposal is land application of waste that has already been properly composted in one of the facilities named.

(1) (No change.)

(2) Measurement options. The volume or weight reported on the quarterly solid waste summary report must be consistent with the volume or weight of the waste received for disposal, as defined in §330.601(b)(1) of this title (relating to Purpose and Applicability). The volume or weight of the waste received for disposal shall be determined prior to disposal or processing of the waste.

(A) The recommended method for measuring and reporting waste received at the gate is in short tons. The operator must accurately measure and report the number of cubic yards or tons of waste received.

*(i)* The fee for waste reported in short tons will be calculated by the commission at an amount equal to $0.62 and one half cent per ton.

*(ii)* The fee for compacted waste reported in cubic yards will be calculated by the commission at an amount equal to $0.20 per cubic yard.

*(iii)* The fee for uncompacted waste reported in cubic yards will be calculated by the commission at an amount equal to $0.12 and one half cent per cubic yard.

(B) If a facility operator chooses to report the amount of waste received utilizing the population equivalent method authorized in §330.603(a)(3) of this title (relating to Reports), the fee shall be calculated by the commission at an amount equal to $0.62 and one half cent per ton.

(3) Fee calculation. The fee shall be calculated by the commission using information obtained from the quarterly solid waste summary report. The total cubic yards or tonnage reported to the commission in the quarterly solid waste summary report shall be derived from gate tickets (weight or volume) or invoices, except in the case of operators who are authorized to report utilizing the population equivalent method in §330.603(a)(3), and records of recycled materials or any other information deemed relevant by the executive director. A billing statement will be generated quarterly by the commission and forwarded to the applicable permittee/registrant or a designated representative.

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

(c) (No change.)

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 December 18, 1998.

TRD-9818469

Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

Effective date: January 7, 1999

Proposal publication date: September 4, 1998

For further information, please call: (512) 239–6087

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# TITLE 31. NATURAL RESOURCES AND CONSERVATION

## Part I. General Land Office

### Chapter 1. Executive Administration

### Subchapter A. Vacancies

**31 TAC §1.3**

The General Land Office (GLO) adopts an amendment to §1.3, concerning Executive Administration. The amendment was proposed to adjust various fees charged by the GLO so that they better reflect the GLO's services and activities, the costs associated with those services and activities, and the value of those services and activities. The amendment is also being adopted to clarify existing language in the rule, and to include reference to payments made by electronic funds transfer. The amendment is being adopted, with changes to the proposed text as published in the November 20, 1998, issue of the *Texas Register (23 TexReg 11781).*

Many of the fees currently charged by the GLO no longer reflect fair market value for the services provided or permitted. For example, the GLO's fees pertaining to geophysical and geochemical exploration were last raised in 1985. With respect to such fees, the GLO staff has evaluated data from other state agencies as well as from private industry to produce a fair and reasonable schedule of fees for that activity. The amended §1.3 raises the fees for geophysical exploration to a level more representative of the fair market value, while not setting them at such a level as to inhibit such exploration on state lands.

The GLO currently provides some services, such as GIS mapping, that are not contemplated by the current fee rules. The amended §1.3 establishes a fee for this service, and also raises fees for other services provided by the agency so that the GLO is fairly compensated for providing them.

The following comments were received with respect to the amended rule:

(b)(16):

Two commenters offered the general suggestion that this is an inappropriate time to raise the fees for geophysical exploration, due to an industry slump. They suggest that raising the fees will discourage exploration.

RESPONSE: The GLO has not raised its fees for geophysical exploration since 1985. These amendments are simply an attempt to make sure that the state is receiving fair value for its resources by making the state's fees consistent with those of other states, the University of Texas System, and private landowners. However, the GLO is keenly aware of economic pressures currently faced by the industry. The GLO also realizes that encouraging geophysical exploration is in the best interest of the state and the Permanent School Fund. Therefore, as a result of these comments, the GLO has cut the proposed fees for geophysical exploration in half. Industry should view this as an incremental step, as the GLO may later bring its fees up to the level originally proposed, as economic conditions warrant and allow.

(b)(16)(A)(ii):

One commenter questioned the basis for the fees for surface and bottom damage.

RESPONSE: The fees are based on comparisons with fees charged for this activity by private landowners, other states, and the University of Texas. The GLO declines to prospectively limit a permittee's potential responsibility for surface and bottom damage caused by their exploration activities.

(b)(16)(B)(ii):

One commenter suggested that the section concerning Relinquishment Act lands was confusing and might create certain property rights in surface lessees.

RESPONSE: This section specifies that fees for actual surface damages to personal property, improvements, livestock, and crops on unleased Relinquishment Act lands are to be negotiated with the surface owner, not the surface lessee. This provision is included primarily for informational purposes and the GLO believes that it should be retained without change.

(b)(16)(A)(ii)(I)(-a-), (-b-):

One commenter suggested that charging between $4.00 and $10.00 per acre for exploration using high-velocity energy sources would adversely affect the economic viability of geophysical exploration projects. However, this commenter also stated that they were presently paying $5.00 to $10.00 per acre to surface owners. As the state is the surface owner with respect to the areas involved, this comment is confusing. As stated above, the GLO has cut the proposed fees for geophysical exploration in half.

(b)(16)(A)(ii)(iii):

One commenter protested the change from a "per day" rate to a "per acre" rate, and suggested alternatively that the state charge on a "per block" basis.

RESPONSE: The GLO remains convinced that the "per acre" basis is the most equitable and administratively efficient way to charge for geophysical exploration.

One commenter lamented the lack of a mechanism is the new rule by which a permittee could claim a refund if they did not fully explore a permitted area.

RESPONSE: The GLO specifically sought to avoid the practice of giving refunds through the promulgation of this amended rule, as this practice is administratively burdensome. The agency believes that applicants are in the best position to evaluate their needs with respect to the size of the area they wish to explore before they apply for a permit.

The International Association of Geophysical Contractors generally commented against raising the fees for geophysical exploration, and offered certain other comments with respect to specific provisions in the amended rule.

PGS Onshore, Inc. generally commented against raising the fees for geophysical exploration, and offered certain other suggestions with respect to specific provisions in the amended rule.

JEBCO Seismic, L.L.P. generally commented against raising the fees for geophysical exploration.

No comments were received concerning any amendments to the rule not having to do with geophysical fees.

The amendment is proposed under Texas Natural Resources Code, §§31.051, 51.174 and §52.324(a), which provides the GLO with the authority to set and collect certain fees and to make and enforce rules consistent with the law.

*§1.3. Fees.*

(a) General.

(1) Form of payment. Fees may be paid by cash, check, or other legal means acceptable to the General Land Office. Payment by means of electronic funds transfer may be required by Texas Government Code §404.095, §9.51 of this title (relating to Royalty and Reporting Obligations to the State), or by other chapters of this title.

(2) Time for payment. Payment is generally required in advance of issuance of permits, leases and other documents and/or delivery of services and/or materials by the General Land Office.

(3) Dishonor or nonpayment by other means. In the event a fee is not paid due to dishonor, nonpayment, or otherwise, the General Land Office shall have no further obligation to issue permits, leases and other documents and/or provide services and/or materials to the permittee, lessee, or applicant.

(b) General Land Office fees. The commissioner is authorized and required to collect the following fees where applicable.

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

(5) Digital mapping (GIS):

(A) GIS maps printed on special printer paper:

*(i)* 8.5 inch by 11 inch: $7.00;

*(ii)* 30 inch by 36 inch: $19.00;

*(iii)* 36 inch by 48 inch: $27.00.

(B) computer charges for GIS data placed on CD ROM:

*(i)* cost of disk: $11.00, and;

*(ii)* programming personnel charge: $26.00 per hour, and;

*(iii)* computer resource charge: $1.50 per minute.

(C) postage and handling: $15 per package.

(6) (No Change)

(7) Vacancies:

(A) application fee: $100.

(B)-(D) (No change.)

(8)-(15) (No change.)

(16) Geophysical and geochemical exploration:

(A) non-Relinquishment Act lands:

*(i)* permit application filing fee: $100;

*(ii)* exploration and surface/bottom damage fees for unleased tracts in bays, other tideland areas, and the Gulf of Mexico:

*(I)* high velocity energy sources:

(-a-) $5.00 per acre in bays and other tideland areas;

(-b-) $2.00 per acre in the Gulf of Mexico;

*(II)* low velocity energy sources:

(-a-) $2.50 per acre in bays and other tideland areas;

(-b-) $1.00 per acre in the Gulf of Mexico;

*(III)* other exploration techniques: negotiable;

*(iii)* surface damage fees for unleased uplands:

*(I)* vibroseis: $2.50 per acre;

*(II)* high velocity energy sources: $5.00 per acre;

*(III)* gravity meter and/or magnetometer: fair market value, but not less than $2.50 per acre;

*(IV)* other exploration techniques: negotiable.

(B) Relinquishment Act lands:

*(i)* permit application filing fee: $100;

*(ii)* all fees for actual surface damages to personal property, improvements, livestock, and crops on unleased Relinquishment Act lands, if any, are to be negotiated with the surface owner.

Any fees in excess of those attributable to the types of surface damages listed in this paragraph must be shared equally with the state;

(17) (No change.)

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 December 21, 1998.

TRD-9818528
Garry Mauro
Commissioner
General Land Office
Effective date: January 10, 1999
Proposal publication date: November 20, 1998
For further information, please call: (512) 305–9129

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## Chapter 9. Exploration and Leasing of State Oil and Gas

**31 TAC §§9.1–9.3, 9.5, 9.6, 9.8, 9.9**

The General Land Office (GLO), with the approval of the School Land Board (SLB), adopts the repeal of §9.1, relating to Definitions; §9.2, relating to Leasing Guide; §9.3, relating to General Provisions; §9.5, relating to Leasing State Property for Oil and Gas; §9.6, relating to Maintaining the Lease; §9.8, relating to Discontinuing the Leasehold Relationship; and §9.9, relating to Pooling and Utilization of State Leases, without changes to the proposed text as published in the October 9, 1998, issue of the *Texas Register* (23 TexReg 10328).

The repeal of these sections and the adoption of new Chapter 9 rules covering the same subject matter is part of a comprehensive reformatting and updating of these rules. These adopted new Chapter 9 rules are easier to use, to read, to understand and to amend. They also conform to current statutes and reflect current agency practice and policies.

No comments were received concerning this action.

This repeal is adopted under Texas Natural Resources Code, §31.051 which gives the commissioner rulemaking authority and Texas Natural Resources Code, §32.062 which gives the SLB rulemaking authority.

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 December 18, 1998.

TRD-9818446
Garry Mauro
Commissioner
General Land Office
Effective date: January 7, 1999
Proposal publication date: October 9, 1998
For further information, please call: (512) 305–9129

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## Chapter 9. Exploration and Leasing of State Oil and Gas

The General Land Office (GLO), with the approval of the School Land Board (SLB), adopts new §9.2, relating to Scope and Applicability; §9.31, relating to General Provisions, §9.32, relating to General Responsibilities of State Lessees, and §9.91, relating to General Provisions, with changes to the text as published in the October 9, 1998, issue of the *Texas Register* (23 TexReg 10329).

The GLO, with the approval of the SLB, adopts new §9.1, relating to Definitions, §9.21, relating to Leasing Guide, §9.22, relating to Leasing Procedures; §9.33, relating to Delay Rental Payments, §9.34, relating to Drilling and Reworking Operations, §9.35, relating to Producing the State Lease, §9.36, relating to Shut-In Royalty, §9.37, relating to Offset Well Obligations and Compensatory Royalties, §9.38, relating to Suspending the State Lease; §9.81, relating to Pooling and Unitizing State Property;, §9.92, relating to Release, §9.93, relating to Assignment, §9.94, relating to Termination, and §9.95, relating to Forfeiture, without changes as published in the October 9, 1998, issue of the *Texas Register* (23 TexReg 10329), and these sections will not be republished.

This rulemaking action is intended to accomplish the following goals and purposes: (1) to make leasing, lease administration or lease compliance easier or more certain; (2) to insure these rules reflect current agency policy; (3) to incorporate statutory changes into them; and (4) to make them more user-friendly-clearer, more readable and easier to use.

These adopted rules have generally been made more user-friendly by organizational changes: renumbering, subdividing, gapping for expansion, reorganizing into subchapters, and placing the sections in the order of how an oil and gas lease progresses–from obtaining a lease, to maintaining and/or pooling, and finally to discontinuing the leasehold relationship. To assist in leasing and lease administration and compliance, the adopted rules explain how the GLO construes its basic lease provisions and associated statutes, set out what the GLO routinely expects of its state lessees, and detail what procedures/steps a lessee should follow to implement certain lease provisions. The following section-by-section discussion explains pertinent information concerning each adopted rule section, including how the section functions.

In adopting these rules, the state is not intending to place itself in the position of adjudicating property rights or to create a right to an evidentiary hearing where such right is not required by statute. In fact, nothing in these rules should be construed to place the state in the position of adjudicating property rights or creating a right to an evidentiary hearing where such right is not created by statute.

SECTION-BY-SECTION DISCUSSION:

SUBCHAPTER A: General Provisions

Section 9.1. Definitions: This section contains definitions of terms used throughout all of Chapter 9.

Section 9.2. Scope and Applicability: This section contains important principles that apply to all Chapter 9 rules. Subsection (b) clarifies that these rule are not intended to limit or infringe on the authority of other state and federal agencies. Subsection (f) has been added to state expressly that these rules shall

not limit the automatic termination of acreage under a lease's retained acreage clause.

SUBCHAPTER B: Issuing Exploration Permits & Oil and Gas Leases

Section 9.21. Leasing Guide: This section is formatted by types of state properties and provides a quick overview of how each type of property is leased.

Section 9.22. Leasing Procedures: This section contains detailed leasing procedures for all types of state properties leased or administered by the GLO or SLB. Paragraphs (2) and (3) cover the leasing of Relinquishment Act lands, with paragraph (2) covering leasing by the surface owner acting as the state's agent and paragraph (3) covering direct leasing by the state when the surface owner will not or cannot act as our agent. Both of these paragraphs have been updated to include statutory changes to the Relinquishment Act found in Texas Natural Resources Code, §52.189 and §52.190. Additionally, §9.22(2)(B) reflects a change in longstanding agency policy. This provision now authorizes an attorney-in-fact to act on behalf of a surface owner in executing a Relinquishment Act lease under certain circumstances. However, this provision also makes it clear that the surface owner and the attorney-in-fact both continue to owe fiduciary duties to the state. Section 9.22(2)(B) is intended to make it easier to lease certain Relinquishment Act property while still protecting the state's interests. Paragraph (5) covering the leasing of highway rights-of-way has been amended to incorporate statutory changes found at Texas Natural Resources Code, §32.002(c) and §32.201.

SUBCHAPTER C: Maintaining a State Oil & Gas Lease

This subchapter subdivides and replaces one prior rule section. The new Subchapter C is now reorganized around operational activities that are likely to occur on a state lease rather than around lease clauses.

Section 9.31. General Provisions: Subsection (a) describes the scope and applicability of the rules included in this subchapter and specifically clarifies that these rule are not intended to limit or infringe on the authority of other state and federal agencies. To make the adopted rules easier to use, subsection (b) has been added to insure that key terms used throughout this subchapter are clearly defined and placed at the beginning of the subchapter. Because the definition of "solid waste" conflicted with its well-established meaning in many federal and state regulatory contexts, "solid waste" has been deleted as a general term in the adopted rules.

Section 9.32. General Responsibilities of State Lessees: This section sets out the state's minimum expectations of how lessees should conduct operations on state properties. It also makes routine lease administration easier by specifying exactly what reports, information, and materials related to lease operations should be routinely submitted to the GLO and when they should be submitted. Our statutes and leases generally ask for operational materials and records and are sometimes not specific about when they should be submitted. Accordingly, compliance has been sporadic and poor. To give lessees clearer guidance about what documents must be filed with the GLO, subsection (c)(3) narrows the requirements to specific items and records and sets specific due dates. The GLO reserves the right to ask for additional materials when needed. Of particular note is subsection (c)(3)(C)(ii)(V), which requires lessees to send additional records when they complete a well on a state tract that is within 1,000 feet of another state tract.

Because subsection (c)(3) clearly sets out the required filings and allows the faxing of documents to meet the deadlines, it is expected that compliance will dramatically increase. In addition, compliance should increase because this rule also sets out a penalty if these items and records are not timely received.

Section 9.33. Delay Rental Payments: This section explains how to hold a lease by tendering delay rentals to the state.

Section 9.34. Drilling and Reworking Operations: This section explains how to hold a lease by drilling and reworking operations. Subsection (c) explains how to obtain an extension of the primary term. An extension is allowed under state fee leases when a lessee is conducting drilling operations at the expiration of the primary term.

Section 9.35. Producing the State Lease: This section explains how to hold a lease by production. Subsection (a)(2)(3), respectively, require the use of a separator when a well produces liquids and require the GLO's permission to commingle production from a separate lease or reservoir with any other production.

Section 9.36. Shut-in Royalty: This section explains how to hold a lease by tendering shut-in royalty payments.

Section 9.37. Offset Well Obligations & Compensatory Royalties: This section sets out our current practice of handling offset wells and authorizing compensatory royalties in lieu of requiring an offset well. It implements Texas Natural Resources Code, §52.034 and §52.173 and the associated offset obligation lease provisions.

Texas Natural Resources Code, §52.034 and §52.173 create statutory obligations to drill offset wells on state property when a well on adjoining property is either draining state hydrocarbons or is within 1,000 feet of the state property. (The well that triggers the offset obligation is referred to as an "encroaching well" under these rules.) These same statutes give the commissioner the sole discretion to accept compensatory royalties instead of requiring an offset well. Under these statutes, the commissioner is not acting as an adjudicator of property rights and an evidentiary hearing is not a prerequisite to the commissioner's decision.

Texas Natural Resources Code, §52.034 and §52.173 do not require the state to prove actual drainage when the encroaching well is within 1,000 feet and nothing in §9.37 is intended to impose any such requirement. The statutes mandate the drilling of an offset well when the encroaching well is within 1,000 feet and specify that any compensatory royalties shall be based on total volumes produced from the encroaching well. Nevertheless, these provisions, if applied indiscriminately in all circumstances, could lead to harsh results that do not serve the legitimate purpose of protecting the state's mineral interests. For example, one such result is requiring an offset well to be drilled when the scientific evidence shows that a geological fault would prevent any possible drainage of the state's hydrocarbons. The following adopted rule provisions mitigate against these kinds of results: (1) Section 9.37(b) allows the commissioner, in his discretion, to reach an agreement that no offset well is necessary because he is convinced that there can be no drainage of state minerals in that particular instance, and (2) Section 9.37(c)(4)(A)(1) allows the commissioner, in his dis-

cretion, to reduce the volumetric component of compensatory royalties based on sound scientific evidence.

Any decision to mitigate against harsh results in a particular instance under §9.37 is a matter committed to the commissioner's discretion. A contested case hearing is neither required nor contemplated under this rule. Moreover, nothing in this rule is intended: (a) to impose on the state any burden of proof beyond what may be required by statute, or (b) to cause drainage, failure to pool, or other matters that the commissioner may consider under this rule to become factually or legally relevant in any legal proceeding concerning the offset obligation under Texas Natural Resources Code, §52.034 and §52.173 or the associated offset obligation lease provisions.

Section 9.38. Suspending the State Lease: This section explains when a suspension of a state lease is warranted and how to obtain one.

SUBCHAPTER E: Pooling and Unitization

Section 9.81. Pooling and Unitizing State Property: This section explains how to pool or unitize state properties.

SUBCHAPTER F: Discontinuing the Leasehold Relationship

This subchapter subdivides and replaces one prior rule section.

Section 9.91. General Provisions: This section sets out how the leasehold relationship between the state and a lessee may be discontinued and explains what duties and obligations are still owed to the state when that relationship is discontinued. Subsection (c)(5)(D) sets out in more detail what is expected of a lessee in cleaning up submerged leased premises when operations have ceased. These provisions reflect standard industry practice and the typically expected actions of a reasonably prudent operator. As adopted, subsection (d) insures that the commissioner has the authority to waive lease-mandated clean-up measures while clarifying that the commissioner must exercise this authority within the parameters of existing federal and state laws and regulations relating to clean-up operations.

Section 9.92. Release: This section explains how to file releases, including both voluntary releases and those resulting from total or partial lease termination.

Section 9.93. Assignment: This section explains how to properly effectuate assignments.

Section 9.94. Termination: This section describes the process the GLO undertakes in determining and recording the fact that a lease has terminated.

Section 9.95. Forfeiture: This section describes the process the commissioner undertakes in forfeiting a lease and considering a forfeited lease for reinstatement. Under Texas Natural Resources Code, §52.176, the commissioner has the sole discretion to forfeit or reinstate a lease under certain circumstances.

The GLO received only one set of comments on its proposed rulemaking and those were from the Texas Railroad Commission (RRC). These comments related to one rule section (§9.32) and various other rule provisions that concern environmental issues. The RRC's objections to these rules had one underlying concern: to insure that these Chapter 9 rules relating to environmental matters did not infringe upon or unnecessarily overlap with the regulatory responsibilities of the RRC or other state and federal agencies.

In response to these general RRC concerns, it was never the GLO's intention to usurp the regulatory authority of any federal or state agency. Provisions in our rules were intended to make that clear and have been modified to make this intention even clearer. Nevertheless, in developing or leasing the minerals under state lands, the legislature has required that water pollution be prevented. (Texas Natural Resources Code, §52.032(a) and §52.085(a).) Consistent with these legislative directives, the SLB has approved a lease form with a material term requiring lessees to prevent pollution. Consequently, in adopting these rules, the GLO is notifying lessees about material lease terms, including the pollution prevention provision, which the GLO, as the lessor and steward of public lands, will enforce to protect its property. Enforcement of these pollution prevention provisions could include lease forfeiture.

Listed by the affected Chapter 9 section are the specific RRC comments and the GLO's responses, which were authorized by the SLB in their December 15, 1998 meeting. The amended rule provisions have satisfied the RRC's concerns.

2(b):

The RRC requested that this section be strengthened and clarified because the GLO cannot supplement, alter, amend or replace any other existing state or federal regulation.

Because it was never the GLO's intent to usurp the regulatory authority of any federal or state agency, the GLO incorporated changes to clarify that these rules do not impair other laws or regulations. In addition, because the sentence in §9.2(b) was also included in another rule provision, the GLO made similar changes to §9.32(a).

31(b)(10):

The RRC recommended deletion of the proposed definition of "solid waste" because the GLO definition conflicts with well-established state and federal definitions of the term.

Staff agreed to this recommendation to prevent confusion.

32(b)(1), 32(b)(2)(D) and 32(b)(4):

The RRC stated that these rules addressed the issue of pollution prevention too narrowly and in a manner that unnecessarily overlaps with its regulatory programs. In particular, the RRC recommended that these three sections should be changed to clarify that discharges of pollutants are only prohibited if they are not authorized by another agency's rule or permit.

32(b)(1): Staff did not agree to the RRC's modifications since this rule provision stems from an express lease clause. Instead, staff has amended this rule provision to track the precise pollution standard set in our lease and to clarify what this standard means. By narrowing our rules to track express lease language, the GLO highlights that its role in these environmental rule sections is as a lessor/landowner enforcing its lease to protect its property.

32(b)(2)(D): No change needed because the pollution standard in §9.32(b)(1) has been changed.

32(b)(4): Because this rule provision is derived from an express lease clause, staff did not agree to the exact RRC modifications. Instead, staff made changes to cross-reference and to incorporate relevant MARPOL prohibitions as they have been implemented in federal laws and regulations.

32(c)(1)(C):

The RRC recommended deletion of this signage requirement.

Again, because this requirement is based on an express lease provision, staff did not agree to a deletion of this provision. Instead, staff made changes to clarify that this signage requirement is only enforceable where required by a lease provision.

32(c)(2):

The RRC requested that the inspection authority of non-GLO entities (the attorney general and the governor) be deleted because it was inappropriate and could create confusion over the inspection authority of other non-GLO regulatory agencies-like the RRC.

The attorney general and the governor have been given express statutory inspection authority over state lands because each has a representative that is a member of the SLB. Since this rule section tracks a statute, staff did not agree to delete any language but instead added a sentence to insure that the inspection authority of other agencies is not undercut.

32(c)(3)(C)(v)(I):

The RRC pointed out an improper reference to an RRC form.

Staff has changed this reference to correct a clerical error.

91(c)(5) (A)-(D) and 91(d):

The RRC noted that these provisions were internally inconsistent and that some of these sections allowed the GLO to unilaterally agree to modify a lessee's clean-up and abandonment operations-which operations are regulated by other entities. .

Staff agreed with this comment and has amended the rules to clarify that these rules will not impair other laws or regulations.

## Subchapter A. General Provisions

**31 TAC §9.1, §9.2**

These rules are adopted under Texas Natural Resources Code, §31.051 and §52.131(h) which give the commissioner rulemaking authority and Texas Natural Resources Code, §§32.062, 32.154 and §32.205 which give the SLB rulemaking authority.

*§9.2. Scope and Applicability.*

(a) Scope of this chapter. Unless expressly limited or expanded elsewhere in this chapter, this chapter shall apply to all lands specified in §9.21(1)-(5) of this title, (relating to Leasing Guide). Those lands specified in §9.21(6) are governed by the statutes and rules referenced in that paragraph of §9.21.

(b) Other applicable rules and statutes. Operations on state lands are subject to all applicable state and federal laws and regulations. The provisions of this chapter do not alter, amend, or replace such state and federal laws and regulations, and compliance with the requirements of this chapter does not relieve the operator of the duty to comply with such laws and regulations. The requirements of this chapter are in addition to the requirements of any other applicable state or federal law or regulation.

(c) Existing Contracts. These rules shall not be construed to unlawfully impair any existing contract.

(d) Compliance. Lessee shall comply with the provisions of its lease, applicable statutes and this chapter. Nothing in this chapter shall be construed as relieving a lessee of these duties or as impairing any remedies available to the state, including forfeiture of a lease. If a lessee, operator or any party acting on lessee's behalf fails to comply with the lease, applicable statutes or this chapter, the state may seek any remedy allowed by law, including forfeiture of the lease. Lessee shall be liable for the damages caused by such failure and any costs and expenses incurred while enforcing this chapter and cleaning areas affected by any pollution or discharged waste. A lessee is responsible and liable for the actions or omissions of its operator and its employees, agents, servants, contractors, subcontractors, trustees, receivers, any other agent in control of any or all of the leasehold interest and any other party acting on lessee's behalf.

(e) Exceptions to this chapter. The commissioner may, if authorized by law and upon proper written request, grant exceptions to the provisions of this chapter if the commissioner deems the exceptions to be in the best interest of the state. No such exception shall be effective until a written request by the lessee and a written explanation, signed by the commissioner, is placed in the appropriate mineral file or other GLO file.

(f) Partial termination. Nothing in this chapter can limit the automatic termination of specified acreage and/or depths under a retained acreage clause (as defined in §9.31(b) of this title, relating to Definitions Applicable to this Subchapter) if a lease contains this kind of clause.

(g) Consistency with Coastal Management Program. Except as otherwise provided in §16.1(c) of this title (relating to Definitions and Scope), an action listed in §16.1(b) taken or authorized by the GLO or SLB pursuant to this chapter that may adversely affect a coastal natural resource area, as defined in §16.1 is subject to, and must be consistent with, the goals and policies identified in Chapter 16 of this title, (relating to Coastal Protection) in addition to any goals, policies, and procedures applicable under this chapter. If the provisions of this chapter conflict with and can not be harmonized with certain provisions of Chapter 16, such conflicting provisions of Chapter 16 will control.

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 December 18, 1998.

TRD-9818465
Garry Mauro
Commissioner
General Land Office
Effective date: January 7, 1999
Proposal publication date: October 9, 1998
For further information, please call: (512) 305–9129

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## Subchapter B. Issuing Exploration Permits and Oil and Gas Leases

**31 TAC §9.21, §9.22**

The new sections are adopted under Texas Natural Resources Code, §31.051 and §52.131(h) which give the commissioner rulemaking authority and Texas Natural Resources Code, §§32.062, 32.154 and §32.205 which give the SLB rulemaking authority.

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 December 18, 1998.

TRD-9818468
Garry Mauro
Commissioner
General Land Office
Effective date: January 7, 1999
Proposal publication date: October 9, 1998
For further information, please call: (512) 305–9129

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## Subchapter C. Maintaining a State Oil and Gas Lease

### 31 TAC §§9.31–9.38

The new sections are adopted under Texas Natural Resources Code, §31.051 and §52.131(h) which give the commissioner rulemaking authority and Texas Natural Resources Code, §§32.062, 32.154 and §32.205 which give the SLB rulemaking authority.

*§9.31. General Provisions.*

(a) Applicability of this Subchapter

(1) Section 9.32 of this title, (relating to General Responsibilities of State Lessees) applies to all state leases covering lands described in §9.21(1)-(5) of this title, (relating to Leasing Guide).

(2) Those rule provisions in this subchapter that create procedures for coordinating with the GLO staff for a specific purpose would also generally apply to any state lease that authorizes such purpose. Some examples include the rules relating to tendering delay rentals and shut-in royalties to the state, to pooling state property and to suspending state leases.

(3) The remaining rules in this subchapter are largely based on the SLB's October, 1997 state fee lease form. Consequently, these remaining rules will only apply to leases executed on this October, 1997 lease form and to provisions in any other state leases covering lands described in §9.21(1)-(5) whenever the other relevant state lease provisions are substantively equivalent to the corresponding provisions in the October, 1997 lease form.

(b) Definitions Applicable to this Subchapter. The following terms shall have the following meanings unless the context or express language in a rule clearly indicates a contrary meaning.

(1) Dry Hole. A dry hole is a completed well not capable of producing in paying quantities.

(2) Drilling Operation. One drilling operation consists of all the activities designed and conducted in an effort to obtain initial production from a well. As long as the actual spud date of the well occurs within a reasonable time, a drilling operation begins when a RRC drilling permit has been obtained and preliminary work, such as grading roads, moving equipment, digging pits or staking locations, has started. A drilling operation continues as long as operations progress in a diligent manner toward the completion of that well. One drilling operation ends when lessee obtains production in paying quantities or when lessee abandons efforts to obtain such production.

(3) Effective Shut-In Date. If lessee has completed a shut-in well during the primary term of a lease and holds the lease in the secondary term by paying a shut-in royalty, the effective shut-in date is the expiration of the primary term. If lessee completes a shut-in well after the primary term expires, the effective shut-in date is the first day of the month following the month when the well was shut in.

(4) Encroaching well. This term has been created under these rules to characterize any well which triggers the offset well obligation under state leases or statutes. An encroaching well is one which: produces in paying quantities; has been completed on either private acreage or on state land leased at a lesser royalty; and is within 1,000 feet of state land or is actually draining such state land. For a multiple-completion well, each separate formation or productive zone will be treated as a separate encroaching well. (See definition of "well.") For purposes of construing lease provisions relating only to shut-in wells, an encroaching well must meet all criteria set above, but it must also be completed in the same producing reservoir as the shut-in well.

(5) Producing (or production). When used in this subchapter, the term "producing" shall mean "producing in paying quantities" (defined as follows).

(6) Producing (or production) in paying quantities. When a lease specifically defines this term, that definition applies. If a lease contains no such definition, the following definition shall apply: a lease or a well produces in paying quantities when receipts from the sale of oil and/or gas produced from the lease or well exceeds the lease's or well's total operating expenses and a reasonably prudent operator would continue to operate the well or the lease in the same manner for the purpose of making a profit and not merely for speculation. Minimum royalty payments are not revenue from actual production and will not be treated as revenue when calculating whether a lease or a well is capable of producing in paying quantities.

(7) Retained Acreage Clause. Any lease provision, regardless of its title, generally designed to limit the acreage and/or depths held by lease operations in the secondary term of a lease. The specific language in these kinds of clauses determines what acreage and/or depths remain held by lease production or operations, what acreage and/or depths terminate under the lease, and exactly when in the secondary term of the lease the clauses become effective.

(8) Reworking Operation. One reworking operation consists of all the activities designed and conducted on a well in an effort to restore or to enhance production in paying quantities from an existing well. One reworking operation continues as long as lessee diligently pursues the production or enhanced production. One reworking operation ends when lessee restores or enhances production within a reasonable time or when lessee abandons efforts to restore or to enhance such production. The production or enhanced production must be in paying quantities.

(9) Shut-In Well. A well capable of producing oil or gas in paying quantities but which is not being produced for reasons set forth in the shut-in provision of a lease. Such reasons may include lack of suitable production facilities or lack of a suitable market. For a multiple-completion well, each separate formation or productive zone will be treated as a separate shut-in well. See definition of "well."

(10) Well Completion Date. The well completion date is the completion date reflected on the completion report filed with RRC unless this report is inaccurate.

(11) Well. For a multiple completion well, "well" shall refer to each separate formation or productive zone which is capable of producing hydrocarbons and which has been given a unique RRC identification number.

*§9.32. General Responsibilities of Stte Lessees.*

(a) Purpose and Scope. This section sets out some of the general responsibilities which lessees on properties leased under this chapter owe the state. Operations on state lands are subject to all applicable state and federal laws and regulations. The provisions of this chapter do not alter, amend, or replace such state and federal laws and regulations, and compliance with the requirements of this chapter does not relieve the operator of the duty to comply with such laws and regulations. The requirements of this chapter are in addition to the requirements of any other applicable state or federal law or regulation.

(b) Minimum Standards of Lessee Conduct.

(1) As expressly required in state leases, lessee shall use the highest degree of care in conducting operations on state leases and shall take all proper safeguards to prevent pollution. To satisfy these requirements, lessee must conduct operations as a reasonably prudent operator using standard industry practices and procedures, must satisfy all other express lease provisions, must satisfy implied lease obligations, and must comply with all valid, applicable federal and state laws, regulations and rules.

(2) Operations or activities requiring such care and safeguards shall include, but are not limited to, the following:

(A) Drilling, reworking, testing, producing, and maintaining a well;

(B) Designing, constructing, treating, testing, maintaining and repairing pipelines;

(C) Producing, storing, transporting or otherwise handling hydrocarbons;

(D) Containing and recapturing discharged hydrocarbons, pollutants, or other hazardous substances and restoring public and private property damaged by such discharges;

(E) Transporting and disposing of solid waste, pollutants or hazardous substances, including all materials associated with drilling and producing hydrocarbons;

(F) Plugging abandoned well sites, removing structures and equipment and restoring the surface after operations have ceased. See also §9.91(c)(5) of this title, (relating to General Provisions);

(G) Installing, testing and maintaining signal lights at or near wells and structures that are located on submerged state tracts;

(H) Conducting any activities that could be destructive to marine life or its habitat on submerged state tracts;

(I) Conducting activities on upland tracts so as to prevent damage to livestock, crops and the surface, including adequately fencing or enclosing equipment and pits.

(J) Installing all necessary equipment, seals, locks or other protective devices to prevent theft of hydrocarbons and personal injury; and

(3) No provision in a state lease or in these rules shall relieve a lessee of the obligation to act as a reasonably prudent operator would under the circumstances. This obligation includes, but is not limited to, the drilling of such additional well or wells as may be reasonably necessary for the proper development of a state lease after a lease well capable of producing in paying quantities has been completed.

(4) No discharge of garbage or solid waste in violation of MARPOL Protocol, Title 33, Chapter 33 of the United States Code or Title 33, Part 151 of the Code of Federal Regulations shall be allowed into state waters from any drilling or support vessel, production platform, crew or supply boat, barge, jack-up rig, or other equipment located on state submerged tracts.

(c) Required Activities/Lessee Responsibilities:

(1) Posting Signs and Identifying State Wells.

(A) Any well drilled on property leased under §9.21(1)(2)(3)(a) and (4) of this title, (relating to Leasing Guide) shall be identified as a state well in RRC records by using "State" as the first word in its designated RRC name.

(B) All well locations and other structures, including drilling barges and platforms on submerged lands, shall be legibly marked and maintained to identify the state tract number, RRC well name, well number and the name of the company operating the lease.

(C) In a prominent location on each vessel and manned platform on a submerged state tract, lessee must display and maintain a sign as required in an express state lease provision.

(2) Allowing access to leased state tracts. The commissioner of the GLO, the attorney general, and the governor or their representatives shall at all times have access to property leased under this chapter to make inspections for any reason deemed necessary to protect the state's property or minerals, including, but not limited to, any exploration, drilling, producing, gathering, and processing activities or any other operations on the state tract. This provision does not impair or limit the authority of any other state or federal agency to perform inspections of property leased under this chapter.

(3) Providing materials, records, reports and other information or items relating to lease operations.

(A) General Reporting Requirements. Unless otherwise indicated, lessee shall mail all materials, records, reports and other information or items required to be submitted to the GLO under this section to the following address: Texas General Land Office; Attention: Minerals Leasing; 1700 North Congress, Room 640; Austin, Texas, 78701-1495. Materials, records, reports and other information or items may also be simultaneously faxed to (512)475-1543 (Attention: Minerals Leasing) to insure that the GLO receives them by the due date as long as they are legible to the GLO staff. All materials, records, reports and other information or items submitted to the GLO must include the state mineral file number assigned to the affected state lease, a plat or description which shows the location of the affected state well or wells, and all appropriate attachments. Incomplete filings will not be recognized as received by the GLO.

(B) Timely Filing of Information or Items.

*(i)* Due Dates. This section sets out the due dates when certain information or items relating to lease operations and activities must be received by the GLO. Whenever GLO staff requests additional information or items, it must receive such information or items within the due date set in the request or if the request does not establish a due date, within 60 days of the date of the request. GLO staff may grant a written extension of a due date.

*(ii)* Evidence of Date of Receipt. Under the standard business practices and/or procedures of the GLO, the date that the GLO stamps, punches, or otherwise marks on the delay rental payment, check, draft, stub, or envelope establishes the date of actual receipt by the GLO.

*(iii)* Penalties for untimely filing. If the GLO does not receive appropriate materials, records, reports or other information or items by the due date set in this section or the due date set in a

written extension, lessee shall be subjected to a penalty of $25 per day for every day that each material, record, report or other information or item is not filed at the GLO. Assessing this penalty does not prevent the state from pursuing any of its other remedies, including lease forfeiture.

(C) Routine Reports and Data Relating to Lease Operations and Activities. The following materials, records, reports, or other information or items shall be submitted to the GLO by the due dates as set forth:

*(i)* Information relating to drilling.

*(I)* RRC W-1 and RRC W-1A (if applicable) with plat and any other supporting documentation: due at least 5 days before spudding a well;

*(II)* RRC P-12 (if applicable) with plat and any other supporting documentation: due at least 5 days before spudding a well; and

*(III)* any applicable Corps of Engineers permits: due at least 5 days before spudding a well.

*(ii)* Information relating to well completion, recompletion or testing.

*(I)* RRC W-2 (if oil well) with any other supporting documentation: due on the date it is submitted to or due at the RRC (whichever is earlier); or

*(II)* RRC G-1 (if gas well) and RRC G-5 and Back Pressure Curve (if applicable) with any other supporting documentation: due on the date it is submitted to or due at the RRC (whichever is earlier); and

*(III)* RRC W-12 with any other supporting documentation, an as-drilled plat and a directional survey (if applicable): due on the date it is submitted to or due at the RRC (whichever is earlier);

*(IV)* Potential Offset Well. If lessee completes a well within 1,000 feet of another state tract or tracts, on the date the RRC W-2 or RRC G-1 is submitted to or due at the RRC (whichever is earlier), lessee shall mail to the lessee or lessees of the adjacent state tract or tracts the following: a RRC W-2 or a RRC G-l (with any other supporting documentation), a RRC W-12 (with any other supporting documentation and a directional survey, if applicable), and a letter stating that the newly completed well may be a potential offset. A copy of this letter must be mailed to the GLO at the same time.

*(V)* RRC P-4 with any other supporting documentation: due on the date it is submitted to or due at the RRC (whichever is earlier);

*(VI)* RRC P-12 (if applicable and not filed before spudding a well) with any other supporting documentation: due on the date it is submitted to or due at the RRC (whichever is earlier);

*(VII)* RRC P-15 with plat (if applicable) and any other supporting documentation: due on the date it is submitted to or due at the RRC (whichever is earlier);

*(VIII)* All logs from any type of survey on the bore-hole section (from base of surface casing to total well depth) for each well on a state lease: due within 15 days of completing the survey.

*(iii)* Information required routinely upon production.

*(I)* RRC G-10: due on the date it is submitted to or due at the RRC (whichever is earlier); or

*(II)* RRC W-10: due on the date it is submitted to or due at the RRC (whichever is earlier); and

*(III)* RRC P-17 (if applicable): due on the date it is submitted to or due at the RRC (whichever is earlier). See also §9.35(a)(3) of this title, (relating to Producing the State Lease) for requirement to obtain state's permission before commingling state production.

*(IV)* Division Orders. For any well in which the state owns an interest, including a free royalty interest created under Texas Natural Resources Code, §51.054, a division order showing all ownership in such well is due at the GLO within 60 days of obtaining initial production from any such well and subsequent division orders are due thereafter within 30 days of any change in any ownership interest. (Note, however, that GLO employees are not authorized to execute such division orders on behalf of the state and that a GLO employee's acts, errors, or omissions in handling a division order cannot bind the state to any terms contained within it.)

*(iv)* Information required when production ceases (even if temporarily). If a well on a state lease has not produced for a 60-day period, written notice of this fact is due at the GLO within 70 days of cessation of production.

*(v)* Information required for dry holes or inactive wells.

*(I)* RRC W-1X with any other supporting documentation: due on the date it is submitted to or due at the RRC (whichever is earlier);

*(II)* RRC W-3A: due at least five days prior to plugging the well; and

*(III)* RRC W-3, with any other supporting documentation: due on the date it is submitted to or due at the RRC (whichever is earlier).

*(vi)* Information related to violations of state and/or federal law. If a violation of state and/or federal law impacts leased state property or the resources found on or under such property or if a requested exemption from state and/or federal law may impact leased state property or the resources found on or under such property, notice of the facts surrounding such violation or exemption is due at the GLO within 24 hours of the violation or the request for an exemption..

(D) Additional Reports and Data Relating to Lease Operations or Activities. The GLO retains the authority to require any additional records, data, information, records, memoranda, materials, or other information or items relating to any aspect of lease operations or activities. The following is a list of the type of information or items the GLO may typically request:

*(i)* an affidavit detailing all activities involved in any drilling or reworking operation conducted on any state well and the date of such activities;

*(ii)* any and all documentation necessary to assess whether production is in paying quantities; and

*(iii)* annual estimates of oil and gas reserves underlying a state lease.

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 December 18, 1998.

TRD-9818456
Garry Mauro
Commissioner
General Land Office
Effective date: January 7, 1999
Proposal publication date: October 9, 1998
For further information, please call: (512) 305–9129

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## Subchapter E. Pooling and Unitizing State Property

**31 TAC §9.81**

The new rules are adopted under Texas Natural Resources Code, §31.051 and §52.131(h) which give the commissioner rulemaking authority and Texas Natural Resources Code, §§32.062, 32.154 and 32.205, which give the SLB rulemaking authority.

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 December 18, 1998.

TRD-9818464
Garry Mauro
Commissioner
General Land Office
Effective date: January 7, 1999
Proposal publication date: October 9, 1998
For further information, please call: (512) 305–9129

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## Subchapter F. Discontinuing the Leasehold Relationship

**31 TAC §§9.91–9.95**

These rules are adopted under Texas Natural Resources Code, §31.051 and §52.131(h) which give the commissioner rulemaking authority and Texas Natural Resources Code, §§32.062, 32.154 and 32.205, which give the SLB rulemaking authority.

*§9.91. General Provisions.*

(a) Any discontinuance of a leasehold relationship, except for termination, is effective only upon complete compliance with §§9.91 - 9.95 of this subchapter. Terminations are effective according to the terms of the lease and the laws of the state.

(b) The leasehold relationship between the state and a lessee of state oil and gas may be discontinued by any of the following:

(1) release;

(2) assignment;

(3) termination;

(4) forfeiture.

(c) Effect of discontinuing the leasehold relationship. When the discontinuance of a leasehold relationship becomes effective, the lessee shall be relieved of all further obligations to the state due to the lessee's ownership of the lease except for the following:

(1) those obligations, liabilities, penalties, or the like owed by the lessee to the state as of the effective date of the release, termination, forfeiture, or assignment;

(2) the duty to pay all royalty owed by lessee in the manner set out in the lease and this chapter on all oil or gas produced under the lease as of the date of the discontinuance of the leasehold relationship;

(3) the accrual of penalty and interest, both in the past and in the future, as set out in this chapter on any delinquent royalty or report owed by the lessee;

(4) the duty to file with the GLO the reports, applications, and other records required by the lease, statutes, and/or this chapter regarding any activity by the lessee or lessee's operator relating to the previously leased premises and/or production therefrom; and

(5) if all oil and gas production, drilling, and rework activity has ceased on a well, the following clean-up duties:

(A) the duty to comply with all federal and state laws, particularly RRC and GLO statutes and administrative rules and United States Corps of Engineers regulations relating to plugging and abandoning wells and cleaning the property;

(B) the duty to remove all oil stored on the property and clean any residue remaining on the property. If such is not completed within 120 days of when the discontinuance of the leasehold relationship becomes effective, the state, at its option, may find that the lessee has abandoned the oil, and may take possession of the oil and dispose of it in a manner that is in the state's best interest;

(C) the duty to remove all equipment, structures, machinery, tools, supplies, and other items on the property and otherwise restore the property to the condition it was in immediately preceding issuance of that lease. If such is not completed within 120 days of when the discontinuance of the leasehold relationship becomes effective, a presumption shall arise that these items have been abandoned by the lessee or operator and the state shall become the owner of these items;

(D) with regard to operations in Texas state waters, the duty to remove all equipment, structures, machinery, tools, supplies, and other items on the property and otherwise restore the property to the condition it was in immediately preceding issuance of that lease. This duty will not be fulfilled until:

*(i)* lessee has examined an area within a 300-foot radius surrounding each wellbore on a given tract using one of the following means: side-scan sonar, trawler drag, divers, or any other method approved in writing by the GLO prior to use; and

*(ii)* a notarized affidavit shall be filed with the GLO within 120 days of when the discontinuance of the leasehold relationship becomes effective. It shall be signed by a senior officer of the company or a principal of any other entity and shall state that the property has been cleared of all navigational hazards and obstructions and has been restored as close as practicable to the condition that it was in immediately preceding issuance of that lease; and

(E) the duty to remove all fills for roads and drill sites if requested by the commissioner.

(d) Discharge of clean-up duties. Lessee shall be liable for any damages incurred due to lessee's failure to comply with subsection (c)(5) of this section. Within the parameters authorized by state and federal laws and regulations, the commissioner may agree in writing to excuse lessee from all or part of these duties.

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 December 18, 1998.

TRD-9818462
Garry Mauro
Commissioner
General Land Office
Effective date: January 7, 1999
Proposal publication date: October 9, 1998
For further information, please call: (512) 305–9129

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## Chapter 9. Exploration and Leasing of State Oil and Gas

### 31 TAC §9.4

The General Land Office adopts the repeal of §9.4, relating to Geophysical and Geochemical Exploration Permits, as proposed in the November 20, 1998, issue of the *Texas Register* (23 TexReg 11782).

The repeal of §9.4 was undertaken as part of the comprehensive review of the agency's rules mandated by the 1997 General Appropriations Act, Article X, §167, and was necessary to propose new language to streamline and formalize the application procedure and operational guidelines concerning the permitting process.

Additionally, renumbering the rule as the concurrently adopted new §9.11 will allow it to properly fit into the overall scheme of Chapter 9, as recently proposed in the October 9, 1998 issue of the *Texas Register* (23 TexReg 10328).

No comments were received concerning this action.

This repeal is adopted under Texas Natural Resources Code, §31.051, which gives the commissioner rulemaking authority.

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 December 21, 1998.

TRD-9818530
Garry Mauro
Commissioner
General Land Office
Effective date: January 10, 1999
Proposal publication date: November 20, 1998
For further information, please call: (512) 305–9129

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### 31 TAC §9.7

The General Land Office adopts the repeal of §9.7, relating to Royalty and Reporting Obligation to the State, without changes to the proposed text as published in the October 9, 1998, issue of the *Texas Register* (23 TexReg 10348).

The repeal of §9.7 and the renumbering of the rule as the concurrently adopted new §9.51 is part of a comprehensive reformatting of all the Chapter 9 rules. This organizational overhaul of Chapter 9, which included renumbering, subdividing, gapping for expansion, reorganizing into subchapters, and placing the sections in the order of how an oil and gas lease progresses has been undertaken to make these rules more user-friendly and easier to amend.

No comments were received concerning this action.

This repeal is adopted under Texas Natural Resources Code, §31.051 which gives the commissioner rulemaking authority and Texas Natural Resources Code, §32.062 which gives the SLB rulemaking authority.

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 December 18, 1998.

TRD-9818447
Garry Mauro
Commissioner
General Land Office
Effective date: January 7, 1999
Proposal publication date: October 9, 1998
For further information, please call: (512) 305–9129

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## Subchapter B. Issuing Exploration Permits and Oil and Gas Leases

### 31 TAC §9.11

The General Land Office (GLO) adopts new §9.11 concerning Geophysical and Geochemical Exploration Permits, with changes to the proposed text as published in the November 20, 1998, issue of the *Texas Register* (23 TexReg 11783).

The GLO has recently undertaken an organizational overhaul of all its Chapter 9 rules to make them easier to use and to amend. The renumbering of the old §9.4, (relating to Geophysical and Geochemical Exploration Permits) as the adopted new §9.11 is part of this comprehensive reformatting of the Chapter 9 rules.

In addition to renumbering the old §9.4, (relating to Geophysical and Geochemical Exploration Permits), the adopted new §9.11 also substantively amends the text of the old §9.4. The substantive component of this rulemaking action is intended to insure that the adopted new §9.11 reflects the current practices and policies of the GLO and has been updated to keep up with the technological advances of the geochemical and geophysical industries.

Generally, the new §9.11 streamlines and clarifies the application process and operational guidelines associated with geophysical and geochemical exploration permitting. More specifically, the new rule contains a list of factors to be used by the commissioner in evaluating an application. The new rule also limits geophysical exploration of bay tracts to once every three years. Additionally, the new rule gives the commissioner the option of requiring that biological monitors be present during

geophysical or geochemical exploration. A variety of other minor changes were also made to give permittees a clearer idea of their responsibilities.

The following comments were received concerning the new rule:

(b)(12):

One commenter suggested that the definition of "shot" be refined to differentiate between low and high velocity energy sources. The commenter is also concerned that a single airgun, rather than an array of airguns, may be interpreted by private landowners to constitute a shot.

The new rule does differentiate between low-velocity and high-velocity energy sources in its "Definitions" section. The rules do not indicate that the discharge of a single airgun should be considered a shot. In order to allow for changing technology and in the interest of protecting natural resources, the GLO elects to retain the broad definition of "shot" as it appears in the rules.

(b)(11):

One commenter suggested that, regardless of the manner in which they are defined in the rule, Resource Management Codes be considered permit conditions.

The codes are routinely attached to and considered parts of permits, where applicable. Changes in the definition of the term will not change this practice.

One commenter wondered about the commissioner's authority to grant or deny permits for geophysical operations.

Sections 52.322, 52.323, and 52.324 of the Texas Natural Resources Code grant this authority to the commissioner.

(c):

One commenter suggested that the rules should specify a set amount of time in which an application would be processed.

Variables such as the size of a particular survey, the time of year in which it is to be conducted, and necessary coordination between the GLO and other natural resource agencies make this suggestion impractical.

(c)(3):

Two commenters objected to the limitation on exploration in bay tracts to one survey every three years.

In enacting this restriction, the GLO recognizes that different groups favor different approaches to the issue of geophysical exploration in these areas of particular environmental sensitivity. The GLO believes that the rule presents a fair compromise between those who might favor unlimited exploration and those who might favor no exploration. We also point out that the rule gives the commissioner the power to waive this restriction.

(c)(4)(A):

One commenter suggested that the contractor used by a permittee to conduct the requested geophysical survey be identified on the application, and that substitution of a different contractor require a new application and permit.

Inclusion of the contractor on the permit was specifically rejected by the GLO in the new rule in order to avoid confusion concerning the rights granted and the obligations imposed through the permitting process. Additionally, natural resource agencies do not tailor their comments to specific contractors that will be working under a particular permit, and thus much of the benefit to be gained from the identification of the contractor is illusory.

(c)(2)(G):

One commenter suggested that the provision listing the groups whose comments are to be considered by the commissioner in his evaluation of an application be amended to include provisions related to notice to and input by certain organizations, as well as by the general public. Among other things, the suggested amendment would include a requirement that notice of permit applications be placed in the *Texas Register*, and would provide for the holding of public hearings in certain circumstances.

Considerable staff time is already spent seeking and incorporating comments from various governmental and other organizations related to permit applications. The requirements that would be imposed by this suggestion would slow down and further bureaucratize the application process and would be unduly burdensome on the GLO staff. The rule already provides for the consideration of comments made by "any other appropriate entities", thereby ensuring that organizations such as the Galveston Bay Foundation will have the opportunity to comment on permit applications.

(e)(1)(A):

One commenter suggested that the GLO issue geophysical and geochemical exploration permits for "set periods of time".

The rule provides for initial permits to be issued for a minimum of three days and a maximum of 90 days. Multiple extensions of 30 days each are available at the discretion of the commissioner. It will be up to the applicant to request that a permit be issued for a set period of time within those parameters.

(c )(1):

One commenter suggested that provisions be made for contractors to conduct preliminary surveys prior to permit approval.

This suggestion was rejected because such preliminary surveying might yield the kinds of impacts to the surveyed area that should be considered and planned for during the permitting process.

(d):

One commenter suggested that limits be placed on the amount of liability insurance that the commissioner may require as proof of an applicant's financial ability to deal with potential liability.

As a result of this comment, the GLO made the change to require proof of liability insurance in an amount to be not less than one million dollars. The rule already gives the commissioner the discretion to require evidence of an applicant's ability to self-insure as an alternative.

(e)(1)(A):

One commenter suggested that the 90-day limit for the initial term of a permit would be too short in some instances, and instead favored a 180-day initial term.

The GLO declines to extend the limit for the initial permit term. The GLO views a 180-day limit for the initial term as too long. A term of such length would encounter conflict with certain seasonal environmental considerations that may be more easily incorporated into permits of shorter duration. Projects of longer duration than 90 days are accommodated by the provision in

the rule for multiple permit extensions of 30 days each, to be granted at the discretion of the commissioner. As a result of this comment the GLO has made the changes in order to make it clear that such extensions need only be accompanied by an additional application fee.

(e)(1)(B):

Three commenters suggested that the provision allowing the commissioner to amend a permit upon 48-hours notice to the permittee was vague. Two commenters suggested that the provision be refined, and one suggested that it be eliminated.

This provision was mainly intended to grant the commissioner the flexibility to amend a permit at the request of a permittee. Upon further reflection, the GLO believes that this provision was ill conceived and that it should be eliminated.

(e)(1)(D):

Two commenters questioned the rule's prohibition against the transfer or assignment of permits.

This provision exists so that the party ultimately responsible for the exploration will be the same party that was subject to the application process. However, as a result of these comments, the GLO has made the change to give the commissioner the discretion to allow such transfers or assignments through his written consent. The GLO feels that this change preserves the GLO's ability to evaluate responsible parties while also making it easier for companies to conduct operations during changing business conditions, such as mergers.

(e)(1)(E):

One commenter suggested that the rule specifying the location at which certain documents are required to be located and available for inspection be made more precise.

As a result of this comment, the GLO has made the change to specify that such documents be located and available for inspection at the permittee's field office.

(e)(1)(F):

One commenter suggested that certain information required to be provided to the GLO by permittees seeking to use high-velocity energy sources in excess of 20 pounds include information about the depth of the charge and the time interval between placement of the charge and actual shooting of the charge.

As a result of this comment, the GLO has made the changes to reflect the need to include the suggested information.

(e)(1)(G):

One commenter suggested that the commissioner be given the authority to expand the conduct of geophysical operations at night, upon application by the permittee.

As written, the rule currently gives the commissioner this authority.

(e)(1)(H):

Two commenters suggested that the requirement that no shot be detonated within three miles of a recreational beach from May 1st to September 10th be modified.

This provision in the new rule is unchanged from the old §9.4, (relating to Geophysical and Geochemical Exploration Permits). The GLO continues to believe that it is in the best interest of the state's vital tourist economy to maintain this restriction.

(e)(1)(I)(v):

One commenter suggested that certain language in the rule presumed that geophysical operations produced significant and adverse impacts.

As a result of this comment, the GLO has made the change in order to reflect that such impacts "may" occur.

(e)(1)(K):

One commenter suggested that the requirement that geophysical operations not be conducted within 1,000 feet of a known bird rookery island was too restrictive.

This provision in the new rule is unchanged from the old §9.4. The GLO continues to believe that this restriction is in the best interest of the state.

(e)(1)L)(i)(ii):

One commenter suggested that a requirement to report "any dangerous condition" encountered while conducting geophysical operations be limited.

As a result of this comment, the GLO has made the change to require a person conducting such operations to report dangerous conditions that might constitute a threat to human health or safety only if such conditions result from the activities performed under the permit. Reporting requirements with respect to environmental conditions and fish mortalities were unchanged.

(e)(1)(N):

One commenter apparently suggests that the rule subjecting a permittee or contractor to liability for fish mortalities be eliminated. Another commenter suggested that the language in this provision be changed to more closely track the statute on which it was based.

This rule simply notifies permittees and contractors of their responsibilities under Texas Parks and Wildlife Code, §12.301. Additionally, any fees paid to the GLO related to geophysical exploration are not intended to serve as compensation for potential fish mortalities. As a result of these comments, the language in this provision was changed to more closely track the statute on which it was based.

(e)(1)(O):

Two commenters recommended changes to the provision giving the commissioner the power to require that biological monitors be present during geophysical or geochemical exploration. One commenter suggested that such monitors be required only upon a showing of good cause, while another commenter suggested that such monitors be required during all exploration conducted in coastal wetlands. One commenter also suggested that such monitors have the ability to order a cessation of exploration activities.

The GLO believes that the current approach, which gives the commissioner the authority to require biological monitors but does not require them, is the most flexible and best approach. Only GLO employees will have the authority to halt geophysical operations.

(e)(2)(B):

One commenter suggested that the requirements for marking materials and equipment used in geophysical and geochemical exploration were overly broad and excessive.

These provisions in the new rule are largely unchanged from the old §9.4. The GLO continues to believe that these provisions are necessary and proper to ensure the safe and correct execution of geophysical operations.

(e)(2)(B)(iii):

One commenter suggested that the requirement that vessels engaged in geophysical exploration be anchored in a way as to minimize damage to commercial fishing operations unduly favorite one user of the state's navigable waters over another.

As a result of this comment, the GLO has elected to delete this provision. As stated elsewhere in these rules, permittees shall conduct operations in accordance with all applicable Coast Guard and United States Army Corps of Engineers rules and regulations.

(e)(2)(B)(iv):

One commenter suggested that the requirement that exploration equipment be "lighted when remaining in position after sundown" was onerous.

As a result of this comment, the GLO has elected to delete this provision. As stated elsewhere in these rules, permittees shall conduct operations in accordance with all applicable Coast Guard and United States Army Corps of Engineers rules and regulations.

(e)(2)(D):

Two commenters suggested that the requirement that no shot be detonated within one mile of a shrimping fleet operating in good faith unfairly favored one user of the state's navigable waters over another.

As a result of these comments, the GLO has elected to make the change to prohibit the use of high-velocity energy sources within one-half mile of a shrimping fleet operating in good faith.

(e)(2)(E):

One commenter suggested that the requirement of a 120-foot hole depth for drilled high-velocity energy sources is excessive and costly.

The GLO has engaged in extensive discussions with industry representatives and natural resource agencies and organizations regarding this subject, but a satisfactory consensus has not been reached. As written, the new rule retains the 120-foot standard found in the old §9.4 while taking into account changing technology by granting the commissioner the authority to waive this provision in writing.

(e)(2)(H):

One commenter suggested that the rule gives undue preference to certain vessels operating in proximity to geophysical operations.

This provision in the new rule is largely unchanged from as it appeared in the old §9.4. The GLO continues to believe that this provision is necessary and that it fairly provides for the interests of different users state's navigable waters. The new rule does require boats to be operating in good faith in order to fall under this provision.

(e)(2)(I):

One commenter suggested that restrictions related to the geophysical exploration conducted near oyster reefs and red snapper banks should differentiate between high-velocity and low-velocity energy discharges.

As a result of this comment, the GLO has elected to make the changes in order to restrict the discharge of high-velocity energy sources in these areas.

(e)(2)(L):

One commenter suggested that the provision requiring a permittee's representative to be present during the discharge of a high-velocity energy source was vague.

As a result of this comment, the GLO has made the change in order to specify that such a person be present on the recording vessel during these discharges.

(e)(3)(C):

One commenter suggested that certain provisions related to a permittee's ability to negotiate payments for surface damages with a surface lessee would unjustly leave the permittee strictly liable to the state for damages caused by geophysical activity.

As a result of this comment, the GLO has detected a typographical error in this provision. The only intended change in this provision from the language in the old §9.4 was the replacement of the terms "operator" and "client" with the term "permittee". The GLO has corrected this error, and regrets any confusion that was caused by this provision as published.

(e)(3)(F):

One commenter suggested that the provision regarding certain restoration activities required to prevent erosion be limited to areas adversely affected by geophysical operations in a manner that would exacerbate erosion. This commenter also requested that a dispute resolution process be set up with respect to this subject.

As a result of this comment, the GLO has made the change to specify that a permittee or contractor is responsible for remedial actions related to erosion only when geophysical operations in an area have adversely affected the terrain so as to allow for or exacerbate erosion. Any conflicts in this area should be resolved through traditionally available legal avenues.

(f):

One commenter suggested that the provision requiring permittee's to transport GLO or TPWD personnel to certain geophysical operations sites for inspection purposes be amended to exempt the permittee from liability for any injuries, damages, etc. claimed by such personnel as a result of activities related to travel to such sites.

This provision in the new rule is unchanged from as it appeared in the old §9.4. The GLO believes that it would be best to defer to the common law and any applicable statutory law with respect to this issue.

(h):

One commenter suggested that permittees be given advance notice and an opportunity for review before the stoppage of work or the imposition of any other penalties as a result of permit violations.

The GLO rejects this suggestion because to accept them would create a considerable administrative burden and, more importantly, would rob the state of its most powerful and effective means of ensuring compliance with permit conditions.

(i):

One commenter suggested that a provision requiring permittees to maintain certain records that may be required by the GLO be limited to providing the agency access to those records.

This provision in the new rule is largely unchanged from as it appeared in the old §9.4. The GLO believes that the manpower and budget limitations under which the agency functions dictate that it retain the right to require that such records be made available in the manner most convenient to the agency.

The International Association of Geophysical Contractors (IAGC) suggested changes to several specific provisions in the new rule. Fairfield Industries supported the comments of IAGC. They also suggested changes to two specific provisions in the new rule. PGS Onshore, Inc. generally supported the new rule, but also suggested several changes to specific provisions in the new rule. The Texas Parks and Wildlife Department expressed support for certain provisions in the new rule, and suggested changes to other provisions.

The new rule is adopted under Texas Natural Resources Code, §§31.051, 51.174, and §52.324(a), which provides the GLO with the authority to set and collect certain fees and to make and enforce rules consistent with the law.

*§9.11. Geophysical and Geochemical Exploration Permits.*

(a) General rule of application. The rules in this section shall apply to lands described in §9.21(1)(2)(3)(a) and (4) of this title (relating to Leasing Guide).

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

(1) Applicant. A person seeking a permit under this section.

(2) Geochemical exploration. A survey or investigation conducted to discover or locate oil and gas prospects by means of soil sampling, analysis, or other accepted techniques.

(3) Geophysical exploration. A survey or investigation conducted to discover or locate oil and gas prospects using magnetic, gravity, seismic, and/or electric techniques.

(4) High velocity energy source. Energy sources which generate a sharp-peaked energy pulse including, but not limited to, dynamite, pentalite, seismogel, and ammonium nitrate.

(5) Low velocity energy source. Energy sources that generate a bell shaped energy pulse including, but not limited to, pneumatic, acoustic, and vibrating devices.

(6) Oyster lease. An area leased from the state for the production of oysters and marked according to the requirements of TPWD.

(7) Oyster reef. Natural or artificial formations located in intertidal or subtidal areas that are composed of oyster shell, live oysters, and other organisms that are discrete, contiguous, and clearly distinguishable from scattered oyster shells, live oysters, and other organisms.

(8) Permit. License issued by the commissioner authorizing geophysical and/or geochemical exploration on public school land.

(9) Permittee. The holder of a permit, who shall be the person responsible for conducting geophysical or geochemical exploration.

(10) Recreational beaches. Any shoreline frequently utilized by the general public for recreational activities.

(11) Resource management codes. Abbreviations for recommended environmental guidelines adopted by state and federal resource agencies and applicable to state-owned tracts.

(12) Shot. Any action resulting in the generation of an energy pulse from which geophysical data is obtained, including both high and low velocity energy sources.

(13) Shrimping fleet. A group of five or more boats trawling for shrimp in an area not more than one mile in diameter.

(14) Structure. Any man-made improvement placed on or affixed to state-owned lands.

(c) Permit applications and procedures.

(1) Geophysical or geochemical exploration for mineral resources may not be conducted on unleased state-owned uplands or on unleased state-owned submerged lands without a permit issued by the commissioner.

(2) Permits are issued at the discretion of the commissioner. The commissioner's decision shall be based upon a consideration of the following factors (no one factor alone shall be determinative):

(A) the date of receipt by the GLO of an applicant's completed application;

(B) applicant's past record of compliance with permit conditions and all other applicable statutes and regulations;

(C) frequency of seismic exploration in the area to be surveyed;

(D) impact on natural resources;

(E) scope and nature of applicant's and contractor's proposed operations;

(F) number of permits currently held by the applicant as well as number of currently pending applications filed by the applicant;

(G) consideration of any comments on the permit application made by the following state and federal resource agencies: Texas Parks and Wildlife Department, United States Fish & Wildlife Service, National Marine Fisheries Service, United States Army Corps of Engineers, Texas Historical Commission, and any other appropriate entities;

(H) any other factors relevant to a particular application.

(3) Geophysical exploration on bay tracts, as depicted on maps on file at the GLO, shall occur only once every three years, unless this provision is waived in writing by the commissioner.

(4) A permit application shall be made upon forms furnished by GLO, and shall include:

(A) the names, addresses, phone numbers, and taxpayer ID numbers of the applicant. If an applicant is a corporation,

it shall include the names of the corporate representatives authorized to execute legal documents;

(B) maps showing the location of shot lines in relation to state lease tracts, including x and y coordinates of the beginning and end points of each line as designated by the Texas Coordinate System, the Texas Natural Resources Code, §21.071, (for submerged lands only);

(C) any resource management code information available regarding the tracts on which the exploration activity will be conducted; and

(D) a complete description of the number and spacing of shots, shot lines, and recording devices, the size of charge per shot, and a description of the energy source to be used during exploration activities.

(5) A complete application must be received by the GLO at least 20 business days for submerged lands and at least 10 business days for uplands before proposed commencement of operations. The application-processing period may extend beyond this time period. No operations, including any surveying of the area, may begin until the applicant receives approval from the GLO and is assigned a permit number

(6) The application shall be accompanied by the application fee. All other appropriate fees, as specified in §1.3(b)(16) of this title (relating to Fees), are due and shall be paid to the GLO prior to the permit's issuance.

(7) Permits are issued subject to any lease or rights granted to a surface or mineral lessee on tracts to be explored.

(8) Prior to the issuance of a permit, applicant may be required to submit additional information.

(d) Insurance. Prior to the issuance of a permit, applicant shall file with the GLO, on behalf of themselves as well as for any persons or organizations operating under a permit, proof of current liability insurance, in an amount to be not less than one million dollars, from a company approved by the Texas Board of Insurance or alternatively such other evidence as may reasonably be required by the GLO to establish the applicant's financial ability to self-insure against potential liability.

(e) Geophysical or geochemical operational guidelines.

(1) The following provisions shall apply to all geophysical or geochemical operations conducted on state-owned lands.

(A) Permits shall be granted for a minimum of three days and a maximum of 90 days. A permit may be extended for multiple periods of 30 days at the discretion of the commissioner and upon payment of an additional application fee.

(B) Failure to comply with any conditions included in the permit which pertain to GLO or any other state or federal regulatory agency shall be considered a violation as specified in subsection (h) of this section.

(C) The GLO will assign a permit number and give written notice of its issuance to the permittee. The permittee shall give verbal notice to the GLO prior to commencement of operations.

(D) Permits shall not be transferred or assigned without the written consent of the commissioner.

(E) Geophysical crews operating on state-owned lands shall have the following items in their possession and available for inspection at the permittee's field office by the commissioner or a designated representative, upon request:

*(i)* a copy of the seismic permit, including any conditions, and the authorized permit number;

*(ii)* a copy of GLO rules governing geophysical and geochemical exploration;

*(iii)* detailed maps showing the approved shot lines and shot points covered by the permit; and

*(iv)* a copy of the resource management codes and definitions as provided by the GLO for those tracts on which operations will be conducted (applicable to submerged lands only).

(F) No high velocity energy sources in excess of 20 pounds may be used on state lands without the written permission of the commissioner. Applicants wishing to utilize shots in excess of these limitations shall submit written documentation to the commissioner explaining the necessity for the size shot proposed, the number of shots to be utilized, the location of all shot holes, the depth of the charge, the time interval that will pass between placement of the charge and the actual detonation of the charge, the proposed date that operations will commence, and the expected operations period. After evaluation, the request will be approved or denied, at the commissioner's discretion.

(G) With the exception of low velocity energy sources used in the Gulf of Mexico, no shots shall be discharged other than in daylight hours except by written permission of the commissioner.

(H) No shots shall be detonated within three miles of a recreational beach between May 1st and September 10th.

(I) Pollution, and other impacts to natural resources shall be governed by these guidelines:

*(i)* All geophysical and geochemical exploration shall be conducted in compliance with all applicable state and federal statutes and regulations relating to pollution of land and water;

*(ii)* Any physical modification of the surface including, but not limited to, mounding, cratering, or vehicle tracks shall be remedied upon completion of the work, or sooner, if the commissioner determines that immediate restoration is practical and is necessary to minimize impacts to natural resources. Such surface restoration shall be coordinated with and approved by GLO;

*(iii)* Persons using wheeled or tracked vehicles on state-owned lands shall use reasonable efforts to avoid impact to the area;

*(iv)* No person operating a vessel, vehicle, or equipment operating under permit shall discharge solid waste or garbage into state waters or state-owned lands. Solid waste includes, but is not limited to, nonbiodegradable containers, rubbish, or refuse. A sign, with letters no smaller than one inch in height, shall be displayed in a high traffic area of any vessel or equipment operating in state waters under permit, stating, "Discharge of any solid waste or garbage into state waters is strictly prohibited and may result in revocation of the state permit authorizing exploration operations".

*(v)* The GLO will ensure compliance with this subsection through permit conditions designed to: avoid adverse impacts to natural resources, minimize unavoidable impacts, and to compensate for those significant and adverse impacts that may occur during the permitted activity.

(J) Prior to conducting any operations, permittees shall coordinate with the appropriate regulatory agencies regarding

any operations that could potentially impact state or federally protected species.

(K) No geophysical surveying or shooting shall be performed within 1,000 feet of a known bird rookery island, as depicted on maps maintained by GLO, between February 15th and September 1st.

(L) Any person conducting geophysical or geochemical activities under this section must immediately advise the commissioner of the following, which presently exist or can reasonably be anticipated:

*(i)* the location and type of any dangerous condition which may constitute a threat to human health or safety, if such condition is the result of the geochemical or geological activities; or

*(ii)* activities or situations, caused by permittee's activities which may adversely affect the environment, aquatic life or wildlife, cultural resources, or other uses of the area in which the exploration activity is conducted.

(M) Any pollution, fish or wildlife kill, or loss of property shall be immediately reported to the commissioner.

(N) In accordance with Texas Parks and Wildlife Code, §12.301, a permittee or contractor is liable to the state for the value of fish or wildlife taken, killed, or inured by work under a permit.

(O) The commissioner may require biological monitors during geophysical or geochemical exploration.

(2) In addition to the provisions of paragraph (1) of this subsection, the following provisions shall apply to geophysical operations conducted on submerged lands.

(A) Each person applying to perform geophysical exploration on state-owned submerged lands shall file with the GLO a unique symbol, number, or series of characters which will be used to identify all equipment and materials used in the geophysical and/or geochemical exploration.

(B) All equipment used in connection with geophysical survey work which is placed on submerged lands shall be:

*(i)* distinctly marked with permittee's unique symbol, number, or series of characters clearly identifying the company performing the geophysical operations;

*(ii)* in compliance with rules governing size, design, lighting, flagging, and marking, as promulgated by the United States Coast Guard and the United States Army Corps of Engineers, and;

*(iii)* removed immediately upon completion of geophysical work.

(C) Staging areas must be approved by the GLO, and shall not be established in vegetated areas of tidal sand or mud flats, submerged aquatic vegetation, or coastal wetlands, as those terms are defined in §16.1 of this title (relating to Definitions and Scope), or vegetated dune areas.

(D) No high velocity energy source shall be detonated within one-half mile of a shrimping fleet operating in good faith in the area.

(E) Shot holes shall be at least 120 feet below the mudline on submerged lands, unless otherwise authorized in writing by the commissioner.

(F) Suspended high velocity energy sources shall not be used without express written authorization from the commissioner. Requests for the use of such explosives shall be in writing, giving the size of charges to be used, the depth at which they are to be detonated, and the specific precautionary methods proposed for the protection of fish, oysters, shrimp, other aquatic life, wildlife, or other natural resources. After evaluation, the request will be approved or denied, at the commissioner's discretion.

(G) Air boats may be required, at the discretion of the GLO, for operations in waters less than three feet deep as measured from mean low water.

(H) No low velocity energy shot shall be discharged within 500 feet and no high velocity energy shot shall be discharged within 1,000 feet of any boat operating in good faith and not involved in the permitted operations.

(I) No high velocity energy source shall be discharged within 500 feet of any oyster reef, marked oyster lease, marked artificial reef, or marked red snapper bank, or within 500 feet of any dredged channel, dock, pier, causeway, or other structure. Assistance in locating oyster reefs and leases is available from TPWD.

(J) Buried shots shall not be left overnight in water less than four feet deep as measured at low tide, or within 1,500 feet of any shoreline unless the shots are properly buried and anchored, all wires are properly shunted to prevent accidental discharge, and all shot holes are properly marked and lighted.

(K) No shot in excess of 20 pounds shall be discharged within one mile of any pass, jetty, mouth of a river, or other entrance to the Gulf of Mexico from inland waters.

(L) A permittee's representative shall be present on the recording vessel whenever the operator is discharging a high velocity energy source.

(3) In addition to the provisions of paragraph (1) of this subsection, the following provisions shall apply to geophysical operations conducted on state-owned uplands.

(A) A surface lessee shall be notified prior to any entry by permittee onto permitted land, and shall be notified upon permittee's departure.

(B) Permittee shall be held liable for any damages to livestock on state-owned lands caused by geophysical or geochemical exploration.

(C) Permittee may not negotiate with the surface lessee regarding payment of surface damages. The permittee shall be liable to the state for any damages caused by geophysical or geochemical exploration.

(D) Fences shall not be damaged or permanently removed. Any fence which is disturbed to permit passage shall be replaced and restored to its pre-existing condition. All gates shall remain closed and locked when not in use.

(E) Permittee may not use stock tank water located on the tract, except as directed by GLO or in case of emergencies.

(F) In areas where geophysical operations have adversely affected the terrain so as to allow or exacerbate erosion, a permittee or contractor shall construct terraces and restore vegetation, as directed by guidelines and instructions provided by GLO.

(f) Inspection. All operations shall be subject to inspection by the commissioner or the commissioner's representatives at any time. Upon reasonable notice, the permittee shall furnish the com-

missioner or the commissioner's representatives with transportation over submerged lands from the normal staging site to and from the operations site, along with any meals and living quarters necessary while the inspection is being conducted. If TPWD assigns a representative to the exploration party, the representative shall be furnished with similar accommodations.

(g) Reporting after expiration of permit. Within 30 days of the expiration date of the permit, the permittee shall file with the commissioner an affidavit prescribed by the GLO, summarizing activities conducted under the permit, which:

(1) identifies each tract worked each day during which exploration operations were conducted, including surveying of the area;

(2) provides maps showing any deviation in shot line or shot point location from the maps which were submitted with the permit application.

(h) Violations.

(1) A permittee that violates or fails to comply with any provision of the Texas Natural Resources Code, this chapter, or their permit, is subject to immediate revocation of the permit and may be prohibited from further exploration on state-owned lands, except upon such additional terms, conditions, and safeguards as the commissioner may expressly stipulate. Permittees and any and all parties conducting operations under a permit will be liable for any costs incurred from any damage resulting from a violation of that permit, as well as for any applicable fines.

(2) Upon discovery of any violations, the commissioner or a designated representative may order temporary discontinuance of seismic operations until completely reviewed by the commissioner.

(i) Other records. At any time or from time to time GLO may require any additional records relating to any aspect of exploration operations, excluding interpretive data. These records shall be maintained by the permittee for a minimum period of five years.

(j) General limitations. These rules shall not be construed to enlarge or restrict the rights of any owner of a state mineral or surface lease.

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 December 21, 1998.

TRD-9818529
Garry Mauro
Commissioner
General Land Office
Effective date: January 10, 1999
Proposal publication date: November 20, 1998
For further information, please call: (512) 305–9129

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## Subchapter D. Paying Royalty to the State

**31 TAC §9.51**

The General Land Office (GLO), with the approval of the School Land Board (SLB), adopts new §9.51, relating to Royalty and Reporting Obligations to the State, without changes to the proposed text as published in the October 9, 1998, issue of the *Texas Register* (23 TexReg 10352). The text will not be republished.

This new section is being adopted as a part of the comprehensive reformatting of the GLO's Chapter 9 rules. This organizational overhaul of Chapter 9, which included renumbering, subdividing, gapping for expansion, reorganizing into subchapters, and placing the sections in the order of how an oil and gas lease progresses has been undertaken to make these rules more user-friendly and easier to amend.

No comments were received regarding adoption of this new section.

This new section is adopted under Texas Natural Resources Code, §31.051 which gives the commissioner rulemaking authority, and Texas Natural Resources Code, §32.062 which gives the SLB rulemaking authority.

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 December 18, 1998.

TRD-9818449
Garry Mauro
Commissioner
General Land Office
Effective date: January 7, 1999
Proposal publication date: October 9, 1998
For further information, please call: (512) 305–9129

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# Part X. Texas Water Development Board

## Chapter 355. Research and Planning Grants

## Subchapter C. Regional Water Planning Grants

**31 TAC §355.93, §355.99**

The Texas Water Development Board adopts amendments to §355.93 and §355.99, concerning Research and Planning Fund. Amendments to §355.99 are adopted with changes to the proposed text as published in the October 30, 1998, issue of the *Texas Register* (23 TexReg 11085). Amendments to §355.93 are adopted without changes and will not be republished. The amendments are adopted to reflect a change in the funding limits for regional water planning, with the board's share of necessary and direct costs of development of the regional water plans increasing from 75% to 100%. The amendments make administrative costs ineligible for board funding, with participants in the regional water planning process expected to cover these administrative expenses.

Amendments to §355.93(b) remove language that currently allows the board to fund administrative costs, and specifically adds administrative costs to the list of ineligible costs in subsection (b). Examples of the types of items that are considered ineligible as administrative costs are included in §355.93(b)(5). The board has chosen not to fund administrative costs based on the levels of expected funding from the state legislature for the regional water planning effort and based on direction of legislative leadership that the regions should provide for the administrative costs of the efforts.

Amendments to §355.99 remove language that limits board funding of the development of regional water plans to 75% and specify that the board may fund regional water plans at 100% of the necessary and direct costs of development or revision of regional water plans within the funding limits of the board. The amendments are adopted based on indications that the legislature intends to increase the state share of funding for direct costs of regional water planning. The amendments will allow the board to initiate funding for regional water planning at these anticipated levels. The board also finds that the increased level of funding will more likely assure that regions successfully complete their planning efforts as mandated by Texas Water Code §16.053. The amendments provide the board with the flexibility to examine the costs of grant applications, and to determine that some costs are either not directly related to the development of regional water plans, or are not necessary for the development of the plans. Related changes in subsection (b) remove language relating to the previously required 25% local match. Subsection (c) is deleted as its terms relating to the substitution of in-kind services for local match would no longer be needed. Additional changes are made to delete subsection (a) from §355.99 based on public comment received. Subsection (a) provided that scope of work funding is limited to $20,000 per regional water planning area. Comments stated that the board should reimburse regions for the expenditure of funds or for in-kind services incurred during the scope of work development. This will require the elimination of the $20,000 limit on scope of work grants, and the board accordingly adopts §355.99 with the elimination of subsection (a). The board finds further that the limitation of $20,000 per regional water planning area for scope of work development is no longer necessary based on anticipated adjustments to funding levels for regional water planning.

A public hearing was held on the rules November 9, 1998. No comments were received at that hearing. Written comments were received in support of the proposed amendments from the Lower Rio Grande Valley Development Council, Rio Grande Water Planning Group (Region M), and Texas Utilities Services, Inc. on behalf of Texas Utilities Electric Company, Texas Utilities Fuel Company, Texas Utilities Mining Company and ENSERCH. Region F Regional Water Planning Group provided comments supportive of the changes but requesting additional changes to the rules. A comment generally against the proposed amendments was received from the county judges of Brewster, Culberson, Hudspeth, Jeff Davis and Presidio Counties.

Region F Regional Water Planning Group commented that expenses that were incurred during the initial scope of work development that were considered eligible study costs as either in-kind services or actual expenses should be eligible for reimbursement as a necessary and direct cost of development of regional water plans. The board agrees, and has made changes to §355.99 to eliminate the limits of funding of the scopes of work.

The county judges of Brewster, Culberson, Hudspeth, Jeff Davis and Presidio Counties commented that the rules, while an improvement over the original funding formula, still were unworkable for their counties. They stated that water plans will be supported by their residents only if locally controlled, and that requiring local entities to pay for 100% of the administrative costs of the planning will not achieve that goal. They state that the state requirement for water planning from the local entities without full state payment for the efforts amounts to an unfunded state mandate, and will not create local buy-in or support for the process. The board has not made changes to the rules as a result of the comments. The board has provided funding based on appropriations made and expected funding from the state legislature for the regional water planning effort and are following direction of legislative leadership that the regions should provide for the administration of the planning efforts. The board also continues to believe that the provision of some level of funding by local interests will provide greater ownership of the planning effort and facilitate acceptance of the planning results.

The sections are adopted under the authority granted in: Texas Water Code, §6.101, which directs the board to adopt rules necessary to carry out the powers and duties of the board provided by the Texas Water Code and other laws of Texas; Texas Water Code, §15.403, which directs the board to adopt rules to carry out Texas Water Code, Chapter 15, under which the board provides the funding for regional water plans; and Texas Water Code, §15.4061, which requires to board to adopt rules establishing criteria for eligibility for regional water planning money.

*§355.99. Funding Limitations.*

The board may provide up to 100% of the necessary and direct costs of development or revision of regional water plans within the funding limits of the board.

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 December 17, 1998.

TRD-9818420
Suzanne Schwartz
General Counsel
Texas Water Development Board
Effective date: January 6, 1999
Proposal publication date: October 30, 1998
For further information, please call: (512) 463–7981

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# Chapter 363. Financial Assistance Programs

## Subchapter B. State Water Pollution Control Revolving Fund

### Division 1. Introductory Provisions

**31 TAC §363.202, §363.209**

The Texas Water Development Board (board) adopts amendments to §363.202 and §363.209, concerning Financial Assistance Programs without changes to the proposed text as published in the October 30, 1998, issue of the *Texas Register* (23 TexReg 11086) and will not be republished. The amendments restore to borrowers of Clean Water State Revolving Fund (CWSRF) funds the ability to finance loan origination fees by including the fees in the principal of the CWSRF loan.

Loan origination fees were financed as a part of CWSRF loans until a ruling by the U.S. Environmental Protection Agency (EPA) in the spring of 1998 held that administrative fees included within CWSRF loans would be subject to the 4% administrative ceiling allowed by the Clean Water Act. To comply with

the EPA ruling, the Board adopted new rules which excluded loan origination fees from being financed through the CWSRF loan. Congressional action has now modified the EPA ruling to exclude, through federal fiscal year 1999, loan origination fees that have been and will be financed as a part of the CWSRF loan from the 4% administrative cost ceiling. Congress has indicated the intention to consider the matter further next year as a part of the reauthorization of the Clean Water Act. Because the agency's customers prefer including the loan origination fee in the loan, the agency is restoring, for the present, the use of this method of funding administrative costs.

The amendment to §363.202, relating to Definitions, deletes the definition for "repayment schedule" as a clean up item since repayment schedules are used only in conjunction with a lending method that is being discontinued. The amendments also renumber the remaining definitions. The amendment to §363.209, relating to Administrative Cost Recovery, provides that the loan origination fee is a one-time charge of 1.85% of the SRF loan amount that is due at loan closing.

No comments were received on the proposed amendments.

The amendments are adopted under the authority of the Texas Water Code, §6.101 and §15.605 which provides the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State.

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 December 17, 1998.

TRD-9818421
Suzanne Schwartz
General Counsel
Texas Water Development Board
Effective date: January 6, 1999
Proposal publication date: October 30, 1998
For further information, please call: (512) 463–7981

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# Chapter 371. Drinking Water State Revolving Fund

## Subchapter B. Program Requirements

### 31 TAC §§371.13, 371.19–371.21, 371.25

The Texas Water Development Board (board) adopts amendments to §§371.13, 371.19–371.21, and 371.25 concerning the Drinking Water State Revolving Fund (Drinking Water SRF). Section 371.20 is adopted with changes to the proposed text as published in the October 30, 1998, issue of the *Texas Register* (23 TexReg 11087). Sections 371.13, 371.19, 371.21 and 371.25 are adopted without changes and will not be republished. The amendments provide correction, add definitions, add detail to clarify the rating criteria and procedures of the Drinking Water SRF program, and eliminate the use of separate funding lists for large and small communities.

Section 371.13, relating to Projects Eligible for Assistance, is amended to reflect the language of the federal Safe Drinking Water Act with respect to systems which do not have the technical, managerial, and financial capacity to ensure compliance with the federal act.

Section 371.19, relating to the Rating Process, is amended to define certain key terms which describe the process by which projects are rated. The section defines "principal project", as distinguished from related but secondary projects, and states how a principal project determines the rating. This amendment allows the inclusion of related secondary projects in the total project to be funded and simplifies and streamlines the submittal and rating process for both the applicant and the agency.

"Affordability factor" is amended to eliminate a single criterion for determining affordability that has proved to be difficult to measure and adopts by reference to §371.24 the more precise and readily measurable criteria contained in the existing definition of "disadvantaged community". "Combined rating factor" and "physical deficiency rating criteria" are components of the project rating process. These components are amended to minimize the likelihood of the rating process resulting in projects receiving equal rating scores. The section also clarifies the definition of "consolidation" and defines "tie breaker" to provide a method for ranking projects that have received equal rating scores. The section is further amended to renumber tables as a result of the change of structure of the section due to the addition of the new subsections and terms.

Section 371.20, relating to the Intended Use Plan, is amended to eliminate a deadline imposed on the agency that has been found to be unnecessary during the process of soliciting project information. The section further provides more information to potential applicants as to the forms that will be sent. This provides potential applicants with more specific notice that the forms used in the rating process must be submitted by the deadline in order for projects to be rated and included in the intended use plan. This change emphasizes for the applicant that submittal for funding consideration is a competitive process. Minor changes have been made from the proposed text to correct punctuation.

Section 371.21, relating to Criteria and Methods for Distribution of Funds for Water System Improvements, is amended to eliminate the practice of maintaining two separate project lists for large and small communities. The change to one project list is made at the request of the U.S. Environmental Protection Agency (EPA) to ensure that funding decisions are made in priority order, in accordance with EPA policy. The change to one list necessitates the inclusion of a bypass process that ensures, when needed, that a minimum of 15% of total funds will be made available to small community systems.

Section 371.25, relating to Criteria and Methods for Distribution of Funds for Disadvantaged Communities, is amended for clarification and to remove a phrase which is unnecessary, since no incomplete applications would receive commitments.

No comments were received on the proposed amendments.

The amendments are adopted under the authority of the Texas Water Code, §6.101 and §15.605 which provide the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State.

*§371.20. Intended Use Plan.*

(a) Each fiscal year the board shall prepare an intended use plan to meet the requirements of the Act and to assist the board in its financial planning. The intended use plan will identify projects

anticipated to receive assistance from that year's available funds. The list of projects by priority ranking included in the intended use plan may also serve as the comprehensive project priority list required by the Act.

(b) The process for listing projects in the intended use plan will be as follows.

(1) Each year the executive administrator will provide written notice and solicit project information from eligible applicants desiring to have their projects placed on the subsequent year's intended use plan. The notice will include forms to be used to submit rating information and the deadline by which rating information must be submitted in order for projects to be rated and included in the intended use plan. The required information will include:

(A) a description of the proposed project;

(B) county map showing location of service area;

(C) an estimated total project cost which:

*(i)* for an estimated loan amount greater than $100,000, shall be certified by a registered professional engineer; or

*(ii)* for an estimated loan amount less than $100,000, shall be accompanied by a statement signed by the system operator establishing the basis for the estimate;

(D) estimated project schedule;

(E) population currently served by the applicant; and

(F) additional information as necessary to establish the priority rating score for source water protection projects.

(2) To be included in the draft intended use plan, the applicant must submit the required information signed by a representative of the applicant not later than the deadline included in the notice. Rating information submitted after the deadline will not be accepted. Incomplete rating information forms may prevent projects from being rated for inclusion in the intended use plan.

(3) After a public hearing, the intended use plan and project priority list will be presented to the board for consideration at a regularly scheduled meeting.

(4) Public notice shall be given 30 days prior to the hearing and the comment period shall remain open 30 days following the hearing.

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 December 17, 1998.

TRD-9818422
Suzanne Schwartz
General Counsel
Texas Water Development Board
Effective date: January 6, 1999
Proposal publication date: October 30, 1998
For further information, please call: (512) 463–7981

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# TITLE 34. PUBLIC FINANCE

## Part IV. Employees Retirement System of Texas

### Chapter 61. Terms and Phrases

**34 TAC §61.1**

The Employees Retirement System of Texas adopts the amendment to §61.1, concerning definitions, without changes to the proposed text as published in the November 6, 1998, issue of the *Texas Register* (23 TexReg 11315) and will not be republished.

This rule is being amended in order to number each definition in accordance with *Texas Register* requirements.

No comments were received regarding adoption of the amendment.

The amendment is proposed under Texas Government Code §815.102, which provides authorization for the board to adopt rules necessary to carry out other business of the board.

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 December 21, 1998.

TRD-9818493
Sheila W. Beckett
Executive Director
Employees Retirement System of Texas
Effective date: January 10, 1999
Proposal publication date: November 6, 1998
For further information, please call: (512) 867–7125

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### Chapter 65. Executive Director

**34 TAC §65.7**

The Employees Retirement System of Texas adopts an amendment to §65.7, concerning Appointment of Examiner, without changes to the proposed text as published in the November 6, 1998, issue of the *Texas Register* (23 TexReg 11315) and will not be republished.

This rule is being amended in order to update the rule.

No comments were received regarding adoption of this amendment.

The amendment is proposed under Texas Government Code §815.102, which provides authorization for the board to adopt rules necessary to carry out other business of the board.

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 December 21, 1998.

TRD-9818494
Sheila W. Beckett
Executive Director
Employees Retirement System of Texas
Effective date: January 10, 1999
Proposal publication date: November 6, 1998
For further information, please call: (512) 867–7125

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## Chapter 67. Hearings on Disputed Claims

**34 TAC §§67.3, 67.5, 67.7, 67.9, 67.13, 67.15, 67.17, 67.21, 67.23, 67.25, 67.27, 67.31, 67.33, 67.35, 67.37, 67.39, 67.41, 67.43, 67.45, 67.47, 67.49, 67.51, 67.53, 67.55, 67.57, 67.61, 67.63, 67.65, 67.69, 67.73, 67.75, 67.77, 67.79, 67.81, 67.83, 67.87, 67.89, 67.91, 67.93, 67.97, 67.103, 67.105, 67.107, 67.109, 67.111**

The Employees Retirement System of Texas (ERS) adopts amendments to §§67.3, 67.5, 67.7, 67.9, 67.13, 67.15, 67.17, 67.21, 67.23, 67.25, 67.27, 67.31, 67.33, 67.35, 67.37, 67.39, 67.41, 67.43, 67.45, 67.47, 67.49, 67.51, 67.53, 67.55, 67.57, 67.61, 67.63, 67.65, 67.69, 67.73, 67.75, 67.77, 67.79, 67.81, 67.83, 67.87, 67.89, 67.91, 67.93, 67.97, 67.103, 67.105, 67.107, 67.109, 67.111 of Chapter 67, concerning Hearings on Disputed Claims. Sections 67.3, 67.5, 67.7, 67.9, 67.13, 67.15, 67.21, 67.23, 67.25, 67.27, 67.31, 67.33, 67.35, 67.37, 67.39, 67.41, 67.43, 67.45, 67.47, 67.49, 67.51, 67.53, 67.55, 67.57, 67.61, 67.63, 67.65, 67.69, 67.73, 67.75, 67.77, 67.79, 67.81, 67.83, 67.87, 67.89, 67.91, 67.93, 67.97, 67.103, 67.105, 67.107, 67.109, 67.111 are adopted without changes and will not be republished. Section 67.17 is adopted with changes to the proposed text as published in the November 6, 1998, issue of the *Texas Register* (23 TexReg 11316).

These amendments are amended in order to bring the rules in line with current practices.

Section 67.17(2) is amended in order to correct a grammatical error.

No comments were received regarding adoption of these amendments.

The amendments are proposed under Texas Government Code §815.102 and Insurance Code, Article 3.50-2, §4.

*§67.17. Parties Defined.*

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

(1) Administering Firm - Any firm designated by the board to administer any coverages, services, benefits, or requirements in accordance with Article 3.50-2, Texas Insurance Code and by the rules of the board, and the administering firm shall be considered a party to any proceeding in connection with such matters.

(2) Appellant or claimant - Any person with standing to pursue an administrative appeal under this Chapter who, by written petition, including appeals, applies for or seeks an available administrative remedy from the board.

(3) Insurer - The insurance carrier who has contracted with the board to provide coverages authorized by the Texas Employees Uniform Group Insurance Benefits Act, Article 3.50-2, Texas Insurance Code. The insurer shall be considered a party to any proceeding which involves a question of eligibility or coverage under its contract with the board.

(4) Intervenor - A party other than an appellant or claimant who is permitted to become a party to a proceeding in accordance with §67.21 (relating to Intervention).

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 December 21, 1998.

TRD-9818496
Sheila W. Beckett
Executive Director
Employees Retirement System of Texas
Effective date: January 10, 1999
Proposal publication date: November 6, 1998
For further information, please call: (512) 867–7125

♦ ♦ ♦

**34 TAC §§67.29, 67.59, 67.67**

The Employees Retirement System of Texas (ERS) adopts the repeal of §§67.29, 67.59, and 67.67, concerning Hearings on Disputed Claims, as proposed in the November 6, 1998, issue of the *Texas Register* (23 TexReg 11323). The information contained in these repealed sections has been included elsewhere in Chapter 67.

No comments were received regarding adoption of the repealed sections.

The repeals are proposed under Government Code §815.102 and Insurance Code, Article 3.50-2, §4.

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 December 21, 1998.

TRD-9818495
Sheila W. Beckett
Executive Director
Employees Retirement System of Texas
Effective date: January 10, 1999
Proposal publication date: November 6, 1998
For further information, please call: (512) 867–7125

♦ ♦ ♦

## Chapter 87. Deferred Compensation

**34 TAC §§87.1, 87.9, 87.15, 87.17**

The Employees Retirement System of Texas adopts amendments to Chapter 87, concerning the Deferred Compensation Plan, with changes to the proposed text of §87.15 as published in the November 6, 1998, issue of the *Texas Register* (23 TexReg 11324). Amended §§87.1, 87.9, 87.17 are adopted without changes to the proposed text and will not be republished.

Section 87.1 is being amended to correct an administrative error and to clarify the definition of "Product Type". Section 87.9 is being amended to add new language regarding product contracts. Section 87.15 is being amended to add language regarding transfers and is adopted with changes due to typographical errors in subsections (e)(2)(B) and (e)(3)(C) and a punctuation error in Subsection (d)(3)(C). Section 87.17 is being amended to add language regarding death benefits and distribution requirements.

No comments were received regarding adoption of these amendments.

These amendments are proposed under Texas Government Code, §609.508, which provides the board of trustees the authority to adopt any rules necessary to administer the deferred compensation plan.

*§87.15. Transfers*

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

(d) Procedures for making a transfer of all deferrals and investment income from a qualified investment product.

(1) (No change.)

(2) (No change.)

(3) If a check is used to make a transfer, this paragraph applies.

(A) The plan administrator, in its discretion, may direct the qualified vendor to make the check payable to the payee specified by the plan administrator, which may be another qualified vendor or an eligible plan in the case of a plan to plan transfer. If the plan administrator directs the qualified vendor to send funds directly to another qualified vendor, the plan administrator shall provide instructions concerning the investment of the amounts transferred. If the specified payee is another qualified vendor, the qualified vendor shall promptly deposit the check into the applicable account previously agreed upon. The qualified vendor shall ensure that the plan administrator or the specified payee receives the check no later than the 15th day after the vendor receives notification of the transfer.

(B) If the check is sent to the plan administrator, the plan administrator must endorse the check and deposit the check with a qualified vendor selected by the plan administrator.

(C) After or before receiving verification of a completed transfer from the qualified vendor selected by the plan administrator, and receiving a list of affected participants from the qualified vendor, the plan administrator shall direct the agency coordinators for the participants to:

*(i)* notify each affected participant concerning the transfers; and

*(ii)* request that each affected participant submit a change agreement to the participant's agency coordinator for the purpose of designating the qualified investment product that will receive the participant's deferrals and investment income.

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

(4) (No change.)

(e) Procedures for making a transfer of less than all deferrals and investment income from a qualified investment product.

(1) (No change.)

(2) If the plan administrator initiates a transfer, this paragraph applies.

(A) The plan administrator shall send a written notice to the qualified vendor that is sponsoring the qualified investment product. The notice must require the vendor to issue a check or a wire transfer in an amount equal to the deferrals and investment income being moved. The notice may be sent with or without prior notice to the participant whose deferrals and investment income are being moved.

(B) The plan administrator, in its discretion, may direct the qualified vendor to make the check payable to the payee specified by the plan administrator, which may be another qualified vendor or an eligible plan in the case of a plan to plan transfer. If the plan administrator directs the qualified vendor to send funds directly to another qualified vendor, the plan administrator shall provide instructions concerning the investment of the amounts transferred. If the specified payee is another qualified vendor, the qualified vendor shall promptly deposit the check into the applicable account previously agreed upon. The qualified vendor shall ensure that the plan administrator or the specified payee receives the check no later than the 15th day after the vendor receives notification of the transfer.

(C) If the check is sent to the plan administrator, the plan administrator shall endorse and deposit the check in a qualified investment product specifically designated to receive transfers initiated by the plan administrator.

(D) After depositing the check, or after receiving notification from the qualified vendor that the check has been deposited, the plan administrator must notify the agency coordinator for the participant whose deferrals and investment income were moved. The notification must:

*(i)* state the reason for the transfer;

*(ii)* direct the agency coordinator to request that the participant complete a change agreement to designate the qualified investment product that will receive the participant's deferrals and investment income; and

*(iii)* for a transfer from a credit union under subsection (b)(2) of this section, direct the agency coordinator to inform the participant that the participant may require the reinvestment of the transferred amounts in the credit union, unless the plan administrator determines that reinvestment in the credit union would not be in the best interests of the plan.

(E) (No change.)

(F) The receiving qualified vendor shall not reject and return funds to the ERS or to a previous qualified vendor who transfers funds at the direction of the plan administrator when plan forms have been signed by a valid vendor agent/representative to transfer or defer funds to that vendor;

(G)-(H) (No change.)

(3) If a participant initiates a transfer, this paragraph applies.

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

(C) The plan administrator, in its discretion, may direct the qualified vendor to make the check payable to the payee specified by the plan administrator, which may be another qualified vendor or an eligible plan in the case of a plan to plan transfer. If the plan administrator directs the qualified vendor to send funds directly to another qualified vendor, the plan administrator shall provide instructions concerning the investment of the amounts transferred. If the specified payee is another qualified vendor, the qualified vendor shall promptly deposit the check into the applicable account previously agreed upon. The qualified vendor shall ensure that the plan administrator or the specified payee receives the check no later than the 15th day after the vendor receives notification of the transfer.

(D) If the check is sent to the plan administrator, the plan administrator shall:

*(i)* endorse the check in favor of the qualified vendor that will be receiving the transfer; and

*(ii)* mail to the qualified vendor that will be receiving the transfer the endorsed check and written instructions concerning the investment of the amounts transferred.

(E) The qualified vendor must send written confirmation to the plan administrator concerning the vendor's receipt of the transferred funds and written instructions. The qualified vendor must ensure that the plan administrator receives the written confirmation no later than the 15th day after the qualified vendor receives the transferred funds and instructions.

(F) (No change.)

(f)-(h) (No change.)

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 December 21, 1998.

TRD-9818497
Sheila W. Beckett
Executive Director
Employees Retirement System of Texas
Effective date: January 10, 1999
Proposal publication date: November 6, 1998
For further information, please call: (512) 867–7125

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# TITLE 43. TRANSPORTATION

## Part I. Texas Department of Transportation

### Chapter 9. Contract Management

### Subchapter A. General

**43 TAC §9.2**

The Texas Department of Transportation adopts amendments to §9.2, concerning Contract Claim Procedure. Section 9.2 is adopted with changes to the proposed text as published in the October 9, 1998, issue of the *Texas Register* (23 TexReg 10360).

EXPLANATION OF ADOPTED AMENDMENTS

Senate Bill 370, 75th Legislature, 1997, codified Transportation Code, §201.112, which authorizes the commission, by rule, to establish procedures for the informal resolution of a claim arising out of a contract described by §22.018, Chapter 223, or Chapter 2254, Government Code. Section 201.112 provides for a right to an administrative hearing if a contractor is dissatisfied with the department's proposed resolution of a claim, and authorizes the executive director to change a finding of fact or conclusion of law made by the administrative law judge, or to vacate or modify an order issued by the administrative law judge, provided the executive director has a legal basis for doing so. The executive director's final order is subject to judicial review under the substantial evidence rule.

Section 9.2 is amended to comply with the requirements of Transportation Code, §201.112. Section 9.2 is also amended to prescribe requirements relating to the composition of the committee established by the department to hear contract claims. The executive director is authorized to name the members and chairman of the committee. In order to ensure that the committee includes members that are objective and experienced in the type of project or claim involved, the chairman of the committee may add members to the committee, including one or more district engineers chosen on a rotating basis, with a preference, if possible, for selecting district engineers of districts that do not have a current contractual relationship with the contractor. Section 9.2 is also amended to allow a contractor to file a contract claim at a location other than the district in which the contractor has a dispute.

Section 9.2 is also amended to clarify that the commission must issue any final and binding orders concerning agreed dispositions of contract claims. In order to clarify that all proceedings before the department, including all oral communications of, and written documentation prepared by, department staff in connection with the analysis of a contract claim are part of an attempt to mutually resolve a contract claim without litigation, §9.2 is finally amended to specify that such communications and documentation are also not admissible for any purpose in a formal administrative hearing provided for in paragraph (5) of that subsection.

RESPONSE TO COMMENTS

Written comments were received and are responded to as follows. Comments were received from the Associated General Contractors of Texas (AGC). The AGC did not indicate whether it was in favor of or against the proposed amendments.

Comment: The AGC commented that its review of the proposed amendments raised some concern about item (7) that states that all oral communications, reports, or other written documentation prepared by department staff during a claim are not admissible in a formal administrative hearing.

Response: Paragraph (7) of subsection (b) is amended to clarify that all proceedings before the department, including all oral communications of, and written documentation prepared by, department staff in connection with the analysis of a contract claim are also part of an attempt to mutually resolve a contract claim without litigation. Analyses of a claim are prepared by department staff for the use of the contract claims committee in its review of a claim, and its attempt to resolve a claim without litigation. Attempts to settle a case have generally been considered privileged. Pursuant to paragraph (3) of subsection (b), the committee will secure detailed reports and recommendations from the responsible department office, and may confer with any other department office deemed appropriate by the committee. The amendments to this rule clarify that the analyses upon which the committee relies to reach its opinion concerning any offers to settle a claim are also part of the settlement attempt. The existing privilege would be meaningless without this clarification.

Comment: The AGC finally commented that the organization of the proposed amendments is somewhat confusing. AGC stated that it would appear that item (7) dealing with evidence in an administrative hearing should precede item (6) dealing with the decision made in an administrative hearing.

Response: The department agrees that paragraphs (6) and (7) of subsection (b) appear out of order in relation to the sequence of events in a contract claim. The order of those two paragraphs has been switched.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation, and, more specifically, Transportation Code, §201.112, which authorizes the commission by rule to establish procedures for the informal resolution of a claim arising out of a contract described by §22.018, Chapter 223, or Chapter 2254, Government Code.

*§9.2. Contract Claim Procedure.*

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

(1) Commission–The three member body appointed by the governor to compose the Texas Transportation Commission.

(2) Committee–The Contract Claim Committee.

(3) Contract claim–A claim for additional compensation, time extension, or any other reason, arising out of a contract between the State of Texas, acting in its own capacity or as an agent of a local government, and a contractor, which is entered into and administered by the Texas Department of Transportation pursuant to Transportation Code, Section 22.018, Chapter 223, or Government Code, Chapter 2254, Subchapters A and B.

(4) Contractor–An individual, partnership, corporation, or other business entity that is a party to a written contract with the State of Texas which is entered into and administered by the Texas Department of Transportation pursuant to Transportation Code, Section 22.018, Chapter 223, or Government Code, Chapter 2254, Subchapters A and B.

(5) Department–The Texas Department of Transportation.

(6) Department office–The department district, division, or office responsible for the administration of the contract.

(7) Department office director–The chief administrative officer of the responsible department office, such officer to be a district engineer, division director, or office director.

(8) District–One of the 25 districts of the department.

(9) Executive director–The executive director of the Texas Department of Transportation.

(b) Contract claim committee.

(1) The executive director will name the members and chairman of a contract claim committee or committees to serve at his or her pleasure. The chairman may add members to the committee, including one or more district engineers who will be assigned to the committee on a rotating basis, with a preference, if possible, for district engineers of districts that do not have a current contractual relationship with the contractor involved in the contract claim. It will be the responsibility of a committee to gather information, study, and meet informally with contractors, if requested, to resolve any disputes that may exist between the department office and the contractor, and which result in one or more contract claims.

(2) The commission stresses that, to every extent possible, disputes between a contractor and the engineer or other department employee in charge of a project should be resolved during the course of the contract. If, however, after completion of a contract, or when required for orderly performance prior to completion, resolution of a contract claim is not reached with the department office, the contractor may file a detailed report and contract claim request with the department office director under whose administration the contract was or is being performed, the department's Construction Division, or the committee. Documents filed with the office director or the Construction Division will be transmitted to the committee.

(3) The committee will secure detailed reports and recommendations from the responsible department office, and may confer with any other department office deemed appropriate by the committee.

(4) The committee will then afford the contractor an opportunity for a meeting to informally discuss the disputed matters and to provide the contractor an opportunity to present relevant information and respond to information the committee has received from the department office.

(5) The committee chairman will give written notice of the committee's proposed disposition of the claim to the contractor. If that disposition is acceptable, the contractor shall advise the committee chairman in writing within 20 days of the date such notice is received, and the chairman will forward to the commission an agreed disposition involving payment to the contractor, for a final and binding order on the claim. If the contractor is dissatisfied with the proposal of the committee, the contractor may petition the executive director for a formal administrative hearing to litigate the claim pursuant to the provisions of §1.21 et seq. of this title (relating to Contested Case Procedure).

(6) Proceedings before the department office director or the committee are in the nature of an attempt to mutually resolve a contract claim without litigation and are not admissible for any purpose in a formal administrative hearing provided in paragraph (5) of this subsection. All oral communications, reports, or other written documentation prepared by department staff in connection with the analysis of a contract claim are part of the attempt to mutually resolve a contract claim without litigation, and are also not admissible for any purpose in a formal administrative hearing provided in paragraph (5) of this subsection.

(7) The administrative law judge's proposal for decision in a formal administrative hearing provided in paragraph (5) of this subsection shall be submitted to the executive director for adoption. The executive director may change a finding of fact or conclusion of law made by the administrative law judge or may vacate or modify an order issued by the administrative law judge. The executive director shall provide a written statement containing the reason and legal basis for any change.

(8) If the contractor fails to submit the petition within 20 days after notice of the committee's recommendation is received, that recommendation will be final, and all further appeal by the contractor shall be barred.

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 December 21, 1998.

TRD-9818485
Richard Monroe
General Counsel
Texas Department of Transportation
Effective date: January 10, 1999
Proposal publication date: October 9, 1998
For further information, please call: (512) 463–8630

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# Chapter 25. Traffic Operations

## Subchapter A. General

### 43 TAC §25.1

The Texas Department of Transportation adopts an amendment to §25.1, concerning the Texas Manual on Uniform Traffic Control Devices (Texas MUTCD). Section 25.1 is adopted with changes to the proposed text as published in the October 9, 1998, issue of the *Texas Register* (23 TexReg 10361).

EXPLANATION OF ADOPTED AMENDMENTS

This amendment will comply with House Bill 297, 75th Legislature, 1997, which added Transportation Code, §544.011 relating to left lane for passing only signs. This section requires that any time the department or a local authority places a sign on a highway that directs slower traffic to travel in a lane other than the farthest left lane, the sign must read, "left lane for passing only." House Bill 297 also requires the Texas Transportation Commission to amend the Texas MUTCD to conform with §544.011. House Bill 297 does not require the department or any local authority to change existing roadway signs; the bill allows "left lane for passing only" signs to be installed as the existing "slower traffic keep right" signs are replaced or repaired.

Although this change to the manual was distributed as an interim change notice, this amendment represents the formal change to the official copy of the printed Texas MUTCD.

COMMENTS

No comments were received on the proposed amendment. The department is adopting §25.1(c) with a change in punctuation to make for a more grammatically correct sentence.

STATUTORY AUTHORITY

The amendment is adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation and §544.001 relating to left lane for passing only signs.

*§25.1. Uniform Traffic Control Devices.*

(a) The Texas Manual on Uniform Traffic Control Devices for Streets and Highways, 1980 edition, as amended by Revision Number 7, which is filed with this section and hereby incorporated by reference, was prepared as required by law to govern standards and specifications for all such traffic control devices to be erected and maintained upon all highways within this state, including those under local jurisdiction. Copies of the manual may be obtained at the Texas Department of Transportation, 125 East 11th Street, Austin, Texas, 78701, and are on file for public inspection with the Office of the Secretary of State, Texas Register Division, James Earl Rudder State Office Building, Room 245, Austin, Texas, 78711.

(b) This manual will be periodically updated. In the intervals between updates, standards contained in "Official Rulings on Requests for Interpretations, Changes, and Experimentation" to the United States Department of Transportation's Manual on Uniform Traffic Control Devices for Streets and Highways will be inserted in this manual and may be used as interim standards.

(c) This manual is not intended to preclude the use of sound engineering judgment and experience in the application and installation of devices, and particularly, in those cases not specifically covered which must not conflict with the manual or other applicable state laws.

(d) This manual will be sold for a price based upon the then current cost to the department, except that certain public entities may be entitled to free copies.

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 December 21, 1998.

TRD-9818486
Richard Monroe
General Counsel
Texas Department of Transportation
Effective date: January 10, 1999
Proposal publication date: October 9, 1998
For further information, please call: (512) 463–8630

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# REVIEW OF AGENCY RULES

This Section contains notices of state agency rules review as directed by the 75th Legislature, Regular Session, House Bill 1 (General Appropriations Act) Art. IX, Section 167. 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 Jail Standards

**Title 37, Part IX**

The Texas Commission on Jail Standards proposes to review the following sections from Chapter 251 pursuant to the Appropriations Act of 1997, HB 1, Article IX, Section 167:

251.1

251.2

251.3

251.4

251.5

251.6

Comments on the review of these proposed rules may be submitted to Lynn Weatherby, Texas Commission on Jail Standards, P.O. Box 12985, Austin, Texas 78711.

TRD-9818503
Jack E. Crump
Executive Director
Texas Commission on Jail Standards
Filed: December 21, 1998

♦ ♦ ♦

The Texas Commission on Jail Standards proposes to review the following sections from Chapter 255 pursuant to the Appropriations Act of 1997, HB 1, Article IX, Section 167:

255.1

255.2

255.3

255.4

255.5

Comments on the review of these proposed rules may be submitted to Lynn Weatherby, Texas Commission on Jail Standards, P.O. Box 12985, Austin, Texas 78711.

TRD-9818504
Jack E. Crump
Executive Director
Texas Commission on Jail Standards
Filed: December 21, 1998

♦ ♦ ♦

The Texas Commission on Jail Standards proposes to review the following sections from Chapter 257 pursuant to the Appropriations Act of 1997, HB 1, Article IX, Section 167:

257.1

257.2

257.3

257.4

257.5

257.6

257.7

257.8

257.9

257.10

The Texas Commission on Jail Standards is contemporaneously proposing amendments to: §257.9 and §257.10 in this issue of the *Texas Register*.

Comments on the review of these proposed rules may be submitted to Lynn Weatherby, Texas Commission on Jail Standards, P.O. Box 12985, Austin, Texas 78711.

TRD-9818505
Jack E. Crump
Executive Director
Texas Commission on Jail Standards
Filed: December 21, 1998

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Texas Natural Resource Conservation Commission

**Title 30, Part I**

The Texas Natural Resource Conservation Commission (commission) proposes the review of the rules in 30 TAC Chapters 1, 3, 5, 10, 20, and 40, concerning procedural rules. This review complies with the General Appropriations Act, Article IX, §167, 75th Legislature, 1997.

The commission proposes to review the following rules: 30 TAC Chapter 1, concerning Purpose of Rules, General Provisions; 30 TAC Chapter 3, concerning Definitions; 30 TAC Chapter 5, concerning Advisory Committees; 30 TAC Chapter 10, concerning Commission Meetings; 30 TAC Chapter 20, concerning Rulemaking; and 30 TAC Chapter 40, concerning Alternative Dispute Resolution Procedure, as required by the General Appropriations Act, Article IX, §167. Section 167 requires state agencies to review and consider for readoption rules adopted under the Administrative Procedure Act. The review must include, at a minimum, an assessment that the reason for the rules continues to exist. The commission has reviewed the rules in each of these chapters and determined that the reasons for adopting these rules continue to exist. The rules are necessary to establish general commission procedures, as required by Texas Government Code, §2001.044. These rules are also necessary to prescribe certain commission procedural requirements for general agency operations, commission advisory committees, commission meetings, commission rulemaking activities, and alternative dispute resolution.

The commission concurrently proposes amendments to §;1.5, 3.2, 5.5, and 10.4 in the Proposed Rules section of this issue of the Texas Register. The changes were identified during the course of the commission's review and primarily correct statutory references and make clarifications. In addition, the commission proposes conforming changes in 30 TAC Chapters 305 and 312 in this edition of the Texas Register. The specific changes are noted in the proposed rule preamble for each action.

Comments on the commission's review of the rules contained in Chapters 1, 3, 5, 10, 20, and 40 may be submitted to Lisa Martin, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 98049-001-AD. Comments must be received by February 1, 1999. For further information, please contact Brian Christian, Policy Research Division, at (512) 239-1760.

TRD-9818455
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: December 18, 1998

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## Public Utility Commission of Texas

**Title 16, Part II**

The Public Utility Commission of Texas files this notice of intention to review §§23.24 relating to Form and Filing of Tariffs, 23.25 relating to Procedures Applicable to Chapter 58- Electing Incumbent Local Exchange Companies (ILECs), 23.26 relating to New and Experimental Services, 23.27 relating to Rate-Setting Flexibility for Services Subject to Significant Competitive Challenges, and 23.28 relating to Promotional Rates for LEC Services pursuant to the Appropriations Act of 1997, House Bill 1, Article IX, §167 (Section 167). Project Number 17709 has been assigned to the review of these rule sections.

As part of this review process, the commission is proposing the repeal of §§23.24-23.28 and is proposing new §25.241 relating to Form and Filing of Tariffs in Chapter 25, Substantive Rules Applicable to Electric Service Providers; and proposing new §§26.207 relating to Form and Filing of Tariffs, 26.208 relating to General Tariff Procedures, 26.209 relating to New and Experimental Services, 26.210 relating to Promotional Rates for Local Exchange Company Services, 26.211 relating to Rate-Setting Flexibility for Services Subject to Significant Competitive Challenges, and 26.212 relating to Procedures Applicable to Chapter 58 Electing Incumbent Local Exchange Companies in Chapter 26, Substantive Rules Applicable to Telecommunications Service Providers to replace these sections. Project Number 20074 has been established for proposed §25.241 and Project Number 20075 has been established for proposed §§26.207-26.212. The proposed new sections and the proposed repeal may be found in the Proposed Rules section of the Texas Register. The commission will accept comments on the §167 requirement in the comments filed on the proposed new sections.

Any questions pertaining to this notice of intention to review should be directed to Rhonda Dempsey, Rules Coordinator, Office of Regulatory Affairs, Public Utility Commission of Texas, 1701 North Congress Avenue, Austin, Texas 78711-3326 or at voice telephone (512) 936-7308.

23.24. Form and Filing of Tariffs.

23.25. Procedures Applicable to Chapter 58-Electing Incumbent Local Exchange Companies (ILECS).

23.26. New and Experimental Services.

23.27. Rate Setting Flexibility for Services Subject to Significant Competitive Challenges.

23.28. Promotional Rates for LEC Services.

TRD-9818412
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 16, 1998

♦ ♦ ♦

The Public Utility Commission of Texas files this notice of intention to review §23.40 relating to Prepaid Local Telephone Service pursuant to the Appropriations Act of 1997, House Bill 1, Article IX, §167 (Section 167). Project Number 17709 has been assigned to the review of these rule sections.

As part of this review process, the commission is proposing the repeal of §23.40 and under Project Number 19517 has proposed new §26.29 relating to Prepaid Local Telephone Service to replace §23.40. The proposed new section and the proposed repeal may be found in the Proposed Rules section of the Texas Register. The commission will accept comments on the §167 requirement in the comments filed on the proposed new section.

Any questions pertaining to this notice of intention to review should be directed to Rhonda Dempsey, Rules Coordinator, Office of Regulatory Affairs, Public Utility Commission of Texas, 1701 North Congress Avenue, Austin, Texas 78711-3326 or at voice telephone (512) 936-7308.

TRD-9818429
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas

Filed: December 17, 1998

♦ ♦ ♦

Board of Tax Professional Examiners

**Title 22, Part XXVII**

The Board of Tax Professional Examiners (Board) proposes the review of the following sections of 22 Texas Administrative Code (TAC) Chapter 621, and 624.

Chapter 621 relates to the Administration of the Board, §621.1. Powers and Duties. Chapter 624 relates to the Education procedures of the Board, §624.1 Definitions, §624.2 Curriculum, §624.3 Content Outlines, §624.4 Sponsors, §624.5 Course Approval and Administration, §624.6 Course Equivalency, §624.7 Instructors, §624.8 Evaluation, §624.9 Guidance, §624.10 Elective Courses, §624.11 Continuing Education.

The Board proposes to review these rules as required by the General Appropriations Act, Article IX, §167. Section 167 requires state agencies to review and consider for readoption rules adopted under the Administrative Procedure Act. The reviews must include, at a minimum, an assessment that the reason for the rules continues to exist. The Board has reviewed the rules in Chapter 621, 624 and determined that the reasons for adopting those rules continue to exist. The rules are necessary for the regulation of state water in the state by the commission, and the protection of groundwater.

Any questions pertaining to this notice of intention to review should be directed to Chrisitne LaPenna, Rules Coordinator, Board of Tax Professional Examiners, 333 Guadalupe Street, Tower 2, Suite 520, Austin, Texas, 78711, or at voice telephone (512) 305-7301.

TRD-9818436
David E. Montoya
Executive Director
Board of Tax Professional Examiners
Filed: December 18, 1998

♦ ♦ ♦

Texas Department of Transportation

**Title 43, Part I**

In accordance with the General Appropriations Act of 1997, House Bill 1, Article IX, §167, the Texas Department of Transportation files this notice of intention to review Title 43, TAC, Part I, §§22.10-22.16, Use of State Highway Right of Way; §25.1, Uniform Traffic Control Devices; §25.2, Freeway Corridor Management System; §25.5, Installation, Operation, and Maintenance of Traffic Signals; §25.6, Payment for and Erection of Signs by Others on State Highway Routes; §25.7, Removal and Storage of Personal Property; §25.9, Naming of Memorial Highways and Historical Routes; §25.10, Signs on State Highway Right of Way; §25.11, Continuous and Safety Lighting Systems; §25.12, Procedures for Establishing Speed Zones; §§25.70-25.76, Railroad Grade Crossings; §§25.101-25.104, Hazardous Material Routing Designations; §§25.400-25.409, Specific Information Logo Sign Program; §§25.420-25.425, City Pride Sign Program; §§25.700-25.708, Agricultural Interest Sign Program; and §§25.901-25.913, Traffic Safety Program.

As required by §167, the department will accept comments regarding whether the reason for adopting each of the rules in these sections continues to exist. The comment period will last 30 days beginning with the publication of this notice of intention to review.

Comments or questions regarding this rule review may be submitted in writing to Tom Newbern, Director, Traffic Operations Division, Texas Department of Transportation, 125 E. 11th Street, Austin, Texas, 78701-2483, or at (512) 416-3200.

TRD-9818478
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: December 21, 1998

♦ ♦ ♦

## Adopted Rule Reviews

Employees Retirement System of Texas

**Title 34, Part IV**

The Employees Retirement System of Texas (ERS) has reviewed Chapter 67, concerning Hearings on Disputed Claims, in accordance with the Appropriations Act, §167, and has determined that the reason for adopting these rules continues to exist. The proposed Rule Review was published in the November 6, 1998, issue of the *Texas Register* (23 TexReg 11413). No comments were received regarding the following sections:

§67.1. Purpose and Scope.

§67.11. Agreements To Be in Writing.

§67.19. Alignment of Parties.

§67.71. Official Notice.

§67.85. Form of Exceptions and Replies.

§67.95. Effective Date of Order.

§67.99. Emergency Order.

§67.101. Ex Parte Communications.

TRD-9818498
Sheila W. Beckett
Executive Director
Employees Retirement System of Texas
Filed: December 21, 1998

♦ ♦ ♦

The Employees Retirement System of Texas (ERS) has reviewed the following Sections, concerning Hearings on Disputed Claims, in accordance with the Appropriations Act, §167, and has determined that the reason for adopting these rules continues to exist. The proposed Rule Review was published in the November 6, 1998, issue of the *Texas Register* (23 TexReg 11413). In addition, the proposed amendments were published in the November 6, 1998, issue of the *Texas Register* (23 TexReg 11323). Please refer to the Adopted Rules Section in this issue of the *Texas Register* to see the adopted rules. No comments were received regarding the following sections:

§67.3. Definitions.

§67.5. Appeal of Denied Claims.

§67.7. Filing of Documents.

§67.9. Computation of Time.

§67.13. Conduct and Decorum.

§67.15. Classification of Parties.

§67.17. Parties Defined.

§67.21. Intervention.

§67.23. Representative Appearances.

§67.25. Classification of Pleadings.

§67.27. Form and Content of Pleadings.

§67.31. Written Motions.

§67.33. Amended Pleadings.

§67.35. Incorporation of Board Records by Reference.

§67.37. Docketing and Number of Causes.

§67.39. Notice and Service.

§67.41 Contents of Notice.

§67.43. Dismissal Without Hearing.

§67.45. Prehearing Conference.

§67.47. Postponements or Continuances.

§67.49. Motion for Consolidation.

§67.51. Place and Nature of Hearings.

§67.53. Presiding Officer.

§67.55. Order of Procedure.

§67.57. Reporters and Transcripts.

§67.61. Offer of Proof.

§67.63. Briefs.

§67.65. The Record.

§67.73. Documentary Evidence.

§67.75. Admissibility of Prepared Testimony and Exhibits.

§67.77. Introduction of Exhibits.

§67.79. Limit on Number of Witnesses.

§67.81. Examiner's Report and Proposal for Decision.

§67.83. Filing of Exceptions and Replies.

§67.87. Oral Argument Before the Board.

§67.89. Presentation of Contested Cases to the Board.

§67.91. Form, Content, and Service of Orders.

§67.93. Administrative Finality. §67.97. Rehearing.

§67.103. Subpoenas.

§67.105. Depositions.

§67.107. Discovery Generally.

§67.109. Witness Fees.

§67.111. Conflicting Claims to Benefits.

In addition, the following repeals have been adopted.

§67.29. Service of Pleadings.

§67.59. Formal Exceptions.

§67.67. Witnesses To Be Sworn.

No comments were received on the proposed repeals.

TRD-9818499
Sheila W. Beckett
Executive Director
Employees Retirement System of Texas
Filed: December 21, 1998

♦ ♦ ♦

## Texas Ethics Commission

**Title 1, Part II**

Notice of Intention to Review:

In accordance with the General Appropriations Act, Article IX, §167, 75th Legislature, 1997, the Texas Ethics Commission proposes to review Title 1, Texas Administrative Code, Chapters 18 (General Rules Concerning Reports), 20 (Reporting Political Contributions and Expenditures), 22 (Restrictions on Contributions and Expenditures), 24 (Restrictions on Contributions and Expenditures Applicable to Corporations and Labor Organizations). The reason for adopting the rules continues to exist.

Comments on the proposed review from any member of the public are solicited. A written comment should be mailed or delivered to Karen Lundquist, Texas Ethics Commission, P.O. Box 12070, Austin, TX 78711-2070, or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the commission concerning the proposed review may do so at any commission meeting during the agenda item "Communication to the Commission from the Public." Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or, toll free in Texas, (800) 325-8506.

TRD-9818475
Tom Harrison
Executive Director
Texas Ethics Commission
Filed: December 18, 1998

♦ ♦ ♦

## General Land Office

**Title 31, Part I**

In the October 2, 1998, issue of the *Texas Register* (23 TexReg 10051), the General Land Office proposed a conclusion that all its rules in Chapter 9, relating to Exploration & Leasing of Oil and Gas, except §§9.4 and 9.7), had been reviewed and that the agency's reasons for adopting these rules continued to exist. No comments were received on this proposed finding and the GLO now adopts this finding. However, the General Land Office also decided to update and to reformat these Chapter 9 rules. (Note: §§9.4 and 9.7 were renumbered as part of the reformatting but these rules will not be reviewed for purposes of the Appropriations Act, §167, until the fiscal year 2000.)

By separate concurrent rule actions, the General Land Office is renumbering and adopting, with changes, all its rules in Chapter 9, relating to Exploration and Leasing of Oil and Gas, except (1) its rule relating to Geophysical Exploration Permits (old rule §9.4, which is being renumbered as current rule §9.11), and (2) its rule relating to Royalty and Reporting Obligations to the State (former rule §9.7, which is being renumbered as current rule §9.51).

TRD-9818448
Garry Mauro
Chairman
General Land Office
Filed: December 18, 1998

♦ ♦ ♦

The General Land Office (GLO) adopts without changes, Chapter 10, relating to Exploration & Development of State Minerals Other Than Oil and Gas in accordance with the Appropriations Act, §167.

No comments were received regarding the adoption of this chapter.

TRD-9818414
Garry Mauro
Chairman
General Land Office
Filed: December 17, 1998

♦ ♦ ♦

The General Land Office (GLO) adopts without changes, Chapter 151, relating to General Rules of Practice and Procedures in accordance with the Appropriations Act, §167.

No comments were received regarding the repeal of this chapter.

The GLO adopts without changes, **new** Chapter 151, relating to Operations of the School Land Board in accordance with the Appropriations Act, §167.

No comments were received regarding the adoption of this **new** chapter.

TRD-9818415
Garry Mauro
Chairman
General Land Office
Filed: December 17, 1998

♦ ♦ ♦

The General Land Office (GLO) adopts without changes, Chapter 153, relating to Exploration and Development in accordance with the Appropriations Act, §167.

No comments were received regarding the repeal of this chapter.

TRD-9818416
Garry Mauro
Chairman
General Land Office
Filed: December 17, 1998

♦ ♦ ♦

The General Land Office (GLO) adopts without changes, Chapter 201, relating to General Rules in accordance with the Appropriations Act, §167.

No comments were received regarding the repeal of this chapter

The GLO adopts without changes, **new** Chapter 201, relating to Boards for Lease of State-Owned Lands in accordance with the Appropriations Act, §167.

No comments were received regarding the adoption of this **new** chapter.

TRD-9818417
Garry Mauro
Chairman
General Land Office
Filed: December 17, 1998

♦ ♦ ♦

# TABLES & GRAPHICS

Graphic material from the emergency, proposed, and adopted sections is published separately in this tables and graphics section. Graphic material is arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic material is indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word “Figure” followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on. Multiple graphics in a rule are designated as “Figure 1” followed by the TAC citation, “Figure 2” followed by the TAC citation.

| Pest Mgmt Zone | Planting Dates | Destruction deadline | Destruction Method (also see footnotes) |
|---|---|---|---|
| 1 | Feb. 1 - March 31 | September 1 | shred and plow a,b |
| 2 – Area 1 | No dates set | September 10 | shred and plow a,b |
| 2 – Area 2 | No dates set | September 20 | shred and plow a,b |
| 2 – Area 3 | No dates set | September 25 | shred and plow a,b |
| 2 - Area 4 | No dates set | October 1 | shred and plow a,b |
| 2 – Area 4 Refugio county only | No dates set | December 14 | shred and plow a,b |
| 2 – Area 4 **Calhoun county only** | No dates set | ~~[December 14]~~ **December 30** | shred and plow a,b |
| 3 - Area 1 | March 5 - May 15 | October 1 | shred and plow a,b |
| 3 - Area 2 | March 5 - May 15 | October 15 | shred and plow a,b |
| 4 | No dates set | October 10 | shred and plow a,b |
| 5 | No dates set | October 20 | shred and/or plow a,c |
| **6** | No dates set | ~~[December 15]~~ **December 30** | shred and/or plow a,c |
| 7 | March 20 - May 31 | November 30 | shred and/or plow a,c |
| 7 Brazos County only | March 20 - May 31 | December 30 | shred and/or plow a,c |
| 8 | March 20 - May 31 | November 30 | shred and/or plow a,c |
| 8 Ellis, Limestone, McLennan and Navarro Counties only | March 20 - May 31 | December 30 | shred and/or plow a,c |
| 9 | No dates set | February 1 | shred and plow b,d |
| 10 | No dates set | February 1 | shred and plow b,d |

a/ Alternative destruction methods are allowed (see paragraph (b)).

b/ Destruction shall be performed in a manner to prohibit the presence of live cotton plants.

c/ Destruction shall periodically be performed to prevent presence of fruiting structures.

d/ Soil shall be tilled to a depth of 2 or more inches in Zone 9, and to a depth of 6 or more inches in Zone 10.

Figure: 30 TAC Chapter 115 preamble

| Gasoline Throughput (Gallons/Month) | Number of Gas Stations | % of Total Stations | Number of Tanks | Average Annualized Total Cost ($1000) | VOC Reductions (Tons/Year) | % of Total VOC Reductions | Average Cost Effectiveness ($/Ton of VOC Reduced) |
|---|---|---|---|---|---|---|---|
| < 10,000 | 1607 | 18.6 | 3942 | 0 | 0 | 0 | 0 |
| ≥ 10,000 AND < 25,000 | 2436 | 28.3 | 5976 | 1957[1] | 1210[1] | 11.8[1] | 1614[1] |
| ≥ 25,000 AND < 50,000 | 2287 | 26.5 | 5610 | 1840[1] | 2480[1] | 24.1[1] | 742[1] |
| ≥ 50,000 AND < 125,000 | 1599 | 18.6 | 3922 | 1280[1] | 3510[1] | 34.1[1] | 366[1] |
| ≥ 125,000 | 691 | 8.0 | 1693 | 550 | 3090 | 30.0 | 179 |
| TOTAL (≥ 10,000) | 7013 | 81.4 | 17,201 | 5630 | 10,290 | 100 | 548 |
| TOTAL (ALL SIZES) | 8620 | 100 | 21,143 | ---- | ---- | ---- | ---- |

[1]If Stage I were implemented for gas stations between 10,000 and 125,000 gallons per month. Included for comparison purposes only.

TABLE I.
SYNTHETIC ORGANIC CHEMICALS

Figure: 30 TAC §115.10(37)

| OCPDB No.* | Chemical | OCPDB No.* | Chemical |
|---|---|---|---|
| 20 | Acetal | 390 | Benzenedisulfonic acid |
| 30 | Acetaldehyde | 400 | Benzenesulfonic acid |
| 40 | Acetaldol | 410 | Benzil |
| 50 | Acetamide | 420 | Benzilic acid |
| 65 | Acetanilide | 430 | Benzoic acid |
| 70 | Acetic acid | 440 | Benzoin |
| 80 | Acetic anhydride | 450 | Benzonitrile |
| 90 | Acetone | 460 | Benzophenone |
| 100 | Acetone cyanohydrin | 480 | Benzotrichloride |
| 110 | Acetonitrile | 490 | Benzoyl chloride |
| 120 | Acetophenone | 500 | Benzyl alcohol |
| 125 | Acetyl chloride | 510 | Benzyl amine |
| 130 | Acetylene | 520 | Benzyl benzoate |
| 140 | Acrolein | 530 | Benzyl chloride |
| 150 | Acrylamide | 540 | Benzyl dichloride |
| 160 | Acrylic acid and esters | 550 | Biphenyl |
| 170 | Acrylonitrile | 560 | Bisphenol A |
| 180 | Adipic acid | 570 | Bromobenzene |
| 185 | Adiponitrile | 580 | Bromonaphthalene |
| 190 | Alkyl naphthalenes | 590 | Butadiene |
| 200 | Allyl alcohol | 592 | 1-butene |
| 210 | Allyl chloride | 600 | n-butyl acetate |
| 220 | Aminobenzoic acid | 630 | n-butyl acrylate |
| 230 | Aminoethylethanolamine | 640 | n-butyl alcohol |
| 235 | p-Aminophenol | 650 | s-butyl alcohol |
| 240 | Amyl acetates | 660 | t-butyl alcohol |
| 250 | Amyl alcohols | 670 | n-butylamine |
| 260 | Amyl amine | 680 | s-butylamine |
| 270 | Amyl chloride | 690 | t-butylamine |
| 280 | Amyl mercaptans | 700 | p-tert-butyl benzoic acid |
| 290 | Amyl phenol | 710 | 1,3-butylene glycol |
| 300 | Aniline | 750 | n-butyraldehyde |
| 310 | Aniline hydrochloride | 760 | Butyric acid |
| 320 | Anisidine | 770 | Butyric anhydride |
| 330 | Anisole | 780 | Butyronitrile |
| 340 | Anthranilic acid | 785 | Caprolactam |
| 350 | Anthraquinone | 790 | Carbon disulfide |
| 360 | Benzaldehyde | 800 | Carbon tetrabromide |
| 370 | Benzamide | 810 | Carbon tetrachloride |
| 380 | Benzene | 820 | Cellulose acetate |

TABLE I.
SYNTHETIC ORGANIC CHEMICALS

| OCPDB No.* | Chemical | OCPDB No.* | Chemical |
|---|---|---|---|
| 840 | Chloroacetic acid | 1190 | Diacetone alcohol |
| 850 | m-chloroaniline | 1200 | Diaminobenzoic acid |
| 860 | o-chloroaniline | 1210 | Dichloroaniline |
| 870 | p-chloroaniline | 1215 | m-dichlorobenzene |
| 880 | Chlorobenzaldehyde | 1216 | o-dichlorobenzene |
| 890 | Chlorobenzene | 1220 | p-dichlorobenzene |
| 900 | Chlorobenzoic acid | 1221 | Dichlorodifluoromethane |
| 905 | Chlorobenzotrichloride | 1240 | Dichloroethyl ether |
| 910 | Chlorobenzoyl chloride | 1244 | 1,2-dichloroethane (EDC) |
| 920 | Chlorodifluoroethane | 1250 | Dichlorohydrin |
| 921 | Chlorodifluoromethane | 1270 | Dichloropropene |
| 930 | Chloroform | 1280 | Dicyclohexylamine |
| 940 | Chloronapthalene | 1290 | Diethylamine |
| 950 | o-chloronitrobenzene | 1300 | Diethylene glycol |
| 951 | p-chloronitrobenzene | 1304 | Diethylene glycol diethyl ether |
| 960 | Chlorophenols | 1305 | Diethylene glycol dimethyl ether |
| 964 | Chloroprene | 1310 | Diethylene glycol monobutyl ether |
| 965 | Chlorosulfonic acid | 1320 | Diethylene glycol monobutyl ether acetate |
| 970 | m-chlorotoluene | | |
| 980 | o-chlorotoluene | 1330 | Diethylene glycol monoethyl ether |
| 990 | p-chlorotoluene | 1340 | Diethylene glycol monoethyl ether acetate |
| 992 | Chlorotrifluoromethane | | |
| 1000 | m-cresol | 1360 | Diethylene glycol monomethyl ether |
| 1010 | o-cresol | | |
| 1020 | p-cresol | 1420 | Diethyl sulfate |
| 1021 | Mixed cresols | 1430 | Difluoroethane |
| 1030 | Cresylic acid | 1440 | Diisobutylene |
| 1040 | Crotonaldehyde | 1442 | Diisodecyl phthalate |
| 1050 | Crotonic acid | 1444 | Diisooctyl phthalate |
| 1060 | Cumene | 1450 | Dikethene |
| 1070 | Cumene hydroperoxide | 1460 | Dimethylamine |
| 1080 | Cyanoacetic acid | 1470 | N,N-dimethylaniline |
| 1090 | Cyanogen chloride | 1480 | N,N-dimethyl ether |
| 1100 | Cyanuric acid | 1490 | N,N-dimethylformamide |
| 1110 | Cyanuric chloride | 1495 | Dimethylhydrazine |
| 1120 | Cyclohexane | 1500 | Dimethyl sulfate |
| 1130 | Cyclohexanol | 1510 | Dimethyl sulfide |
| 1140 | Cyclohexanone | 1520 | Dimethyl sulfoxide |
| 1150 | Cyclohexene | 1530 | Dimethyl terephthalate |
| 1160 | Cyclohexylamine | 1540 | 3,5-dinitrobenzoic acid |
| 1170 | Cyclooctadiene | 1545 | Dinitrophenol |
| 1180 | Decanol | 1550 | Dinitrotoluene |

TABLE I.
SYNTHETIC ORGANIC CHEMICALS

| OCPDB No.* | Chemical | OCPDB No.* | Chemical |
|---|---|---|---|
| 1560 | Dioxane | 1990 | Ethyl ether |
| 1570 | Dioxolane | 2000 | 2-ethylhexanol |
| 1580 | Diphenylamine | 2010 | Ethyl orthoformate |
| 1590 | Diphenyl oxide | 2020 | Ethyl oxalate |
| 1600 | Diphenyl thiourea | 2030 | Ethyl sodium oxalacetate |
| 1610 | Dipropylene glycol | 2040 | Formaldehyde |
| 1620 | Dodecene | 2050 | Formamide |
| 1630 | Dodecylaniline | 2060 | Formic acid |
| 1640 | Dodecylphenol | 2070 | Fumaric acid |
| 1650 | Epichlorohydrin | 2073 | Furfural |
| 1660 | Ethanol | 2090 | Glycerol (Synthetic) |
| 1661 | Ethanolamines | 2091 | Glycerol dichlorohydrin |
| 1670 | Ethyl acetate | 2100 | Glycerol triether |
| 1680 | Ethyl acetoacetate | 2110 | Glycine |
| 1690 | Ethyl acrylate | 2120 | Glyoxal |
| 1700 | Ethylamine | 2145 | Hexachlorobenzene |
| 1710 | Ethylbenzene | 2150 | Hexachloroethane |
| 1720 | Ethyl bromide | 2160 | Hexadecyl alcohol |
| 1730 | Ethylcellulose | 2165 | Hexamethylenediamine |
| 1740 | Ethyl chloride | 2170 | Hexamethylene glycol |
| 1750 | Ethyl chloroacetate | 2180 | Hexamethylenetetramine |
| 1760 | Ethylcyanoacetate | 2190 | Hydrogen cyanide |
| 1770 | Ethylene | 2200 | Hydroquinone |
| 1780 | Ethylene carbonate | 2210 | p-hydroxybenzoic acid |
| 1790 | Ethylene chlorohydrin | 2240 | Isoamylene |
| 1800 | Ethylenediamine | 2250 | Isobutanol |
| 1810 | Ethylene dibromide | 2260 | Isobutyl acetate |
| 1830 | Ethylene glycol | 2261 | Isobutylene |
| 1840 | Ethylene glycol diacetate | 2270 | Isobutyraldehyde |
| 1870 | Ethylene glycol dimethyl ether | 2280 | Isobutyric acid |
| 1890 | Ethylene glycol monobutyl ether | 2300 | Isodecanol |
| 1900 | Ethylene glycol monobutyl ether acetate | 2320 | Isooctyl alcohol |
| | | 2321 | Isopentane |
| 1910 | Ethylene glycol monoethyl ether | 2330 | Isophorone |
| 1920 | Ethylene glycol monoethyl ether acetate | 2340 | Isophthalic acid |
| | | 2350 | Isoprene |
| 1930 | Ethylene glycol monomethyl ether | 2360 | Isopropanol |
| 1940 | Ethylene glycol monomethyl ether acetate | 2370 | Isopropyl acetate |
| | | 2380 | Isopropylamine |
| 1960 | Ethylene glycol monophenyl ether | 2390 | Isopropyl chloride |
| 1970 | Ethylene glycol monopropyl ether | 2400 | Isopropylphenol |
| 1980 | Ethylene oxide | 2410 | Ketene |

TABLE I.
SYNTHETIC ORGANIC CHEMICALS

| OCPDB No.* | Chemical | OCPDB No.* | Chemical |
|---|---|---|---|
| 2414 | Linear alkyl sulfonate | 2791 | Nitromethane |
| 2417 | Linear alkylbenzene | 2792 | Nitrophenol |
| 2420 | Maleic acid | 2795 | Nitropropane |
| 2430 | Maleic anhydride | 2800 | Nitrotoluene |
| 2440 | Malic acid | 2810 | Nonene |
| 2450 | Mesityl oxide | 2820 | Nonyl phenol |
| 2455 | Metanilic acid | 2830 | Octyl phenol |
| 2460 | Methacrylic acid | 2840 | Paraldehyde |
| 2490 | Methallyl chloride | 2850 | Pentaerythritol |
| 2500 | Methanol | 2851 | n-pentane |
| 2510 | Methyl acetate | 2855 | l-pentene |
| 2520 | Methyl acetoacetate | 2860 | Perchloroethylene |
| 2530 | Methylamine | 2882 | Perchloromethyl mercaptan |
| 2540 | n-methylaniline | 2890 | o-phenetidine |
| 2545 | Methyl bromide | 2900 | p-phenetidine |
| 2550 | Methyl butynol | 2910 | Phenol |
| 2560 | Methyl chloride | 2920 | Phenolsulfonic acids |
| 2570 | Methyl cyclohexane | 2930 | Phenyl anthranilic acid |
| 2590 | Methyl cyclohexanone | 2940 | Phenylenediamine |
| 2620 | Methylene chloride | 2950 | Phosgene |
| 2630 | Methylene dianiline | 2960 | Phthalic anhydride |
| 2635 | Methylene diphenyl diisocyanate | 2970 | Phthalimide |
| 2640 | Methyl ethyl ketone | 2973 | B-picoline |
| 2645 | Methyl formate | 2976 | Piperazine |
| 2650 | Methyl isobutyl carbinol | 3000 | Polybutenes |
| 2660 | Methyl isobutyl ketone | 3010 | Polyethylene glycol |
| 2665 | Methyl methacrylate | 3025 | Polypropylene glycol |
| 2670 | Methyl pentynol | 3063 | Propionaldehyde |
| 2690 | a-methylstyrene | 3066 | Propionic acid |
| 2700 | Morpholine | 3070 | n-propyl alcohol |
| 2710 | a-naphthalene sulfonic acid | 3075 | Propylamine |
| 2720 | B-naphthalene sulfonic acid | 3080 | Propyl chloride |
| 2730 | a-naphthol | 3090 | Propylene |
| 2740 | B-naphthol | 3100 | Propylene chlorohydrin |
| 2750 | Neopentanoic acid | 3110 | Propylene dichloride |
| 2756 | o-nitroaniline | 3111 | Propylene glycol |
| 2757 | p-nitroaniline | 3120 | Propylene oxide |
| 2760 | o-nitroanisole | 3130 | Pyridine |
| 2762 | p-nitroanisole | 3140 | Quinone |
| 2770 | Nitrobenzene | 3150 | Resorcinol |
| 2780 | Nitrobenzoic acid (o, m, and p) | 3160 | Resorcylic acid |
| 2790 | Nitroethane | 3170 | Salicylic acid |

TABLE I.
SYNTHETIC ORGANIC CHEMICALS

| OCPDB No.* | Chemical | OCPDB No.* | Chemical |
|---|---|---|---|
| 3180 | Sodium acetate | 3380 | Toluene sulfonyl chloride |
| 3181 | Sodium benzoate | 3381 | Toluidines |
| 3190 | Sodium carboxymethyl cellulose | 3390 | |
| 3191 | Sodium chloracetate | 3391 | |
| 3200 | Sodium formate | and | |
| 3210 | Sodium phenate | 3393 | Trichlorobenzenes |
| 3220 | Sorbic acid | 3395 | 1,1,1-trichloroethane |
| 3230 | Styrene | 3400 | 1,1,2-trichloroethane |
| 3240 | Succinic acid | 3410 | Trichloroethylene |
| 3250 | Succinonitrile | 3411 | Trichlorofluoromethane |
| 3251 | Sulfanilic acid | 3420 | 1,2,3-trichloropropane |
| 3260 | Sulfolane | 3430 | 1,1,2-trichloro-1,2,2-trifluoroethane |
| 3270 | Tannic acid | | |
| 3280 | Terephthalic acid | 3450 | Triethylamine |
| 3290 | | 3460 | Triethylene glycol |
| and | | 3470 | Triethylene glycol dimethyl ether |
| 3291 | Tetrachloroethanes | 3480 | Triisobutylene |
| 3300 | Tetrachlorophthalic anhydride | 3490 | Trimethylamine |
| 3310 | Tetraethyllead | 3500 | Urea |
| 3320 | Tetrahydronaphthalene | 3510 | Vinyl acetate |
| 3330 | Tetrahydrophthalic anhydride | 3520 | Vinyl chloride |
| 3335 | Tetramethyllead | 3530 | Vinylidene chloride |
| 3340 | Tetramethylenediamine | 3540 | Vinyl toluene |
| 3341 | Tetramethylethylenediamine | 3541 | Xylenes (mixed) |
| 3350 | Toluene-2,4-diamine | 3560 | o-xylene |
| 3354 | Toluene-2,4-diisocyanate | 3570 | p-xylene |
| 3355 | Toluene diisocyanates (mixture) | 3580 | Xylenol |
| 3360 | Toluene sulfonamide | 3590 | Xylidine |
| 3370 | Toluene sulfonic acids | | |

*The OCPDB Numbers are reference indices assigned to the various chemicals in the Organic Chemical Producers Data Base developed by EPA.

# 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, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

## Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were received for the following projects(s) during the period of December 16, 1998, through December 23, 1998:

FEDERAL AGENCY ACTIONS:

Applicant: AIMCOR, Inc.; Location: The project is located along the Galveston Channel, at the AIMCOR Galveston Terminal, 4800 Port Industrial Road, Galveston, Galveston County, Texas. The USGS Quad reference map is Galveston, TX; Project Number: 98-0570-F1; Description of Proposed Action: The applicant is requesting authorization to maintenance dredge, by hydraulic means, an existing berthing/docking area to -44 feet mean low tide. All material will deposited into established leveed disposal areas. The area has been previously dredged under Department of Army Permit 16709(03), which is still valid. AIMCOR is a tenant on the property and is requesting a separate permit from the landowner to perform the maintenance dredging; Type of Application: U.S.A.C.E. permit application number 21478 under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is, or is not consistent with the Texas Coastal Management Program goals and policies, and whether the action should be referred to the Coastal Coordination Council for review. Further information for the applications listed above may be obtained from Ms. Janet Fatheree, Council Secretary, Coastal Coordination Council, 1700 North Congress Avenue, Room 617, Austin, Texas 78701-1495, or janet.fatheree@glo.state.tx.us. Persons are encouraged to submit written comments as soon as possible within 30 days of publication of this notice. Comments should be sent to Ms. Fatheree at the above address or by fax at (512) 475-0680.

TRD-9818544
Garry Mauro
Chairman
Coastal Coordination Council
Filed: December 22, 1998

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## Comptroller of Public Accounts

Legal Banking Holidays

Texas Tax Code Annotated §111.053(b) requires that, before January 1 of each year, the Comptroller of Public Accounts publish a list of the legal holidays for banking purposes for that year. Pursuant to the Federal Reserve Bank of Dallas Notice 98-77, dated August 14, 1998, the Federal Reserve Bank of Dallas and its office at El Paso, Houston, and San Antonio will observe the following holidays for calendar year 1999 and will not be open on the dates indicated below. Banks operating in Texas may, but are not required to close on these dates:

Saturdays and Sundays

Friday, January 1, New Years Day

Monday, January 18, Martin Luther King Jr. Day

Monday, February 15, Presidents Day

Monday, May 31, Memorial Day

Monday, July 5, Independence Day (observed)

Monday, September 6, Labor Day

Monday, October 11, Columbus Day

Thursday, November 11, Veterans Day

Thursday, November 25, Thanksgiving Day

TRD-9818474
Walter Muse
Legal Counsel
Comptroller of Public Accounts
Filed: December 18, 1998

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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 Articles 1D.003, 1D.009, and 1E.003, Title 79, Revised Civil Statutes of Texas, as amended (Articles 5069-1D.003, 1D.009, and 1E.003, Vernon's Texas Civil Statutes).

The weekly ceiling as prescribed by Article 1D.003 and 1D.009 for the period of 12/28/98 - 01/03/99 is 18% for Consumer [1]/Agricultural/ Commercial [2]/credit thru $250,000.

The weekly ceiling as prescribed by Article 1D.003 and 1D.009 for the period of 12/28/98 - 01/03/99 is 18% for Commercial over $250,000.

The judgment ceiling as prescribed by Article 1E.003 for the period of 01/01/99 - 01/31/99 is 10% for Consumer/Agricultural/Commercial/ credit thru $250,000.

The judgment ceiling as prescribed by Article 1E.003 for the period of 01/01/99 - 01/31/99 is 10% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

TRD-9818541
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: December 22, 1998

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## Texas Department of Criminal Justice

Notices To Bidders

The Texas Department of Criminal Justice invites bids for complete Renovation of the Kitchen and Dining areas of both Hilltop and Riverside Kitchen Facilities at Gatesville, Texas. The work includes demolition and architectural replacement. Architectural work to include new CMU walls, ceilings, floors, and finishes; extensive new M.E.P work; replacement of Food Service equipment and a substantial amount of Owner furnished/Contractor installed items. This project also includes Contractor furnished and installation of a Central Boiler at the Riverside Campus.

The successful bidder will be required to meet the following requirements and submit evidence within five days after receiving notice of intent to award from the Owner:

*A.* Contractor must have a minimum of five consecutive years of experience as a General Contractor and provide references for at least three projects that have been completed of a dollar value and complexity equal to or greater than the proposed project.

*B.* Contractor must be bondable and insurable at the levels required.

All Bid Proposals must be accompanied by a Bid Bond in the amount of 5.0% of greatest amount bid. Performance and Payment Bonds in the amount of 100% of the contract amount will be required upon award of a contract. The Owner reserves the right to reject any or all bids, and to waive any informality or irregularity.

Bid Documents can be purchased from the Architect/Engineer at a cost of $125 (non-refundable) per set, inclusive of mailing/delivery costs, or they may be viewed at various plan rooms. Payment checks for documents should be made payable to the Architect/Engineer: CERNA RABA & PARTNERS II, Attention: Robert Greive, 8930 Wurzbach Road, Suite 100, San Antonio, Texas 78240; Phone: (210) 616-0730.

A Pre-Bid conference will be held at 10am, on January 12, 1999, at the Riverside Campus, 1401 State School Road, Gatesville, Texas followed by a site-visit. Attendance is mandatory.

Bids will be publicly opened and read at 2pm, January 21, 1999, in the Blue Room at the Facilities Division located in the warehouse building of the TDCJ Administrative Complex (former Brown Oil Tool) on Spur 59 off of Highway 75 North, Huntsville, Texas.

The Texas Department of Criminal Justice requires the Contractor to make a good faith effort to include Historically Underutilized Businesses (HUB's) in at least 26.1% of the total value of this construction contract award. Attention is called to the fact that not less than the minimum wage rates prescribed in the Special Conditions must be paid on these projects.

TRD-9818542
Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Filed: December 22, 1998

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The Texas Department of Criminal Justice invites bids for construction of the Sex Offenders Treatment Facility at the Lockhart V. Hightower Unit in Dayton, Texas. This is a re-advertisement. The project consists of new construction of a 600-inmate capacity Sex Offenders Treatment Facility at the existing Hightower Unit, Route 3, Box 9800, FM 686, Dayton, Texas 77535. The size of the facility is approximately 22,660 square feet. The work includes civil, architectural, mechanical, electrical, plumbing, security electronics, structural concrete and steel, and pre-engineered metal building as further shown on the Contract Documents prepared by O'Connell Robertson & Associates, Inc.

The successful bidder will be required to meet the following requirements and submit evidence within five days after receiving notice of intent to award from the Owner.

*A.* Contractor must have a minimum of five consecutive years of experience as a General Contractor and provide references for at least three projects that have been completed of a dollar value and complexity equal to or greater than the proposed project.

*B.* Contractor must be bondable and insurable at the levels required.

All Bid Proposals must be accompanied by a Bid Bond in the amount of 5.0% of greatest amount bid. Performance and Payment Bonds in the amount of 100% of the contract amount will be required upon award of a contract. The Owner reserves the right to reject any or all bids, and to waive and informality or irregularity.

Bid Documents can be purchased from the Architect/Engineer at a cost of $75 (non-refundable) per set, inclusive of mailing/delivery costs, or they may be viewed at various plan rooms. Payment checks for documents should be made payable to the Architect/ Engineer: O'Connell Robertson & Associates, Inc., Attention: William Burkhardt, AIA, 811 Barton Springs Road, Suite 900, Austin, Texas 78704; phone: (512) 478-7286; fax: (512) 478-7441.

A Pre-Bid conference will be held at 10am on January 19, 1999, at the Lockhart V. Hightower Unit, Dayton, Texas followed by a site-visit. Attendance is mandatory. Bids will be publicly opened and read at 2p.m., February 4, 1999, in the blue conference room at the Facilities Division located in the warehouse building of the TDCJ

Administrative Complex (formally Brown Oil Tool) on Spur 59 off of Highway 75 North, Huntsville, Texas.

The Texas Department of Criminal Justice requires the Contractor to make a good faith effort to include Historically Underutilized Businesses (HUB's) in at least 26.1% of the total value of this construction contract award. Attention is called to the fact that not less than the minimum wage rates prescribed in the Special Conditions must be paid on these projects.

TRD-9818558
Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Filed: December 23, 1998

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## Deep East Texas Council of Governments

Request for Quotes

For Regional Services Subcontracted Environmental Law Enforcement Training

For Spring of 1999

Quotes Should Be Directed To:

Van Bush, Environmental Planner

Deep East Texas Council Of Governments

Regional Services Department

274 East Lamar Street

Jasper, Tx 75951

409-384-5704 (Phone)

409-384-5390 (Fax)

vbush@detcog.org (E-MAIL)

DEADLINE FOR SUBMISSION

NO LATER THAN 5:00 P.M., JANUARY 18, 1999

I. GENERAL INFORMATION

A. Purpose

This Request for Quotes (RFQ) is to contract for an environmental law enforcement training seminar to be conducted in the Spring of 1999. The training seminar should be certified by T.C.L.E.O.S.E., as well as the American Bar Association (ABA).

B. Who may respond

Only certified environmental law personnel qualified to instruct an accredited course on the subject matter should respond.

C. Instructions for Submission of Quote

1. Closing Submission Date:

Quotes must be submitted and received no later than 5:00 P.M., Monday, January 18, 1999.

2. Inquiries:

Inquiries concerning this RFQ should be directed to:

Van Bush, Environmental Planner

Deep East Texas Council of Governments

Regional Services Department

274 East Lamar Street

Jasper, TX 75951

409-384-5704 (phone)

409-384-53910 (fax)

vbush@detcog.org (e-mail)

3. Conditions of Quote

All costs incurred in the preparation of a proposal responding to this RFQ will be the responsibility of the Offeror and will not be reimbursed by the Deep East Texas Council of Governments.

4. Instructions to Prospective Contractors:

Your quote should be addressed as follows:

Van Bush, Environmental Planner

Deep East Texas Council of Governments

Regional Services Department

274 East Lamar Street

Jasper, TX 75951

It is important that the Offeror's quote be submitted in a sealed envelope clearly marked in the lower left hand corner with the following information:

Request for quotes

Sealed Bid for Environmental Training

Failure to do so may result in premature disclosure of your proposal. In the event that this occurs, your quote will be disqualified.

5. Right to reject:

DETCOG reserves the right to reject any and all proposals in response to this RFQ. A contract for the accepted quote will be based upon factors described in this RFQ and said award will be made to the entity which, in the opinion of DETCOG is best qualified to complete the contract.

6. Small, Disadvantaged, Minority, Women-Owned and Historically Underutilized Businesses:

Efforts will be made by DETCOG to utilize small, disadvantaged, minority, women-owned and historically underutilized businesses.

An Offeror qualifies as a small business if the definition of "small business: as established by the Small Business Administration (13 CFR 121.3-8), by having average annual receipts for the last three years of less than four million dollars."

7. Notification of Award:

Upon approval of the Texas Natural Resource Conservation Commission, Deep East Texas Solid Waste Advisory Committee and Deep East Texas Council of Governments Board of Directors; the Offeror shall then be notified, in writing, of the successful selection by the DETSWAC and DETCOG BOD.. It is expected the proposals will be considered at the DETSWAC meeting in Jasper on January 26, 1999. The DETSWAC recommendation will be presented at the regularly scheduled meeting of the DETCOG BOD in San Augustine on January 28, 1999.

Contracting will not occur until the proposal has been approved by the TNRCC.

8. Property of DETCOG:

All proposals will become part of the official files of DETCOG and DETCOG shall be under no obligation to return such to Offeror.

II. OFFEROR'S TECHNICAL QUALIFICATIONS

The Offeror, in its proposal, shall, as a minimum, include the following:

A. Prior Training Experience

The Offeror should describe all relevant prior training experience giving special attention to the experience related to experience related to environmental law. More preferable experience would include environmental training programs done for councils of government, regional planning commissions or local governments.

B. Staff Qualifications

The Offeror should describe the qualifications of staff assigned to the proposed project.

C. Understanding of Work to be Performed

The Offeror should describe its understanding of work to be performed, including estimated hours and other pertinent information.

III. PROPOSAL EVALUATIONS

A. Nonresponsive Proposals

Proposals may be judged nonresponsive and removed from the further consideration if any of the following occur:

1. The proposal is not received within the specified time limits of the RFQ.

2. The proposal does not follow the specified format.

3. The proposal does not contain adequate information to form a judgment by reviewers.

B. Evaluation

Evaluation of each proposal will be based on the following criteria:

Factors; Point Range

1. Prior experience working with COGs, RPCs and local governments; 0-20

2. Prior experience in law enforcement training; 0-20

3. Qualifications of staff; 0-20

4. Understanding of work to be performed; 0-20

5. Price; 0-20

6. Small, disadvantaged, minority, women-owned, and historically under-utilized businesses; 0-5

Total=105 points

C. Review Process

The Deep East Texas Council of Governments may, at its discretion, request clarification, presentations, or hold a meeting with any or all Offerors for the purpose of clarifying or negotiating an Offeror's proposal.

However, DETCOG reserves the right to make an award without further discussion of the proposals submitted.

DETCOG will contemplate the award using the above criteria. The proposals will then be further evaluated using all legal and appropriate considerations to determine the applicant that best meets the needs of DETCOG in fulfilling our training obligations.

TRD-9818431

Walter G. Diggles
Executive Director
Deep East Texas Council of Governments
Filed: December 17, 1998

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## East Texas Council of Governments

### Notice of Request for Proposals for Rider 25 Basic Education Projects for TANF Clients

The East Texas Workforce Development Area is soliciting proposals from qualified training providers for the operation for basic education and literacy training for persons receiving Temporary Assistance for Needy Families (TANF) benefits under Rider 25 of the State Appropriations Act for the Texas Workforce Commission. The services will be provided for a period beginning March 5, 1999, and ending August 31, 1999. (A one-year extension of the contract may be possible.) Provision of these services will involve a cost reimbursement subcontract with the East Texas Council of Governments (ETCOG), Grant Recipient and Administrative Unit for the East Texas Workforce Development Area.

By state law, public school districts, regional education service centers, public post-secondary educational institutions, public non-profit agencies and community-based organizations are eligible providers. Community-based organizations must have a minimum of two years experience as a literacy provider. The RFP provides detailed information regarding staff qualification requirements.

These projects will be funded through Temporary Assistance to Needy Families (TANF) funding. Activities specified include (A) Workforce or workplace literacy training, plus ancillary services (B) capacity building (C) program development (if project provides capacity building or program development, proposal must clearly demonstrate how these activities will directly benefit TANF participants.) Projects solicited through this Request for Proposals must serve some portion of the East Texas Workforce Development Area, which is comprised of the following counties: Anderson, Camp, Cherokee, Gregg, Harrison, Henderson, Marion, Panola, Rains, Rusk, Smith, Upshur, Van Zandt and Wood. It is anticipated that a total of $60,706 will be available.

The Person to be Contacted Regarding Submission of a Proposal

Persons or organizations wanting to receive a Request for Proposals (RFP) package should request by letter or by fax. Requests should be addressed to Gary Allen, Section Chief-Planning and Board Support, Workforce Development Programs, East Texas Council of Governments, 3800 Stone Road, Kilgore, Texas 75662. The fax number for ETCOG is (903) 983-1440. Questions concerning the Request for Proposal process should be addressed to Wendell Holcombe, East Texas Council of Governments, at (903) 984-8641.

Closing Date for Receipt of Proposals

The anticipated deadline for receipt of proposals will be February 9, 1999.

The Procedure by Which Subcontracts will be Awarded

Proposals will be numerically rated by a committee of the East Texas Workforce Development Board. The committee will make its recommendation to the full Board. The recommendation of the committee will then be considered by the Board. The decision of the Workforce Development Board will be considered by the East Texas Chief Elected Officials Board of Directors. The East Texas Council of Governments Executive Committee will consider the final

selection of successful proposal(s) and will authorize subcontract (s) for services.

TRD-9818487
Glynn Knight
Executive Director
East Texas Council of Governments
Filed: December 21, 1998

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## Texas Department of Economic Development

### Announcement of Availability of REMI Model

State agencies may use sophisticated policy analysis tool through agreement with the Texas Department of Economic Development.

The Texas Department of Economic Development has acquired the Regional Economic Models Inc.'s (REMI) model for the state of Texas. REMI is used throughout the United States to show impacts of economic and demographic changes on a regional economy resulting from public policy decisions regarding environmental laws, utility deregulation, business expansion, and taxes, among others. REMI contains historical population and demographic data going back to 1969 and includes a baseline forecast through 2030. REMI is a dynamic model of the U.S. and Texas economies and only requires a personal computer to operate.

Prior to use of the model, other state agencies will be required to sign an interagency agreement and reimburse the Texas Department of Economic Development with a portion of the annual maintenance fees for the model. REMI will deliver the Texas regional model to participating agencies after a secondary user's license has been purchased directly from REMI.

Interagency contracts must be completed by January 22nd for use of the REMI model through the remainder of FY99. Agencies interested in beginning use of the REMI model in FY2000 must submit a completed interagency contract by July 15, 1999.

Please contact Branner Stewart at the Texas Department of Economic Development for additional information concerning the REMI model, the secondary user's license, and the interagency contract. Phone: 512-936-0291.

TRD-9818535
Gary Rosenquest
Chief Administrative Officer
Texas Department of Economic Development
Filed: December 21, 1998

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## Texas Education Agency

### Request for Applications Concerning Technology Integration in Education (TIE) for School Year 1999–2000

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) number 701-99-001 from local education agencies (LEAs) including public school districts, regional education service centers, open-enrollment charter schools, and shared services arrangements of LEAs to integrate technology into schools under the Technology Integration in Education (TIE) initiative. Individual campuses are not eligible to apply. Applications from large school districts must apply as a vertical team, boundary area, or similar grouping or feeder pattern and must impact more than one campus.

Description. The primary objective of this grant opportunity is to improve student achievement by fully integrating technology into schools. The TIE initiative must focus on implementation of the Commissioner's Public Access Initiative and the Long-Range Plan for Technology, 1996-2000, and focus on instructional, administrative, and professional development strategies to achieve the primary objective.

Dates of Project. The TIE project will be implemented during the 1999-2000 school year(s). Applicants should plan for a starting date of no earlier than May 17, 1999, and an ending date of no later than September 30, 2000.

Project Amount. The total amount of TIE funds for fiscal year 1999 is $33 million. Funding will be provided for approximately 40 projects. Awards to collaboratives representing a large number of districts may not exceed $3 million and individual district awards may not exceed $700,000. This project is federally funded (100%) from the Technology Literacy Challenge Funds.

Selection Criteria. Applications will be selected based on the ability of each applicant to carry out all requirements contained in the RFA. Applicants must address elements of the Commissioner's Public Access Initiative and the Long-Range Plan for Technology, 1996-2000, to be considered for funding. Special consideration (or priority) will be given to applicants that demonstrate greatest technology need and with a percentage of students identified as economically disadvantaged higher than the state average. The TEA reserves the right to select from the highest ranking applications those that address all requirements in the RFA.

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 number 701-99-001 may be obtained by writing the: Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701; by calling (512) 463-9304; or by faxing the request to (512) 463-9811. Please refer to the RFA number in your request. For information purposes only, a copy of the RFA may be found at the TEA web site at http://www.tea.state.tx.us. In order to be considered for funding, interested applicants must obtain an official copy of the RFA from the Document Control Center.

Further Information. For clarifying information about the RFA, contact Delia R. Duffey, Division of Instructional Technology, Texas Education Agency, (512) 463-9401.

Deadline for Receipt of Applications. Applications must be received in the Document Control Center of the Texas Education Agency by 5:00 p.m. (Central Time), Wednesday, February 10, 1999, to be considered.

TRD-9818545
Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
Filed: December 22, 1998

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### Request for Applications Concerning Texas Reading Academies for School Year(s) 1999–2000

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications from public school districts; open-enrollment charter schools; shared services arrangements (SSAs) of public school districts; and regional education service centers (ESCs) on behalf of public school districts or SSAs of public school districts under Request for Applications (RFA) number 701-99-005. These applications must describe projects to implement scientific, research-based reading programs designed to meet the Governor's challenge of having all Texas children reading at or above grade level by the end of third grade and remaining on grade level throughout their school career. The eligible population for this RFA is students in Grades 2 through 8, and applicants may propose programs to serve all or part of that population.

The Texas Reading Academies RFA will be mailed directly to the following individuals, among others: ESC executive directors and reading initiative liaisons; superintendents; principals of elementary campuses; State Board of Education members; and chief executive officers of open- enrollment charter schools.

Description. The primary objective of grants awarded under this RFA is to ensure that Texas elementary students are proficient in reading. The goal is to provide as much direct intervention with students as possible through the implementation of scientific, research-based reading programs; the purchase of additional instructional or diagnostic reading materials; necessary reading materials for libraries; instructional staff; or related professional staff development of educators. Applicants should propose projects which implement reading programs in their classrooms to prevent reading failure, and/or an intervention system designed to ensure that struggling students have opportunities to achieve. Applicants are encouraged to develop "academy- type" reading laboratories/programs for students and create reading programs based on research. These programs could include core reading materials to provide intensive, structured reading instruction designed to prevent reading failure. Effective, rigorous, proven intervention programs could be included as a part of a comprehensive plan for instruction, or may be submitted as the entire project. Quality projects will be comprehensive and provide students with very early exposure to systematic, explicit instruction in phonemic awareness, decoding, reading comprehension, writing and vocabulary. Projects will use materials that assist students in mastering decoding skills and increasing speed and fluency. They will also focus on methodologies, strategies and materials used to expand students' vocabulary; increase background knowledge and comprehension; and provide opportunities for students to practice reading skills.

To be eligible for funding, applicants must submit a plan for parental involvement in the program. ESCs and districts applying as members of SSAs must submit either a parental involvement plan for each member district or a combined parental involvement plan for the project. Applicants must also submit a plan for performing diagnostic assessments of reading skills.

Dates of Project. The Texas Reading Academies Program will be implemented during the 1999-2000 school year(s). Applicants should plan for a starting date of May 3, 1999, and an ending date of no later than June 30, 2000. Projects must have a duration of at least three months and at most 14 months, but may be less than the full 14 months.

Project Amount. Funding will be provided for approximately 15 projects. Each project will receive a minimum of $25,000 up to $500,000, not limited thereto, for the 1999-2000 school year(s).

Selection Criteria. Awards will be considered on the basis of total points. The TEA reserves the right to select from the highest-ranking applications those that address the ability of each applicant to carry out all requirements contained in the RFA and that are most advantageous to the program. It is important that a diversity of students and districts be represented in the operation of these programs. Therefore, after all applications have received a final score from 0 to 100, additional factors may be considered prior to selection of the programs recommended for funding. Projects will be selected to establish programs that are: cost effective; diverse with respect to size of districts; diverse with respect to type of campus(es); diverse with respect to type of programs and instructional strategies/ methodologies; and diverse with respect to geographic location in Texas.

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 number 701-99-005 may be obtained by writing the: Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, or by calling (512) 463-9304. Please refer to the RFA number in your request.

Further Information. For clarifying information about the RFA, contact Gina S. Day, Division 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 Texas Education Agency by 5:00 p.m. (Central Time), Friday, February 26, 1999, to be considered.

TRD-9818543
Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
Filed: December 22, 1998

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## Texas Department of Health

Licensing Actions for Radioactive Materials

Licensing Actions for Radioactive Materials

NEW LICENSES ISSUED:

| Location | Name | License# | City | Amend-ment # | Date of Action |
|---|---|---|---|---|---|
| Cedar Creek | Biocrest Manufacturing, L.P. | L05214 | Cedar Creek | 0 | 12/07/98 |
| Dallas | (QTE) Quality Testing & Engineering, Inc. | L05222 | Dallas | 0 | 12/15/98 |
| Denison | Texoma Heart Group | L05208 | Denison | 0 | 12/11/98 |
| El Paso | Ep Premier Medical Group dba Premier Diagnostic Cntr. | L05198 | El Paso | 0 | 12/08/98 |
| Houston | Daljit S Muttiana MD | L05216 | Houston | 0 | 12/03/98 |
| Houston | Complete Cardiac Care | L05218 | Houston | 0 | 12/07/98 |
| Houston | M & G Inspection & Testing Incorporated | L05220 | Houston | 0 | 12/04/98 |
| ThroughoutTexas | Price Construction, Inc. | L05205 | Big Spring | 0 | 12/03/98 |
| Victoria | Hardin Tubular Sales, Inc. | L05224 | Victoria | 0 | 12/09/98 |

AMENDMENTS TO EXISTING LICENSES ISSUED:

| Location | Name | License# | City | Amend-ment # | Date of Action |
|---|---|---|---|---|---|
| Amarillo | Amarillo Diagnostic Clinic | L04085 | Amarillo | 9 | 12/09/98 |
| Andrews | Waste Control Specialists, LLC | L04971 | Andrews | 7 | 12/09/98 |
| Arlington | Radiology Associates of Tarrant County dba Six Flags | L05109 | Arlington | 7 | 12/08/98 |
| Austin | Renaisance Instruments Inc. | L05097 | Austin | 1 | 12/01/98 |
| Baytown | San Jacinto Methodist Hospital | L02388 | Baytown | 31 | 12/10/98 |
| Carthage | East Texas Medical Center Carthage | L02540 | Carthage | 23 | 12/10/98 |
| Channelview | Equistar Chemicals LP | L00064 | Channelview | 35 | 12/12/98 |
| Cleburne | Walls Regional Hospital | L02039 | Cleburne | 14 | 12/08/98 |
| Dallas | Baylor University Medical Center | L01290 | Dallas | 45 | 12/11/98 |
| Dallas | Columbia Hospital at Medical City Dallas | L01976 | Dallas | 110 | 12/11/98 |
| Dallas | Syncor International Corporation | L02048 | Dallas | 93 | 12/08/98 |
| Dallas | Raytheon TI Systems, Inc. | L04096 | Dallas | 16 | 12/07/98 |
| Dallas | Dallas Cardiology Associates PA dba Heartplace | L04607 | Dallas | 19 | 12/07/98 |
| Dallas | Texas Oncology PA - Sammons Cancer Center | L04878 | Dallas | 9 | 12/02/98 |
| El Paso | Sierra Medical Center | L04758 | El Paso | 7 | 12/02/98 |
| Fort Worth | Sterigenics International, Inc. | L03851 | Fort Worth | 22 | 12/03/98 |
| Fort Worth | Cook Ft. Worth Childrens Medical Cntr. | L04518 | Fort Worth | 10 | 12/08/98 |
| Fort Worth | Cook Fort Worth Childrens Medical Center | L04587 | Fort Worth | 3 | 12/04/98 |
| Fort Worth | Trans America International Inc. Nuclear Imaging Cntr | L04634 | Fort Worth | 19 | 12/07/98 |
| Galveston | University of Texas Medical Branch | L01299 | Galveston | 52 | 12/15/98 |
| Houston | Professional Service Industries, Inc. | L00203 | Houston | 106 | 12/07/98 |
| Houston | Memorial Hermann Hospital System, c/o Memorial HospSW | L00439 | Houston | 59 | 12/15/98 |
| Houston | Cox Laboratory for Biomedical Engineering | L00631 | Houston | 21 | 12/10/98 |
| Houston | Baylor College of Medicine | L00680 | Houston | 67 | 12/03/98 |

[figure]

AMENDMENTS TO EXISTING LICENSES ISSUED:

| Location | Name | License# | City | Amend-ment # | Date of Action |
|---|---|---|---|---|---|
| Houston | WHMC dba West Houston Medical Center | L02224 | Houston | 42 | 12/03/98 |
| Houston | St. Joseph Hospital | L02279 | Houston | 40 | 12/07/98 |
| Houston | University of Texas Health Science Center @ Houston | L02774 | Houston | 38 | 12/10/98 |
| Houston | GB Biosciences Corporation | L03521 | Houston | 14 | 12/11/98 |
| Houston | University of Texas Health Sciences Center @ Houston | L03685 | Houston | 23 | 12/08/98 |
| Houston | Richmond Imaging Affiliates LTD dba River Oaks Imagin | L04342 | Houston | 22 | 12/10/98 |
| Houston | Texas Nuclear Imaging Inc dba Nuclear Imaging of Tx | L05009 | Houston | 9 | 12/08/98 |
| Kerrville | Sid Peterson Memorial Hospital | L01722 | Kerrville | 24 | 12/14/98 |
| Kingswood | Lieber Moore Cardiology Associates | L04622 | Kingswood | 5 | 12/02/98 |
| Levelland | Methodist Hospital Levelland | L02925 | Levelland | 13 | 12/08/98 |
| Longview | Texas Eastman Division | L00301 | Longview | 87 | 12/07/98 |
| Lubbock | Joe Arrington Cancer Research & Treatment Center | L04881 | Lubbock | 12 | 12/09/98 |
| McKinney | Columbia Medical Center Subsidiary LP | L02415 | McKinney | 16 | 12/08/98 |
| Mineral Wells | Palo Pinto General Hospital | L01732 | Mineral Wells | 20 | 12/10/98 |
| Nacogdoches | Memorial Hospital | L01071 | Nacogdoches | 30 | 12/07/98 |
| Nacogdoches | Nacogdoches Medical Center | L02853 | Nacogdoches | 22 | 12/04/98 |
| Odessa | Desert Industrial X-Ray | L04590 | Odessa | 21 | 12/11/98 |
| San Antonio | Baptist Health System | L00455 | San Antonio | 81 | 12/02/98 |
| San Antonio | Southwest Texas Methodist Hospital | L00594 | San Antonio | 134 | 12/04/98 |
| San Antonio | CTRC Clinical Foundation | L01922 | San Antonio | 50 | 12/10/98 |
| San Antonio | Nix Medical Center | L03531 | San Antonio | 15 | 11/30/98 |
| Stafford | Burzynski Research Institute Inc. | L02948 | Stafford | 13 | 12/08/98 |
| Texarkana | Texarkana Memorial Hospital Inc. dba Wadley Regional | L02486 | Texarkana | 28 | 12/07/98 |
| The Woodlands | Montgomery County Cardiovascular Association | L05151 | The Woodlands | 3 | 12/15/98 |
| ThroughoutTexas | E.I. du Pont de Nemours & Company | L00314 | La Porte | 69 | 12/10/98 |
| ThroughoutTexas | Medical and Radiation Physics Inc. | L01417 | San Antonio | 16 | 12/07/98 |
| ThroughoutTexas | Weaver Services | L01489 | Snyder | 20 | 12/04/98 |
| ThroughoutTexas | Halliburton Energy Services, A Division of Halliburto | L02113 | Houston | 90 | 12/07/98 |
| ThroughoutTexas | H & G Inspection Company, Inc. | L02181 | Houston | 124 | 12/07/98 |
| ThroughoutTexas | K & N Perforators | L02300 | Victoria | 23 | 12/10/98 |
| ThroughoutTexas | Rhodes Testing | L04702 | Longview | 5 | 12/04/98 |
| Tyler | Doctors Memorial Hospital | L03505 | Tyler | 10 | 11/20/98 |
| Victoria | Detar Hospital | L01630 | Victoria | 29 | 11/25/98 |

RENEWALS OF EXISTING LICENSES ISSUED:

| Location | Name | License# | City | Amend-ment # | Date of Action |
|---|---|---|---|---|---|
| Corpus Christi | Corpus Christi Medical Center - Bay Area | L04723 | Corpus Christi | 15 | 12/10/98 |
| Haltom | Richardson Associates dba Nuclear Measurment Services | L02889 | Haltom City | 17 | 12/04/98 |
| Houston | Proportional Technologies, Inc. | L04747 | Houston | 7 | 12/04/98 |
| Lufkin | Texas Foundries | L00357 | Lufkin | 27 | 12/07/98 |
| Midland | Midland Certified Reagent Company | L03497 | Midland | 10 | 12/08/98 |
| Sugarland | Selective Tools, Inc. | L04669 | Sugarland | 6 | 12/02/98 |
| ThroughoutTexas | Texas Department of Health Toxic Substances Control | L04712 | Austin | 7 | 12/09/98 |
| ThroughoutTexas | Geoscience Engineering & Testing Inc. | L05180 | Houston | 1 | 12/12/98 |
| Waco | Lehigh Portland Cement | L01087 | Waco | 19 | 12/08/98 |

TERMINATIONS OF LICENSES ISSUED:

| Location | Name | License# | City | Amend-ment # | Date of Action |
|---|---|---|---|---|---|
| Corpus Christi | Doctors Regional Medical Center | 2816 | Corpus Christi | 43 | 12/11/98 |
| Corpus Christi | Columbia Heart Hospital | L05111 | Corpus Christi | 4 | 12/11/98 |
| Denton | Raifu Durodoye | L04981 | Denton | 1 | 12/09/98 |
| San Antonio | Smithkline Beecham Clinical Laboratories | L02417 | San Antonio | 19 | 11/20/98 |

[figure]

TRD-9818433
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: December 18, 1998

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## Notice of Amendment to the Radioactive Material License of Waste Control Specialists, LLC

Notice is hereby given by the Texas Department of Health (department), Bureau of Radiation Control that it has amended Radioactive Material License Number L04971 issued to Waste Control Specialists, LLC (WCS) located in Andrews County, Texas, one mile North of State Highway 176, 250 feet East of the Texas/New Mexico State Line; 30 miles West of Andrews, Texas.

The issuance of amendment number seven modifies conditions 33 and 34 by authorizing the use of a larger Permacon structure for waste processing in the stabilization building and relocating the smaller Permacon to the container storage building for waste drum opening and sampling, only.

The department has determined that the amendment of the license, Title 25 of the Texas Administrative Code (TAC) Chapter 289, *Texas Regulations for Control of Radiation* (TRCR), and the documentation submitted by the licensee provide reasonable assurance that the licensee's radioactive waste facility is sited, designed, operated, and will be decommissioned and closed in accordance with the requirements of the TRCR; the amendment of the license will not be inimical to the health and safety of the public or the environment; and the activity represented by the amendment of the license will not have a significant effect on the human environment.

This notice affords the opportunity for a public hearing upon written request within 30 days of the date of publication of this notice by a person affected as required by Texas Health and Safety Code §401.114 and as set out in TRCR 13.5. A "person affected" is defined as a person who is a resident of a county, or a county adjacent to a county, in which the radioactive materials are or will be located, including any person who is doing business or who has a legal interest in land in the county or adjacent county, and any local government in the county; and who can demonstrate that he has suffered or will suffer actual injury or economic damage.

A person affected may request a hearing by writing Mr. Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189. Any request for a hearing must contain the name and address of the person who considers himself affected by this action, identify the subject license, specify the reasons why the person considers himself affected, and state the relief sought. If the person is represented by an agent, the name and address of the agent must be stated. Should no request for a public hearing be timely filed, the agency action will be final.

A public hearing, if requested, shall be conducted in accordance with the provisions of Texas Health and Safety Code, §401.114, the Administrative Procedure Act (Chapter 2001, Texas Government Code), the formal hearing procedures of the department (25 TAC §1.21. et seq.) and the TRCR.

A copy of the license amendment and all material submitted is available for public inspection at the Bureau of Radiation Control, Texas Department of Health, 8407 Wall Street, Austin, Texas. Information relative to the amendment may be obtained by writing Mr. Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189.

TRD-9818538
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: December 22, 1998

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## Notice of Emergency Cease and Desist Order on Seven Acres Jewish Geriatric Center

Notice is hereby given that the Bureau of Radiation Control (bureau) ordered Seven Acres Jewish Geriatric Center (registrant-R15731) of Houston to cease and desist using the Siemens dental unit (Model Number 775/0487, Serial Number R7419-618457) to perform dental x-ray procedures until the exposures at skin entrance meet the Texas radiation requirements, and the exposure timing device produces acceptable exposure intervals. The bureau determined that continued radiation exposure to patients in excess of that required to produce a diagnostic image constitutes an immediate threat to public health and safety, and the existence of an emergency. The order will remain in effect until the registrant has received authorization from the bureau to operate this unit.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-9818539
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: December 22, 1998

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## Notice of Intent to Revoke Certificates of Registration

Pursuant to *Texas Regulations for Control of Radiation*, Part 13, (25 Texas Administrative Code §289.112), the Bureau of Radiation Control (bureau), Texas Department of Health (department), filed complaints against the following registrants: Fort Worth Rehabilitation Hospital, Fort Worth, R18303; Memorial Sisters of Charity Health Network, Nederland, R19861; Sanders Chiropractic Clinic, Fort Worth, R21307; J. S. C. A. W., Incorporated, Houston, R22698; Mid-County Dental Equipment, Groves, R21686; Medical and Dental Engineering, El Paso, R22703.

The department intends to revoke the certificates of registration; order the registrants to cease and desist use of radiation machine(s); order the registrants to divest themselves of such equipment; and order the registrants to present evidence satisfactory to the bureau that they have complied with the orders and the provisions of the Texas Health and Safety Code, Chapter 401. If the fee is paid within 30 days of the date of each complaint, the department will not issue an order.

This notice affords the opportunity to the registrants for a hearing to show cause why the certificates of registration should not be revoked. A written request for a hearing must be received by the bureau within 30 days from the date of service of the complaint to be valid. Such written request must be filed with 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. Should no request for a public hearing be timely filed or if the fee is not paid, the certificates of registration will be revoked at the end of the 30-day period of notice. A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-9818540
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: December 22, 1998

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## Notice of Intent to Revoke Radioactive Material Licenses

Pursuant to *Texas Regulations for Control of Radiation*, Part 13, (25 Texas Administrative Code §289.112), the Bureau of Radiation Control (bureau), Texas Department of Health (department), filed complaints against the following licensees: Cummings Wireline Service, Inc., Cibolo, L03604; William Marsh Rice University, Houston, L04744.

The department intends to revoke the radioactive material licenses; order the licensees to cease and desist use of such radioactive materials; order the licensees to divest themselves of the radioactive material; and order the licensees to present evidence satisfactory to the bureau that they have complied with the orders and the provisions of the Texas Health and Safety Code, Chapter 401. If the fee is paid within 30 days of the date of each complaint, the department will not issue an order.

This notice affords the opportunity to the licensees for a hearing to show cause why the radioactive material licenses should not be revoked. A written request for a hearing must be received by the bureau within 30 days from the date of service of the complaint to be valid. Such written request must be filed with 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. Should no request for a public hearing be timely filed or if the fee is not paid, the radioactive material licenses will be revoked at the end of the 30-day period of notice. A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-9818537
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: December 22, 1998

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## Notice of Request for Proposals for Medical Transportation Contracted Services for Individuals Eligible Under the Transportation for Indigent Cancer Patients Program (TICP)

**INTRODUCTION:** The Texas Department of Health (department) requests proposals for medical transportation contracted services for state fiscal year 2000. Proposals will be reviewed and contracts will be awarded on a competitive basis.

**PURPOSE:** The purpose of this program is to provide medical transportation services to non-Medicaid eligible individuals who are diagnosed by a physician as having cancer or a cancer-related illness. Transportation is provided from the client's resident to and from a regional or distant cancer referral institute (including cancer treatment facilities in the program area) thereby improving the patient's access to life-essential medical services.

The Transportation for Indigent Cancer Patients Program is responsible for providing necessary, nonemergency, ambulatory, and nonambulatory transportation services in a manner that is:

(1) similar in scope and duration for all eligible clients;

(2) consistent with the best interests of clients;

(3) appropriate to available resources, the client's and medical facility's geographic location, and limitations of clients;

(4) reasonably prompt;

(5) safe;

(6) cost-effective; and

(7) administratively efficient.

**ELIGIBLE APPLICANTS:** Public and private agencies, organizations, boards, educational institutions, and county and municipal governments are eligible to apply.

**AVAILABLE FUNDS:** Medical transportation services under this program are funded by state general revenue. The amount of state funds allocated to the department is determined by the Texas Legislature.

**DEADLINE:** Proposals prepared according to the instructions in the Request for Proposals (RFP) must be received by the appropriate regional contact person on or before April 1, 1999, 5:00 p.m. central standard time. No facsimiles or electronic documents or devices will be accepted.

**EVALUATION AND AWARD CRITERIA:** Each proposal will be screened for minimum eligibility and completeness. Proposals which are deemed ineligible or incomplete will not be reviewed. Proposals

which arrive after the deadline will not be reviewed. Proposals will be evaluated based upon the following criteria.

(1) client services (hours/days of operation, trip scheduling, accessibility, special needs, and experience);

(2) administration (proposed unit rate(s), service description, communication, complaints and feedback procedures);

(3) vehicles (number per service area, number nonambulatory per service area, location, condition of vehicles, communication equipment, child car seats, heater and air conditioner);

(4) drivers (number and location of drivers and training); and

(5) bonus points will be assigned for services above and beyond minimum requirements.

**FOR A COPY OF THE REQUEST FOR PROPOSALS (RFP):** The RFP will be available for release on January 8, 1999. To request a copy of the RFP, contact Region 11 Manager Carlos DeLaRosa, McAllen, Texas, Telephone (956) 971-1279.

TRD-9818435
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: December 18, 1998

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## Notice of Request for Proposals for Medical Transportation Services for Medicaid-eligible Individuals to and from Allowable Medicaid Services

**INTRODUCTION**: The Texas Department of Health (department) requests proposals for medical transportation services for state fiscal year 2000. Proposals will be reviewed and contracts will be awarded on a competitive basis.

**PURPOSE**: The purpose of this program is to provide medical transportation services to Medicaid-eligible individuals who do not have any other means of transportation to and from an allowable Medicaid service. The department must ensure that transportation to and from Medicaid allowable medical services is available for all eligible clients in the state. The Medical Transportation Program (MTP) is responsible for providing necessary, nonemergency, ambulatory, and nonambulatory transportation services in a manner that is:

(1) similar in scope and duration for all eligible clients;

(2) consistent with the best interests of clients;

(3) appropriate to available resources, the client's and medical facility's geographic location, and limitations of clients;

(4) reasonably prompt;

(5) safe;

(6) cost-effective; and

(7) administratively efficient.

**ELIGIBLE APPLICANTS**: Public and private agencies, organizations, boards, educational institutions, and county and municipal governments are eligible to apply.

**AVAILABLE FUNDS**: Medical transportation funds are provided by both federal and state sources. The amount of state funds allocated to the department is determined by the Texas Legislature. Funds are then allocated among the department's public health regions.

**DEADLINE**: Proposals prepared according to the instructions in the Request for Proposals (RFP) must be received by the appropriate regional contact person on or before April 1, 1999, 5:00 p.m. central standard time. No facsimiles or electronic documents or devices will be accepted.

**EVALUATION AND AWARD CRITERIA**: Each proposal will be screened for minimum eligibility and completeness. Proposals which are deemed ineligible or incomplete will not be reviewed. Proposals which arrive after the deadline will not be reviewed. Proposals will be evaluated based upon the following criteria:

(1) client services (hours/days of operation, trip scheduling, accessibility, special needs, and experience);

(2) administration (proposed unit rate(s), service description, communication, complaints and feedback procedures);

(3) vehicles (number per service area, number nonambulatory per service area, location, condition of vehicles, communication equipment, child car seats, heater and air conditioner);

(4) drivers (number and location of drivers and training); and

(5) bonus points will be assigned for services above and beyond minimum requirements.

**FOR A COPY OF THE REQUEST FOR PROPOSALS (RFP)**: The RFP will be available for release on January 8, 1999. To request a copy of the RFP, contact the appropriate MTP Regional Manager: Region 2, Sue Henderson, Abilene, Texas, (915) 690-3261; Region 3, Barbara Columbus, Arlington, Texas (817) 264-4583; Region 4, Barbara Brandon, Tyler, Texas (903) 533-5231; Region 6, Judy Terry, Houston, Texas (713) 767-3136; and Region 9/10, Marta E. Saldana, El Paso, Texas (915) 774-6287.

TRD-9818434
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: December 18, 1998

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## Notice of Revision to Request for Proposals for a Study to Provide Identification of the Best Practice Outreach Models for Texas Health Steps

This notice supersedes and replaces the "Notice of Request for Proposals for a Study to Provide Identification of the Best Practice Outreach Models for Texas Health Steps (ThSteps); a Study to Provide Identification of the Best Practice Outreach Models for the Children's Health Insurance Program (CHIP) Phase I; and to Propose Three Options for a Marketing Name and Logo for CHIP Phase II" published in the December 25, 1998, issue of the *Texas Register*.

**INTRODUCTION**: The Texas Department of Health (department) requests proposals for a Texas Health Steps (THSteps) outreach efforts efficacy study; a Children's Health Insurance Program (CHIP) outreach study; and development of options for a statewide CHIP Phase II marketing identity. Proposals will be reviewed and the contract will be awarded on a competitive basis.

**AVAILABLE FUNDS**: Approximately $250,000 in state and federal funds is expected to be available to fund one project with a 12-month budget. The specific dollar amount will depend upon the merit and scope of the proposed project. Maximum funding categories are: $100,000 (THSteps Outreach Efforts Efficacy Study); $125,000 (CHIP Study); and $25,000 (Proposal for Options for a Statewide CHIP Phase II Marketing Identity).

**OFFERORS' CONFERENCE**: An offerors' conference will be held on Friday, January 15, 1999, at the Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, at 10:00 a.m., in the Main Building, Room G-107.

**FOR A COPY OF THE REQUEST FOR PROPOSALS (RFP)**: The RFP will be available for release on December 28, 1998. To request a copy of the RFP, contact Janet Kres, THSteps, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, Telephone: (512) 458-7111, Extension 2863; Fax: (512) 458-7256.

TRD-9818536
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: December 22, 1998

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Schedule of Controlled Substances

SCHEDULES OF CONTROLLED SUBSTANCES

PURSUANT TO THE TEXAS CONTROLLED SUBSTANCES ACT, HEALTH AND SAFETY CODE, CHAPTER 481, THESE SCHEDULES, ESTABLISHED JANUARY 1, 1999, SUPERCEDE PREVIOUS SCHEDULES AND CONTAIN THE MOST CURRENT VERSION OF THE SCHEDULES OF ALL CONTROLLED SUBSTANCES FROM THE PREVIOUS SCHEDULES AND MODIFICATIONS.

January 1, 1999

Changes to the schedules are designated by an asterisk (*). Additional information can be obtained by contacting the Texas Department of Health, Bureau of Food and Drug Safety, 1100 West 49th Street, Austin, Texas 78756. The telephone number is (512) 719-0237.

## SCHEDULES

Nomenclature: Controlled substances listed in these schedules are included by whatever official, common, usual, chemical, or trade name they may be designated.

### SCHEDULE I

Schedule I consists of:

- Schedule I opiates

the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, if the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

(1) Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-N-phenylacetamide);
(2) Allylprodine;
(3) Alphacetylmethadol (except levo-alphacetylmethadol, also known as levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM);
(4) Alpha-methylfentanyl or any other derivative of Fentanyl;
(5) Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl) ethyl-4-piperidinyl]-N-phenylpropanamide);
(6) Benzethidine;

(7) Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-phenyl-propanamide);

(8) Beta-hydroxy-3-methylfentanyl (N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]- N-phenylpropanamide);

(9) Betaprodine;

(10) Clonitazene;

(11) Diampromide;

(12) Diethylthiambutene;

(13) Difenoxin;

(14) Dimenoxadol;

(15) Dimethylthiambutene;

(16) Dioxaphetyl butyrate;

(17) Dipipanone;

(18) Ethylmethylthiambutene;

(19) Etonitazene;

(20) Etoxeridine;

(21) Furethidine;

(22) Hydroxypethidine;

(23) Ketobemidone;

(24) Levophenacylmorphan;

(25) Meprodine;

(26) Methadol;

(27) 3-methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide), its optical and geometric isomers;

(28) 3-methylthiofentanyl (N-[3-methyl-1-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide);

(29) Moramide;

(30) Morpheridine;

(31) MPPP (1-methyl-4-phenyl-4-propionoxypiperidine);

(32) Noracymethadol;

(33) Norlevorphanol;

(34) Normethadone;

(35) Norpipanone;

(36) Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidinyl]-

propanamide);

(37) PEPAP (1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine);

(38) Phenadoxone;

(39) Phenampromide;

(40) Phencyclidine;

(41) Phenomorphan;

(42) Phenoperidine;

(43) Piritramide;

(44) Proheptazine;

(45) Properidine;

(46) Propiram;

(47) Thiofentanyl (N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]-propanamide);

(48) Tilidine; and

(49) Trimeperidine;

- Schedule I opium derivatives

the following opium derivatives, their salts, isomers, and salts of isomers, unless specifically excepted, if the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Acetorphine;

(2) Acetyldihydrocodeine;

(3) Benzylmorphine;

(4) Codeine methylbromide;

(5) Codeine-N-Oxide;

(6) Cyprenorphine;

(7) Desomorphine;

(8) Dihydromorphine;

(9) Drotebanol;

(10) Etorphine (except hydrochloride salt);

(11) Heroin;

(12) Hydromorphinol;

(13) Methyldesorphine;

(14) Methyldihydromorphine;

(15) Monoacetylmorphine;

(16) Morphine methylbromide;

(17) Morphine methylsulfonate;

(18) Morphine-N-Oxide;

(19) Myrophine;

(20) Nicocodeine;

(21) Nicomorphine;

(22) Normorphine;

(23) Pholcodine; and

(24) Thebacon;

- Schedule I hallucinogenic substances

unless specifically excepted or unless listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following hallucinogenic substances or that contains any of the substance's salts, isomers, and salts of isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation (for the purposes of this Schedule I hallucinogenic substances section only, the term "isomer" includes optical, position, and geometric isomers):

(1) Alpha-ethyltryptamine (some trade or other names: etryptamine; Monase; alpha-ethyl-1H-indole-3-ethanamine; 3-(2-aminobutyl) indole; alpha-ET; AET);

(2) 4-bromo-2,5-dimethoxyamphetamine (some trade or other names: 4-bromo-2,5-dimethoxy-alpha-methylphenethylamine; 4-bromo-2,5-DMA);

(3) 4-bromo-2,5-dimethoxyphenethylamine (some trade or other names: Nexus; 2C-B; 2-(4-bromo-2,5-dimethoxyphenyl)-1-aminoethane; alpha-desmethyl DOB);

(4) 2,5-dimethoxyamphetamine (some trade or other names: 2,5-dimethoxy-alpha-methylphenethylamine; 2,5-DMA);

(5) 2,5-dimethoxy-4-ethylamphetamine (some trade or other names: DOET);

(6) 5-methoxy-3,4-methylenedioxy-amphetamine;

(7) 4-methoxyamphetamine (some trade or other names: 4-methoxy-alpha-methyl-phenethylamine; paramethoxyamphetamine; PMA);

(8) 1-methyl-4-phenyl-1,2,5,6-tetrahydro-pyridine (MPTP);

(9) 4-methyl-2,5-dimethoxyamphetamine (some trade and other names: 4-methyl-2,5-dimethoxy-alpha-methyl-phenethylamine; "DOM"; and "STP");

(10) 3,4-methylenedioxy-amphetamine;

(11) 3,4-methylenedioxy-methamphetamine (MDMA, MDM);

(12) 3,4-methylenedioxy-N-ethylamphetamine (some trade or other names: N-ethyl-alpha-methyl-3,4(methylenedioxy)phenethylamine; N-ethyl MDA; MDE; MDEA);

(13) 3,4,5-trimethoxy amphetamine;

(14) N-hydroxy-3,4-methylenedioxyamphetamine (Also known as N-hydroxy MDA);

(15) Bufotenine (some trade and other names: 3-(beta-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N,N-dimethylserotonin; 5-hydroxy-N,N-dimethyltryptamine; mappine);

(16) Diethyltryptamine (some trade and other names: N,N-Diethyltryptamine; DET);

(17) Dimethyltryptamine (some trade and other names: DMT);

(18) Ethylamine Analog of Phencyclidine (some trade or other names: N-ethyl-1-phenylcyclohexylamine; (1-phenylcyclohexyl) ethylamine; N-(1-phenylcyclohexyl)-ethylamine; cyclohexamine; PCE);

(19) Ibogaine (some trade or other names: 7-Ethyl-6,6-beta,7,8,9,10,12,13-octa-hydro-2-methoxy-6,9-methano-5H-pyrido[1',2':1,2] azepino [5,4-b] indole; tabernanthe iboga);

(20) Lysergic acid diethylamide;

(21) Marihuana;

(22) Mescaline;

(23) N-ethyl-3-piperidyl benzilate;

(24) N-methyl-3-piperidyl benzilate;

(25) Parahexyl (some trade or other names: 3-Hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6H-dibenzo [b,d] pyran; Synhexyl);

(26) Peyote, unless unharvested and growing in its natural state, meaning all parts of the plant classified botanically as *Lophophora*, whether growing or not, the seeds of the plant, an extract from a part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or extracts;

(27) Psilocybin;

(28) Psilocin;

(29) Pyrrolidine analog of phencyclidine (some trade or other names: 1-(1-phenyl-cyclohexyl)-pyrrolidine, PCPy, PHP);

(30) Tetrahydrocannabinols;

(31) Synthetic equivalents of the substances contained in the plant *Cannabis*, or in the resinous extractives of that plant, and synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such

as: delta-1 cis or trans tetrahydrocannabinol, and their optical isomers; delta-6 cis or trans tetrahydrocannabinol, and their optical isomers; delta-3,4 cis or trans tetrahydrocannabinol, and its optical isomers; (Compounds of these structures, regardless of numerical designation of atomic positions, since nomenclature of these substances is not internationally standardized);

(32) Thiophene analog of phencyclidine (some trade or other names: 1-[1-(2-thienyl)cyclohexyl] piperidine; 2-thienyl analog of phencyclidine; TPCP); and

(33) 1-[1-(2-thienyl)cyclohexyl]pyrrolidine (some trade or other names: TCPy);

- Schedule I stimulants

unless specifically excepted or unless listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including the substance's salts, isomers, and salts of isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Aminorex (some other names: aminoxaphen; 2-amino-5-phenyl-2-oxazoline; 4,5-dihydro-5-phenyl-2-oxazolamine);

(2) Cathinone (some trade or other names: 2-amino-1-phenyl-1-propanone; alpha-aminopropiophenone; 2-aminopropiophenone and norephedrone);

(3) Fenethylline;

(4) Methcathinone (some other names: 2-(methylamino)-propiophenone; alpha-(methylamino)propiophenone; 2-(methylamino)-1-phenylpropan-1-one; alpha-N-methylaminopropiophenone; monomethylpropion; ephedrone; N-methylcathinone; methylcathinone; AL-464; AL-422; AL-463; and UR1432);

(5) 4-methylaminorex;

(6) N-ethylamphetamine; and

(7) N,N-dimethylamphetamine (some other names: N,N-alpha-trimethylbenzene-ethaneamine; N,N-alpha-trimethylphenethylamine);

- Schedule I depressants

unless specifically excepted or unless listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following substances having a depressant on the central nervous system, including the substance's salts, isomers, and salts of isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical

designation:

(1) Mecloqualone; and

(2) Methaqualone.

**SCHEDULE II**

Schedule II consists of:

- Schedule II substances, vegetable origin or chemical synthesis

the following substances, however produced, except those narcotic drugs listed in other schedules:

(1) Opium and opiate, and a salt, compound, derivative, or preparation of opium or opiate, other than thebaine-derived butorphanol, naloxone and its salts, naltrexone and its salts, and nalmefene and its salts, but including:

(1-1) Codeine;
(1-2) Ethylmorphine;
(1-3) Etorphine hydrochloride;
(1-4) Granulated opium;
(1-5) Hydrocodone;
(1-6) Hydromorphone;
(1-7) Metopon;
(1-8) Morphine;
(1-9) Opium extracts;
(1-10) Opium fluid extracts;
(1-11) Oxycodone;
(1-12) Oxymorphone;
(1-13) Powdered opium;
(1-14) Raw opium;
(1-15) Thebaine; and
(1-16) Tincture of opium;

(2) a salt, compound, isomer, derivative, or preparation of a substance that is chemically equivalent or identical to a substance described by Paragraph (1) of Schedule II substances, vegetable origin or chemical synthesis, other than the isoquinoline alkaloids of opium;

(3) Opium poppy and poppy straw;

(4) Cocaine, including:

(4-1) its salts, its optical, position, and geometric isomers, and the salts of those isomers; and

(4-2) coca leaves and a salt, compound, derivative, or preparation of coca leaves that is chemically equivalent or identical to a substance described by this paragraph, other than decocainized coca leaves or extractions of coca leaves that do not contain cocaine or ecgonine; and

(5) Concentrate of poppy straw, meaning the crude extract of poppy straw in liquid, solid, or powder form that contains the phenanthrene alkaloids of the opium poppy;

- Opiates

the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, if the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

(1) Alfentanil;
(2) Alphaprodine;
(3) Anileridine;
(4) Bezitramide;
(5) Carfentanil;
(6) Dextropropoxyphene, bulk (nondosage form);
(7) Dihydrocodeine;
(8) Diphenoxylate;
(9) Fentanyl;
(10) Isomethadone;
(11) Levo-alphacetylmethadol (some trade or other names: levo-alpha-acetylmethadol, levomethadyl acetate, LAAM);
(12) Levomethorphan;
(13) Levorphanol;
(14) Metazocine;
(15) Methadone;
(16) Methadone-Intermediate, 4-cyano-2-dimethylamino-4,4-diphenyl butane;
(17) Moramide-Intermediate, 2-methyl-3-morpholino-1,1-diphenyl-propane-carboxylic acid;
(18) Pethidine (meperidine);
(19) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;
(20) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;
(21) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;
(22) Phenazocine;
(23) Piminodine;
(24) Racemethorphan;
(25) Racemorphan;
(26) Remifentanil; and

(27) Sufentanil;

- Schedule II stimulants

unless listed in another schedule and except as provided by the Texas Controlled Substances Act, Health and Safety Code, Section 481.033, a material, compound, mixture, or preparation that contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:

(1) Amphetamine, its salts, optical isomers, and salts of its optical isomers;

(2) Methamphetamine, including its salts, optical isomers, and salts of optical isomers;

(3) Methylphenidate and its salts; and

(4) Phenmetrazine and its salts;

- Schedule II depressants

unless listed in another schedule, a material, compound, mixture or preparation that contains any quantity of the following substances having a depressant effect on the central nervous system, including the substance's salts, isomers, and salts of isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Amobarbital;

(2) Glutethimide;

(3) Pentobarbital; and

(4) Secobarbital;

- Schedule II hallucinogenic substances

(1) Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a U.S. Food and Drug Administration approved drug product. (Some other names for dronabinol: (6aR-trans)-6a,7,8,10a-tetrahydro-6,6,9-tri-methyl-3-pentyl-6H-dibenzo[b,d]pyran-1-ol, or (-)-delta-9-(trans)-tetrahydrocannabinol); and

(2) Nabilone (Another name for nabilone: (±)-trans-3-(1,1-dimethylheptyl)-6,6a,7,8, 10,10a-hexahydro-1-hydroxy-6,6-dimethyl-9H-dibenzo[b,d]pyran-9-one);

- Schedule II precursors

unless specifically excepted or listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following substances:

(1) Immediate precursor to methamphetamine:

(2) Phenylacetone and methylamine if possessed together with intent to manufacture methamphetamine;

(3) Immediate precursor to amphetamine and methamphetamine:

(4) Phenylacetone (some trade or other names: phenyl-2-propanone; P2P; benzyl methyl ketone; methyl benzyl ketone); and

(5) Immediate precursors to phencyclidine (PCP):

(6) 1-phenylcyclohexylamine; and

(7) 1-piperidinocyclohexanecarbonitrile (PCC).

**SCHEDULE III**

Schedule III consists of:

- Schedule III depressants

unless listed in another schedule and except as provided by the Texas Controlled Substances Act, Health and Safety Code, Section 481.033, a material, compound, mixture, or preparation that contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

(1) a compound, mixture, or preparation containing amobarbital, secobarbital, pentobarbital, or any of their salts and one or more active medicinal ingredients that are not listed in a schedule;

(2) a suppository dosage form containing amobarbital, secobarbital, pentobarbital, or any of their salts and approved by the Food and Drug Administration for marketing only as a suppository;

(3) a substance that contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid, except those substances that are specifically listed in other schedules;

(4) Chlorhexadol;

(5) Lysergic acid;

(6) Lysergic acid amide;

(7) Methyprylon;

(8) Sulfondiethylmethane;

(9) Sulfonethylmethane;

(10) Sulfonmethane; and

(11) Tiletamine and zolazepam or any salt thereof. Some trade or other names for a tiletamine-zolazepam combination product: Telazol. Some trade or other names for tiletamine: 2-(ethylamino)-2-(2-thienyl)-cyclohexanone. Some trade or

other names for zolazepam: 4-(2-fluorophenyl)-6,8-dihydro-1,3,8-trimethyl-pyrazolo-[3,4-e][1,4]-diazepin-7(1H)-one, flupyrazapon;

- Nalorphine

- Schedule III narcotics

a material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any of their salts:

(1) not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(2) not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(3) not more than 300 milligrams of dihydrocodeinone (hydrocodone), or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

(4) not more than 300 milligrams of dihydrocodeinone (hydrocodone), or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(5) not more than 1.8 grams of dihydrocodeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(6) not more than 300 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts;

(7) not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts; and

(8) not more than 50 milligrams of morphine, or any of its salts, per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

- Schedule III stimulants

unless listed in another schedule, a material, compound, mixture or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including the substance's salts, optical, position, or geometric isomers, and salts of the substance's isomers, if the existence of the salts, isomers, and salts of isomers is possible within the specific

chemical designation:

(1) Benzphetamine;
(2) Chlorphentermine;
(3) Clortermine; and
(4) Phendimetrazine;

- Schedule III anabolic steroids and hormones

anabolic steroids, including any drug or hormonal substance, chemically and pharmacologically related to testosterone (other than estrogens, progestins, and corticosteroids) that promotes muscle growth, and includes the following:

(1) Boldenone;
(2) Chlorotestosterone (4-chlortestosterone);
(3) Clostebol;
(4) Dehydrochlormethyltestosterone;
(5) Dihydrotestosterone (4-dihydrotestosterone);
(6) Drostanolone;
(7) Ethylestrenol;
(8) Fluoxymesterone;
(9) Formebolone;
(10) Mesterolone;
(11) Methandienone;
(12) Methandranone;
(13) Methandriol;
(14) Methandrostenolone;
(15) Methenolone;
(16) Methyltestosterone;
(17) Mibolerone;
(18) Nandrolone;
(19) Norethandrolone;
(20) Oxandrolone;
(21) Oxymesterone;
(22) Oxymetholone;
(23) Stanolone;
(24) Stanozolol;

(25) Testolactone;

(26) Testosterone; and

(27) Trenbolone.

**SCHEDULE IV**

Schedule IV consists of:

- Schedule IV depressants

except as provided by the Texas Controlled Substances Act, Health and Safety Code, Section 481.033, a material, compound, mixture, or preparation that contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

(1) Alprazolam;

(2) Barbital;

(3) Bromazepam;

(4) Camazepam;

(5) Chloral betaine;

(6) Chloral hydrate;

(7) Chlordiazepoxide;

(8) Clobazam;

(9) Clonazepam;

(10) Clorazepate;

(11) Clotiazepam;

(12) Cloxazolam;

(13) Delorazepam;

(14) Diazepam;

(15) Estazolam;

(16) Ethchlorvynol;

(17) Ethinamate;

(18) Ethyl loflazepate;

(19) Fludiazepam;

(20) Flunitrazepam;

(21) Flurazepam;

(22) Halazepam;

(23) Haloxazolam;
(24) Ketazolam;
(25) Loprazolam;
(26) Lorazepam;
(27) Lormetazepam;
(28) Mebutamate;
(29) Medazepam;
(30) Meprobamate;
(31) Methohexital;
(32) Methylphenobarbital (mephobarbital);
(33) Midazolam;
(34) Nimetazepam;
(35) Nitrazepam;
(36) Nordiazepam;
(37) Oxazepam;
(38) Oxazolam;
(39) Paraldehyde;
(40) Petrichloral;
(41) Phenobarbital;
(42) Pinazepam;
(43) Prazepam;
(44) Quazepam;
(45) Temazepam;
(46) Tetrazepam;
(47) Triazolam; and
(48) Zolpidem;

- Schedule IV stimulants

unless listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including the substance's salts, optical, position, or geometric isomers, and salts of those isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Cathine [(+)-norpseudoephedrine];

(2) Diethylpropion;
(3) Fencamfamin;
(4) Fenfluramine;
(5) Fenproporex;
(6) Mazindol;
(7) Mefenorex;
(8) Pemoline (including organometallic complexes and their chelates);
(9) Phentermine;
(10) Pipradrol;
(11) SPA [(-)-1-dimethylamino-1,2-diphenylethane]; and
*(12) Sibutramine

- Schedule IV narcotics

unless specifically excepted or unless listed in another schedule, a material, compound, mixture, or preparation containing limited quantities of the following narcotic drugs or their salts:

(1) Not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit; and
(2) Dextropropoxyphene (Alpha-(+)-4-dimethylamino-1,2-diphenyl-3-methyl-2-propionoxybutane).

- Schedule IV other substances

unless specifically excepted or unless listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following substances, including the substance's salts:

(1) Butorphanol, including its optical isomers; and
(2) Pentazocine, its salts, derivatives, compounds, or mixtures.

**SCHEDULE V**

Schedule V consists of:

- Schedule V narcotics

unless specifically excepted or unless listed in another schedule, a material, compound, mixture, or preparation containing any of the following narcotic drugs and their salts:

(1) Buprenorphine;

- Schedule V narcotics containing non-narcotic active medicinal ingredients

a compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs that also contain one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer on the compound, mixture or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

(1) Not more than 200 milligrams of codeine, or any of its salts, per 100 milliliters or per 100 grams;

(2) Not more than 100 milligrams of dihydrocodeine, or any of its salts, per 100 milliliters or per 100 grams;

(3) Not more than 100 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or per 100 grams;

(4) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;

(5) Not more than 15 milligrams of opium per 29.5729 milliliters or per 28.35 grams; and

(6) Not more than 0.5 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit;

- Schedule V stimulants

unless specifically exempted or excluded or unless listed in another schedule, a compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers and salts of isomers:

(1) Pyrovalerone.

TRD-9818547
Susan K. Steeg
General Counsel
Texas Department of Health

Filed: December 22, 1998

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**Texas Natural Resource Conservation Commission**

Enforcement Orders, Week Ending December 23, 1998

An agreed order was entered regarding MCKINNEY SMELTING, INC., Docket Number 1997-0364-IHW-E; TNRCC ID Number F0074; Enforcement ID Number 10161 on December 7, 1998 assessing $110,400 in administrative penalties with $105,400 deferred.

Information concerning any aspect of this order may be obtained by contacting Cecily Small Gooch, Staff Attorney at (817)469-6750 or Timothy Haas, Enforcement Coordinator at (512)239-6007, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DALLAS C-STORE, INC., Docket Number 1998-0757-PST-E; PST Facility ID Number 45926; Enforcement ID Number 12245 on December 7, 1998, assessing $3,125 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Frank Muser, Enforcement Coordinator at (512) 239-6951, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding COLLEGE MOUND WATER SUPPLY CORPORATION, Docket Number 1998-0721-PWS-E; PWS 1290012; Enforcement ID Number 12458 on December 7, 1998, assessing $1,613 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Terry Thompson, Enforcement Coordinator at (512) 239-6095, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding KEY ASSOCIATES, Docket Number 1997-1194-PST-E; PST Facility ID Number 69290; Enforcement ID Number 12076 on December 7, 1998, assessing $2500 in administrative penalties with $500 deferred.

Information concerning any aspect of this order may be obtained by contacting Gayle Zapalac, Enforcement Coordinator at (512) 239-1136, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding RED COLEMAN RED-E-MART #38, Docket Number 1998-0644-PST-E; PST Facility ID Number 28011; Enforcement ID Number 12514 on December 7, 1998, assessing $3,875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Julia McMasters, Enforcement Coordinator at (512) 239-5839, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ANTON ZAGHLOUL DBA MR T'S FOOD MART, Docket Number 1998-0448-PST-E; PST ID Number 0068350; Enforcement ID Number 12432 on December 7, 1998, assessing $1,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Seyed Miri, Enforcement Coordinator at (512) 239-6793, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding THERMODYN CONTRACTORS, INC., Docket Number 1998-0833-PST-E; PST Facility ID Number005545; Enforcement ID Number 12495 on December 7, 1998, assessing $6,000 in administrative penalties with $1,200 deferred.

Information concerning any aspect of this order may be obtained by contacting Randy Norwood, Enforcement Coordinator at (512) 239-1879, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding JEANEE PROPERTIES, INC., Docket Number 1997-1193-PST-E; PST Facility ID Number 69290; Enforcement ID Number 12061 on December 7, 1998, assessing $26,250 in administrative penalties with $23,850 deferred.

Information concerning any aspect of this order may be obtained by contacting Gayle Zapalac, Enforcement Coordinator at (512) 239-1136, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding JAMES KERBY, Docket Number 1998-0496-EAQ-E; Edwards Aquifer Protection Program Number 98011402; Enforcement ID Number 12460 on December 7, 1998, assessing $1,000 in administrative penalties with $200 deferred.

Information concerning any aspect of this order may be obtained by contacting Laurie Eaves, Enforcement Coordinator at (512) 239-4495, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding George and Lisa Walker, Docket Number 1998-0299-EAQ-E; Enforcement ID Number 12310 on December 7, 1998 assessing $1,000 in administrative penalties with $200 deferred.

Information concerning any aspect of this order may be obtained by contacting Merrillee Gerberding, Enforcement Coordinator at (512) 239-4490, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CUSTOM RESTORATION, INC., Docket Number 1998-0665-EAQ-E; Edwards Aquifer Program Number 893; Enforcement ID Number 12602 on December 7, 1998 assessing $1,000 in administrative penalties with $200 deferred.

Information concerning any aspect of this order may be obtained by contacting Brian Lehmkuhle, Enforcement Coordinator at (512) 239-4482, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CHANNEL SHIPYARD COMPANY, INC, Docket Number 1998-0173-IHW-E; SWR Number 31257; Enforcement ID Number 1256 on December 7, 1998, assessing $36,080 in administrative penalties with $7,216 deferred.

Information concerning any aspect of this order may be obtained by contacting Anne Nyffenegger, Enforcement Coordinator at (512) 239-2554, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CITY OF KILGORE, Docket Number 1997-0817-MWD-E; Permit Number 10201-001; Enforcement ID Number 8327 on December 7, 1998, assessing $3,552 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laurie Eaves, Enforcement Coordinator at (512) 239-4495 or Guy Henry, Staff Attorney at (512) 239-6259, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CITY OF ELDORADO, Docket Number 1998-0141-MWD-E; Water Quality Permit Number 10165-001; EPA NPDES Number TX0092274; Enforcement ID Number 8482-2 on December 7, 1998, assessing $3,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Karen Berryman, Enforcement Coordinator at (512) 239-2172, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding DENNIS SCHOUTEN DBA DENNIS SCHOUTEN DAIRY, Docket Number 1997-0900-AGR-E; No TNRCC Permit; Enforcement ID Number 11715 on December 7, 1998, assessing $5,720 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting William Puplampu, Staff Attorney at (512) 239-0677 or Karen Berryman, Enforcement Coordinator at (512)239-2172, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DAVID TAVANA DBA HERCULES CAR WASH, Docket Number 1998-0524-AIR-E; Account Number EE-0970-A; Enforcement ID Number 12345 on December 7, 1998, assessing $1000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Stacey Young, Enforcement Coordinator at (512) 239-1899, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding KOCH MIDSTREAM SERVICES COMPANY, INCORPORATED, Docket Number 1998-0334-AIR-E; Account Number FI-0028-G; Enforcement ID Number 384 on December 7, 1998, assessing $4,950 in administrative penalties with $990 deferred.

Information concerning any aspect of this order may be obtained by contacting Suzanne Walrath, Enforcement Coordinator at (512) 239-2134, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding A+ WOOD SHAVINGS, LLC, Docket Number 1998-0276-AIR-E; Account Number MQ-0570-A; Enforcement ID Number 12238 on December 7, 1998, assessing $1,000 in administrative penalties with $200 deferred.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator at (512) 239-1044, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding RANGERVILLE CO-OP GIN, Docket Number 1998-0802-AIR-E; Account Number CD-0066-M; Enforcement ID Number 12563 on December 7, 1998, assessing $2,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Carl Schnitz, Enforcement Coordinator at (512) 239-1892, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding THE DOW CHEMICAL COMPANY, Docket Number 1998-0708-AIR-E; Account Number BL-0082-R; Enforcement ID Number 10379 on December 7, 1998, assessing $2,500 in administrative penalties with $500 deferred.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator at (512) 239-1044, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding NATIONS WAY TRANSPORT SERVICE, INCORPORATED, Docket Number 1998-0545-AIR-E; Account Number EE-1956-K; Enforcement ID Number 12395 on December 7, 1998, assessing $2,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Stacey Young, Enforcement Coordinator at (512) 239-1899, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding STAN THRELKELD, Docket Number 1997-0312-PST-E; TNRCC ID Number 0038613; Enforcement ID Number 10207 on December 7, 1998, assessing $4,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting William Puplampu, Staff Attorney at (512) 239-0677 or Sushil Modak, Enforcement Coordinator Enforcement Coordinator at (512)239-2142, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-9818555
LaDonna Castanuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: December 23, 1998

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## Notice of Application for a Texas Weather Modification License

The following applicants seek to obtain a Texas weather-modification license for Fiscal Year 1999, under Texas Water Code Chapter 18 (Texas Weather Modification Act of 1967) and the Rules of the Texas Natural Resource Conservation Commission (TNRCC), 30 TAC Chapter 289.

Application Number E834083 submitted by SOUTHWEST TEXAS RAIN ENHANCEMENT ASSOCIATION, P. O. Box 1433, Carrizo Springs, Texas 78834. The application was received on July 22, 1998, and has been declared administratively complete.

Application Number E902609 submitted by BELDING FARMS, A DIVISION OF TEXAS PRODUCTION COMPANY, Route 1, Box 140, Fort Stockton, Texas 79735. The application was received on September 21, 1998, and has been declared administratively complete.

The TNRCC staff and the TNRCC Weather Modification Advisory Committee conducted a technical review of the above applications for licenses and recommend issuance of the licenses.

Issuance of a license, or renewal of an existing license, merely certifies that the person(s) or organization holding the license is (are) competent to conduct weather modification activities, and is contingent upon the applicant paying the license fee and demonstrating competence in the field of meteorology which is reasonably necessary to engage in weather modification and control operations. A permit is required before the licensee can actually begin conducting weather modification and control activities.

Individual members of the public who wish to inquire about the information contained in this notice, or to inquire about other agency permit applications or permitting processes, should call the TNRCC Office of Public Assistance, Toll Free, at 1-800-687-4040. General information regarding the TNRCC can be found at our web site at www.tnrcc.state.tx.us.

TRD-9818554
LaDonna Castanuela
Chief Clerk

Texas Natural Resource Conservation Commission
Filed: December 23, 1998

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## Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Natural Resource Conservation Commission (TNRCC or commission) Staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) pursuant to the Texas Water Code, §7.075. Section 7.705 requires that before the TNRCC may approve the AOs, the TNRCC shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* not later than the 30th day before the date on which the public comment period closes, which in this case is **January 30, 1999**. Section 7.075 also requires that the TNRCC promptly consider any written comments received and that the TNRCC may withdraw or hold approval of an AO if a comment discloses facts or considerations that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the TNRCC's Orders and permits issued pursuant to the TNRCC's regulatory authority. Additional notice of changes to a proposed AOs is not required to be published if those changes are made in response to written comments.

A copy of the proposed AOs is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable Regional Office listed as follows. Written comments about the AOs should be sent to the attorney designated for the AO at the TNRCC's Central Office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on January 30, 1999**. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The TNRCC attorney is available to discuss the AOs and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on the AOs should be submitted to the TNRCC in **writing**.

(1)COMPANY: Andrew Corporation; DOCKET NUMBER: 98-0004-AIR-E; TNRCC ID NUMBER: DF-0100-V; LOCATION: Denton, Denton County, Texas; TYPE OF FACILITY: miscellaneous metal coatings plant; RULES VIOLATED: 30 TAC §115.421(a)(9)(A)(i) and §115.421(a)(9)(A)(ii), by using a clear coat with a volatile organic compound (VOC) content greater than 4.3 pounds per gallon, as documented during inspections conducted on February 6, 1997 and June 4, 1997; 30 TAC §116.115(a) by failing to maintain records of actual hours of operation and the quantity and type of each coating and solvent consumed during the specified averaging period, as documented during inspections conducted on February 6, 1997 and June 4, 1997; PENALTY: $8,100; STAFF ATTORNEY: William Puplampu, Litigation Division, MC 175, (512) 239-0677; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(2)COMPANY: Duval County Conservation and Reclamation District; DOCKET NUMBER: 98- 0155-MWD-E; TNRCC ID NUMBER: 10270-001; LOCATION: Duval County, Texas; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: Texas Water Code, §26.121 by exceeding the permit limit for the daily average ammonia nitrogen concentration; PENALTY: $11,250; STAFF ATTORNEY: Tracy L. Harrison, Litigation Division, MC 175, (512) 239-1736; REGIONAL OFFICE: 1403 Seymour, Suite 2, Laredo, Texas 78040-8752, (956) 791-6611.

TRD-9818488
Paul C. Sarahan
Director, Litigation Division
Texas Natural Resource Conservation Commission
Filed: December 21, 1998

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## Notices of Public Hearings

Notice is hereby given that under the requirements of Texas Health and Safety Code, §382.017, and Texas Government Code, Subchapter B, Chapter 2001, the Texas Natural Resource Conservation Commission (TNRCC or commission) will conduct a public hearing to receive testimony concerning revisions to 30 TAC Chapters 1, 3, 5, 10, 305, and 312, concerning the commission's general procedural rules.

The commission proposes the amendments to make minor changes to certain of the commission's general procedural rules. The changes are necessary to clarify and correct the rules. The changes were identified during the course of the commission's review of these rules in accordance with the rules review requirement in the General Appropriations Act. The General Appropriations Act, Article IX, §167, requires all state agencies to review and readopt their rules every four years. At a minimum, state agencies must determine whether the reason for adopting the rules continues to exist. The commission further instructed staff to apply the regulatory reform standards in order to identify any necessary changes to the rules.

A public hearing on the proposal will be held February 1, 1999, at 10:30 a.m. in Room 2210 of TNRCC Building F, located at 12100 Park 35 Circle, Austin. 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 occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and answer questions before and after the hearing.

Comments may be submitted to Lisa Martin, Office of Policy and Regulatory Development, 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., February 1, 1999, and should reference Rule Log Number 98049-001-AD. For further information, please contact Brian Christian, Policy Research Division, (512) 239-1760.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

TRD-9818454
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: December 18, 1998

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Notice is hereby given that pursuant to the requirements of the Texas Health and Safety Code Annotated, §382.017 (Vernon's 1992); Texas Government Code Annotated, Subchapter B, Chapter 2001 (Vernon's 1993); and 40 Code of Federal Regulations, §51.102, of the United States Environmental Protection Agency (EPA) regulations concerning State Implementation Plans (SIP), the Texas Natural Resource Conservation Commission (commission) will conduct public hearings to receive testimony regarding revisions to 30 TAC Chapter 114 and the SIP concerning Cleaner Gasoline, and to 30 TAC Chapter 115 and the SIP concerning Stage I Vapor Recovery rules. These revisions are part of the new Texas Clean Air Strategy, which includes

a variety of options in order to meet the national ambient air quality standards for ground-level ozone.

The proposed revisions to Chapter 114 will lower the evaporative emissions of volatile organic compounds (VOC), as well as improve the catalytic converter performance through reductions in gasoline sulfur which in turn results in reduced emissions of VOC and oxides of nitrogen from fuel combustion. To comply with these proposed state regulations, refiners will need to ensure that gasoline distributed to eastern Texas meets the limits set forth in these rules. Specifically, the proposed rules require that gasoline produced for delivery and ultimate sale to the consumer in the affected area does not exceed 7.8 pounds per square inch absolute reid vapor pressure for the period of May 1 through October 31 of each year, beginning May 1, 2000. The proposed rules further require that gasoline sulfur levels do not exceed 150 parts per million, beginning May 1, 2003. The rules would further provide for counties or large cities to opt into these regulations earlier than proposed here, provided certain conditions are met.

The proposed revisions to Chapter 115 would amend the Stage I vapor recovery rules to implement controls on gasoline tank-truck unloading at gasoline stations in the regional strategy VOC control zone. In addition, the proposed revisions would amend the VOC loading/unloading rules and tank-truck leak testing rules to require control of gasoline terminals, gasoline bulk plants, and annual leak-tightness testing of gasoline tank-trucks in the regional strategy VOC control zone. The proposal also reorganizes and modifies existing portions of these Chapter 115 rules.

Public hearings on the proposed rule and SIP revisions will be held in Austin on January 25, 1999, at 11:00 a.m. in Building F, Room 2210, at the Texas Natural Resource Conservation Commission Complex, located at 12100 Park 35 Circle; in San Antonio on January 25, 1999, at 7:00 p.m. at the San Antonio City Council Chambers, located at 103 Main Plaza; in Lufkin on January 26, 1999, at 2:00 p.m. at the Lufkin City Council Chambers, located at 300 East Shepherd, Room 102; and in Tyler on January 26, 1999, at 7:00 p.m. at the Tyler Junior College Regional Training and Development Complex located at 1530 South Southwest Loop 323, Room 104. Individuals may present oral statements when called upon in order of registration. Open discussion will not occur 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.

Written comments should be mailed to Heather Evans, Office of Policy and Regulatory Development, 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., February 1, 1999, and should reference Rule Log Numbers 98028-115-AI and 98058-114-AI. For questions or any further information, please contact Bill Jordan, Air Policy and Regulations Division, at (512) 239-2583 or Eddie Mack, Air Policy and Regulations Division, at (512) 239-1488. Copies of the proposed rule and SIP revisions can be obtained from the commission's Web Site at www.tnrcc.state.tx.us/oprd/rules/propadop.html, or by calling Ms. Evans at (512) 239-1970.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

TRD-9818443
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: December 18, 1998

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## Provisionally-Issued Temporary Permits to Appropriate State Water

Listed below are permits issued during the period of December 21, 1998:

Temporary Permit Number TP-8050 by Cox Paving Company for diversion of 10 acre-foot in a six month period for industrial (road construction) use. Water may be diverted from the Frio River tributary of Nueces River, Nueces River Basin, approximately 1 mile east of Leakey, Real County, Texas where the Frio crosses State Highway 377.

Temporary Permit Number TP-8051 by Hunter Industries, Inc. for diversion of 3 acre-foot in a one year period for industrial (road construction) use. Water may be diverted from McCoy Creek tributary of the Guadalupe River, Guadalupe River Basin, approximately 12 miles north of Cuero and 3.5 miles south of Hocheim, DeWitt County, Texas where McCoy Creek crosses State Highway 183.

Temporary Permit Number TP-8052 by Texas Utilities Pipeline Services, Inc. for diversion of 1 acre-foot in a three month period for mining (boring) use. Water may be diverted from Town Creek, a tributary of the Trinity River, Trinity River Basin, approximately 1/4 mile east of Palestine, Anderson County, Texas at a Texas Utilities Pipeline Services right of way on Town Creek.

Temporary Permit Number TP-8053 by Big Creek Construction, LTD for industrial (road construction) use. Water may be diverted from an unnamed tributary of Spring Creek, a tributary of the Little Brazos River, tributary of the Brazos River, Brazos River Basin, approximately 5.5 miles south of Hearne, Robertson County, Texas at a point where the un-named tributary to Spring Creek crosses State Highway 2549.

The Executive Director of the TNRCC has reviewed each application for the permits listed and determined that sufficient water is available at the proposed point of diversion to satisfy the requirements of the application as well as all existing water rights. Any person or persons who own water rights or who are lawful users of water on a stream affected by the temporary permits listed above and who believe that the diversion of water under the temporary permit will impair their rights may file a complaint with the TNRCC. The complaint can be filed at any point after the application has been filed with the TNRCC and the time the permit expires. The Executive Director shall make an immediate investigation to determine whether there is a reasonable basis for such a complaint. If a preliminary investigation determines that diversion under the temporary permit will cause injury to the complainant the commission shall notify the holder that the permit shall be canceled without notice and hearing. No further diversions may be made pending a full hearing as provided in §295.174. Complaints should be addressed to Water Rights Permitting Section, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, Telephone (512) 239-4433. Information concerning these applications may be obtained by contacting the Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, Telephone (512) 239-3300.

TRD-9818552
LaDonna Castanuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: December 22, 1998

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## State Pension Review Board

Consultant Contract Award

Under provisions of the Government Code, Chapter 2254, the State Pension Review Board has awarded a contract for actuarial services to The Milliman & Robertson Inc. Suite 333 Clay, Suite 4330, Houston, Texas 77002.

The purpose of this contract is to provide actuarial review of pension legislation when the Texas Legislature is in session. The contract is effective December 15,1998 to August 31, 1999 with a maximum expenditure of $50,000.00 for FY1999.

TRD-9818477
Lynda Baker
Administrative Assistant
State Pension Review Board
Filed: December 21, 1998

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## Texas Department of Protective and Regulatory Services

Meeting Open to the Public Regarding Development of Rules Relating to the Payment for Therapy and Counseling in Residential Settings through Medicaid

The staff of the Texas Department of Protective and Regulatory Services (PRS) will conduct a meeting open to the public to provide information to Residential Child Care Contractors as PRS moves towards allowing access to Medicaid providers for Medicaid allowable therapeutic services for children receiving level of care 3-6, or Emergency Shelter services. The meeting is not a meeting of the Board, but is a meeting held by PRS staff to aid in a revision of rules relating to the payment for therapy and counseling in residential settings through Medicaid, prior to presenting the rules to the Board for publication for comment. A representative of NHIC, which handles Medicaid payments for the state, will be present to provide information on the Medicaid provider enrollment process. Other information related to this topic may be presented. The meeting will be held on February 1, 1999, in the Board Room on the first floor of the East Tower of the John H. Winters Complex, 701 West 51st Street, Austin, Texas 78757. The meeting will begin at 1:30 p.m.

Persons with disabilities planning to attend this meeting who may need auxiliary aids or services are asked to contact Lita Compton, (512) 438-4929 by January 25, 1999, so that appropriate arrangements can be made.

TRD-9818557
C. Ed Davis
Deputy Commissioner for Legal Services
Texas Department of Protective and Regulatory Services
Filed: December 23, 1998

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## Public Utility Commission of Texas

Applications to Introduce New or Modified Rates or Terms Pursuant to Public Utility Commission Substantive Rule §23.25

Notice is given to the public of an application filed with the Public Utility Commission of Texas on November 19, 1998 to introduce new or modified rates or terms pursuant to P.U.C. Substantive Rule §23.25, *Procedures Applicable to Chapter 58-Electing Incumbent Local Exchange Companies (ILECs).*

Tariff Title and Number: Southwestern Bell Telephone Company Notification of Rate Change Basket II: Discretionary Services, Reducing Residential Rates Associated With Extended Area Calling Service Pursuant to P.U.C. Substantive Rule §23.25. Tariff Control Number 20117.

The Application: Southwestern Bell Telephone Company (SWBT) is reducing rates associated with Extended Area Calling Service marketed under the name "Local Plus." This filing reduces the residential rate in the Lower Rio Grande Valley by $5.05 and reduces the residence rates of all Local Plus plans by five cents. The commission's General Counsel and Staff have recommended interim approval of SWBT's application to become effective on December 19, 1998. The commission is allowing any interested party to intervene by January 8, 1999. If no interventions are received by this date, SWBT's application will be granted final approval effective January 11, 1999.

Persons who wish to intervene in this proceeding should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512)936-7120 by January 8, 1999. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9818425
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 17, 1998

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Notice is given to the public of an application filed with the Public Utility Commission of Texas on December 15, 1998 to introduce new or modified rates or terms pursuant to P.U.C. Substantive Rule §23.25, *Procedures Applicable to Chapter 58-Electing Incumbent Local Exchange Companies (ILECs).*

Tariff Title and Number: Southwestern Bell Telephone Company Notification to Introduce a New Optional Service for Business Customers Called Call Transfer Disconnect Service Pursuant to P.U.C. Substantive Rule §23.25. Tariff Control Number 20235.

The Application: Southwestern Bell Telephone Company (SWBT) is introducing a new optional service for business customers called Call Transfer Disconnect. Call Transfer Disconnect will allow the customer to disconnect from a three-way call while still allowing the other two parties to continue the call in progress. With Call Transfer Disconnect, business subscribers will be able to transfer incoming calls to correct destinations or departments and free up their main or listed number for new calls.

Persons who wish to intervene in this proceeding should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 by January 14, 1999. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9818426
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas

Filed: December 17, 1998

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## Corrections of Error

The Public Utility Commission proposed amendments to 16 TAC §26.5, concerning definitions. The rule was published in the October 30, 1998, *Texas Register* (23 TexReg 11018).

Due to a typographical error in new paragraph (52) "Customer trouble report", on page 23 TexReg 11020, the second sentence contained the term "switcHouse Billoard" in error. The sentence should read as follows. "Each telephone or PBX switchboard position reported in trouble shall be counted as a separate report when several items are reported by one customer at the same time, unless the group of troubles so reported is clearly related to a common cause."

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The Public Utility Commission proposed new 16 TAC §26.27 and §26.28, concerning customer service and protections. The rules were published in the December 11, 1998, *Texas Register* (23 TexReg 12584).

Due to errors in the submitted text, the PUC filed these corrections to clarify two sentences.

In §26.27(b), the first sentence after the catchline should read, "A one-time penalty not to exceed 5.0% may be charged on each delinquent bill." The word "each" has been added.

In §26.28(h)(3), the text should read, "have a suspension or disconnect date that is not a holiday or weekend day, not less than ten days after the notice is issued." The word "ten" has been added.

## Notice of Application for Approval of Certain Depreciation Rates Filed Pursuant to Public Utility Commission Substantive Rule §23.61(h).

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on December 15, 1998, for approval of certain depreciation rates pursuant to P.U.C. Substantive Rule §23.61(h).

Docket Title And Number: Application of Taylor Telephone Cooperative, Inc. for an Increase in Certain Depreciation Rates and Special Amortization Pursuant to P.U.C. Substantive Rule §23.61(h). Docket Number 20236.

The Application: Taylor Telephone Cooperative, Inc. (Taylor) requests approval for special amortization in order to adjust certain depreciation reserve accounts. Taylor also seeks approval to modify certain existing deprecation rates of two accounts: poles and aerial wire. Taylor provides service in the Texas counties of Bradshaw, Buffalo Gap, Crews, Hamby, Hawley, Lawn, Lueders, Nolan, Noodle, Norton, Nubia, Potosi, Tuscola, Wingate. Taylor proposes an effective date of January 1, 1998 for these increased rates.

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 Office of Customer Protection at (512) 936-7120 on or before January 15, 1999. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9818427

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

Filed: December 17, 1998

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## Notices of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on December 15, 1998, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.154 - 54.159 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Snappy Phone of Texas, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 20238 before the Public Utility Commission of Texas.

Applicant intends to provide pre-paid phone service to a credit deficient market.

Applicant's requested SPCOA geographic area includes the entire state of Texas.

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 Office of Customer Protection at (512) 936-7120 no later than January 6, 1999. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9818424

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

Filed: December 17, 1998

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Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on December 15, 1998, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.154 - 54.159 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Focal Communications Corporation of Texas for a Service Provider Certificate of Operating Authority, Docket Number 20239 before the Public Utility Commission of Texas.

Applicant intends to provide local exchange services to business and residential customers. Services will include but are not limited to the following: local exchange access services to single-line and multi-line customers (including basic residential and business lines, direct inward/outward PBX trunk service, Centrex services, and ISDN), local exchange usage services to customers of Applicant's end-user access line services, and switched and special carrier access services to other common carriers on an equal access basis.

Applicant's requested SPCOA geographic area includes the areas currently served by Southwestern Bell Telephone Company and GTE Southwest, Inc. in the state of Texas.

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 Office of Customer Protection at (512)936-7120 no later than January 6, 1999. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9818430

Rhonda Dempsey

Rules Coordinator
Public Utility Commission of Texas
Filed: December 17, 1998

♦ ♦ ♦

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on December 17, 1998, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.154 - 54.159 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of LEC Unwired, L.L.C. for a Service Provider Certificate of Operating Authority, Docket Number 20250 before the Public Utility Commission of Texas.

Applicant intends to provide a full-range of local exchange and competitive access telecommunications services.

Applicant's requested SPCOA geographic area includes the entire state of Texas, with an initial service offering in those areas being served by Southwestern Bell Telephone Company in the counties of Angelina, Jefferson, Hardin, Jasper, Nacogdoches, Newton, Orange, Sabine, San Augustine, Trinity and Tyler.

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 Office of Customer Protection at (512)936-7120 no later than January 6, 1999. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9818500
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 21, 1998

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Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on December 18, 1998, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.154-54.159 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Media Communication Consultants, L.L.C. for a Service Provider Certificate of Operating Authority, Docket Number 20257 before the Public Utility Commission of Texas.

Applicant intends to provide the entire range of telecommunication services including, but not limited to, special access and private line services, integration services, residential and business access services, and originating and terminating carrier access services.

Applicant's requested SPCOA geographic area includes the geographic area of Texas in the counties of Bell, Burnet, Coryell, Falls, Hill, Lampasas, McLennan, Milam, and Williamson currently served by Southwestern Bell Telephone Company, Central Telephone Company of Texas, Inc., Continental Telephone of Texas, GTE Southwest, Inc., Texas Midland Telephone Company, and United Telephone Company of Texas, Inc.

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 Office of Customer Protection at (512) 936-7120 no later than January 6, 1999. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9818548
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 22, 1998

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## Notices of Application to Amend Certificate of Convenience and Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on December 7, 1998, to amend a certificate of convenience and necessity pursuant to §§14.001, 32.001, 36.001, 37.051, and 37.054, 37.056, 37.057, 37.058 of the Public Utility Regulatory Act, Texas Utilities Code Annotated (Vernon 1998) (PURA). A summary of the application follows.

Docket Title and Number: Application of West Texas Utilities Company to Amend a Certificate of Convenience and Necessity to Construct a Proposed Transmission Line within Taylor County, Docket Number 20196 before the Public Utility Commission of Texas.

The Application: In Docket Number 20196, WTU requests approval to relocate 1.13 miles of existing 69-kV transmission line, known as the South Abilene to Cedar Gap line in Taylor County. The proposed transmission line is being relocated approximately 75 feet west of its current location, at the request of the Texas Department of Transportation (TXDOT). TXDOT plans to modify U.S. Highway 83/84 by constructing an overpass at the intersection of Loop 707.

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 Office of Customer Protection at (512) 936-7120 within 15 days of this notice. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9818423
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 17, 1998

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Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on December 15, 1998, to amend a certificate of convenience and necessity pursuant to §§14.001, 32.001, 36.001, 37.051, and 37.054, 37.056, 37.057, 37.058 of the Public Utility Regulatory Act, Texas Utilities Code Annotated (Vernon 1998) (PURA). A summary of the application follows.

Docket Title and Number: Application of Jasper-Newton Electric Cooperative, Inc. (Jasper- Newton) to Amend a Certificate of Convenience and Necessity to Construct a Proposed Transmission Line within Jasper County, Docket Number 20240 before the Public Utility Commission of Texas.

The Application: In Docket Number 20240, Jasper-Newton requests approval to construct 5.46 miles of 138-kV transmission line, to be known as the McGee 138-kV transmission line, and the proposed McGee substation in Jasper County. The proposed transmission and substation projects will allow Jasper-Newton to reduce the length of the distribution feeders to the area which will increase service

reliability and voltage levels. The transmission service can be provided from a transmission point-of-delivery which is served by a loop system, providing a more secure source of power.

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 Office of Customer Protection at (512) 936-7120 within 15 days of this notice. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9818470
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 18, 1998

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Notice of Intent to File Pursuant to P.U.C. Substantive Rule §23.27

Notice is given to the public of the intent to file with the Public Utility Commission of Texas of an application pursuant to P.U.C. Substantive Rule §23.27 to file a customer-specific tariff for a new PLEXAR(R)-Custom service for Pharr-San Juan-Alamo ISD in Pharr, Texas.

Tariff Title and Number:. Southwestern Bell Telephone Company Notice of Intent to File a Customer Specific Tariff to Provide for a New PLEXAR(R)-Custom Service for Pharr-San Juan- Alamo ISD in Pharr, Texas, Pursuant to P.U.C. Substantive Rule §23.27. Tariff Control Number 20265.

The Application: Southwestern Bell Telephone Company. intends to file an application on or around January 1, 1999, to provide a new PLEXAR(R)-Custom PBX-type service designed to meet the specific needs of customers who have communication system requirements of 75 or more station lines to the Pharr-San Juan - Alamo ISD in Pharr, Texas. PLEXAR(R) - Custom provides switched voice and/or data communications via an arrangement of station lines, switching equipment, customer facility groups, and other communications facilities combined with standard tariff services for local exchange access, toll, etc. The service utilizes the customer facility group concept in that it gives the business subscriber the ability to order the number of local exchange access lines (pursuant to the Local Exchange Tariff) necessary to provide the subscriber's desired grade of service to access the local and long distance switched network.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9818556
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 23, 1998

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## The Texas A&M University System, Board of Regents

Requests for Proposal

In accordance with the Texas Insurance Code, Article 3.50-3, as amended, The Texas A&M University System (the System) announces a Request for Proposals (RFP) for a consultant services contract which will include, but not be limited to, the following services: actuarial analyses and plan pricing for the System's health plans; and counsel regarding plan designs, funding financial arrangements, tax-related issues, legislative changes, and carrier negotiations and selection for all System insurance and benefit programs.

Firms wishing to respond to this request should be able to demonstrate the experience and qualifications necessary to produce excellent outcomes in the above areas. Of interest are relevant credentials of project personnel and experience in conducting similar projects for large multi-location employers.

The RFP instructions, which detail information regarding the project, are available upon request from the System.

The deadline for receipt of the proposals in response to this request will be 4:00 p.m. CST on January 22, 1999.

The System reserves the rights to accept or reject any or all proposals submitted. It is under no legal requirement to execute a resulting contract on the basis of this advertisement. The System intends to use responses as a basis for further negotiations of specific project details and will base its choice on cost, demonstrated competence, superior qualifications, and evidence of conformance with the RFP criteria.

This RFP does not commit the System to pay any costs incurred prior to execution of a contract. Issuance of this material in no way obligates the System to award a contract or to pay any costs incurred in the preparation of a response. The System specifically reserves the right to vary all provisions set forth at any time prior to execution of a contract where the system deems it to be in its best interest.

To obtain copies of the RFP instructions, please submit a written request to Mr. Steven W. Hassel, Director, Benefit Programs, The Texas A&M University System, 301 Tarrow Drive, 5th Floor, College Station, Texas, 77840-7896. (FAX: 409 845- 5281) For questions or further information regarding this notice, contact Mr. Steven W. Hassel, at (409) 845-2026 or by e-mail at hassel@sagomail.tamu.edu.

TRD-9818413
Vickie Burt
Executive Secretary to the Board
The Texas A&M University System, Board of Regents
Filed: December 16, 1998

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The Texas Engineering Extension Service (TEEX) requests proposals from consulting firms qualified to provide defense technology commercialization services for Texas defense enterprises. The selected service provider will assist TEEX on a task order agreement to develop a mechanism or program in Texas to continue the defense technology commercialization process after the Defense Technology Commercialization Project is complete in December 1999.

Request for Proposal information may be obtained from Rex Janne, Director of Purchasing Services, Texas A&M University, College Station, Texas 77843-1477. You may e-mail your request to r-janne@tamu.edu.

Selection criteria will include competence, experience, knowledge and qualifications in the area of Texas defense industry. Historically Underutilized Businesses are encouraged to participate in this request for proposal. All things being equal, a preference will be given to a

consultant firm whose principal place of business is within the State of Texas.

Proposals must be received on or before 2:00 p.m., January 14, 1999.

TRD-9818432
Vickie Burt
Executive Secretary to the Board
The Texas A&M University System, Board of Regents
Filed: December 18, 1998

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