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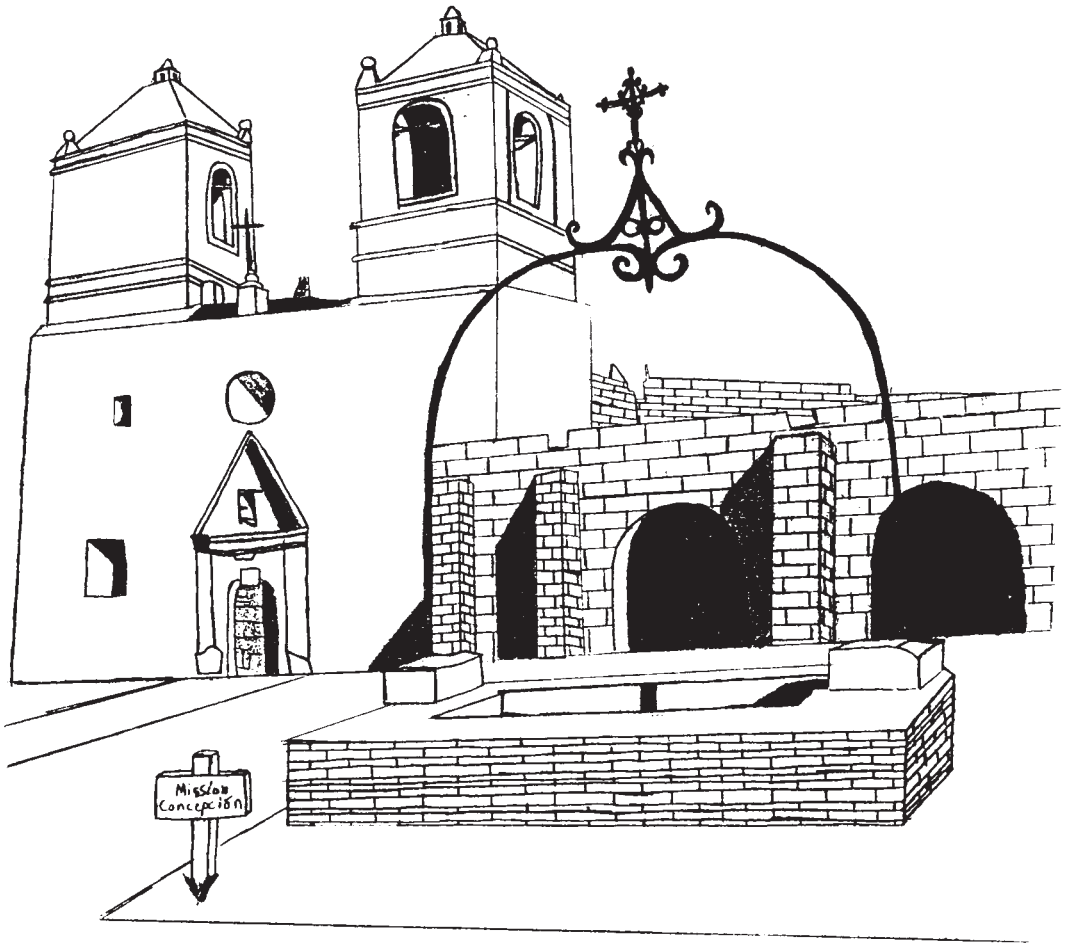

This month's front cover artwork:

Artist: *David Guzman*

11th Grade

Luling High School

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.

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ATTORNEY GENERAL

PROPOSED RULES

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. You may view copies of opinions at http://www.oag.state.tx.us. To request copies of opinions, please fax your request to (512) 462-0548 or call (512) 936-1730. To inquire about pending requests for opinions, phone (512) 463-2110.

Opinions

Opinion No. JC-0199. The Honorable Tim Cone, Criminal District Attorney, Upshur County, Justice Center, 405 North Titus Street, Gilmer, Texas 75644, regarding whether a member of the Gilmer Volunteer Fire Department may simultaneously serve on a city council (RQ-0131-JC).

S U M M A R Y. Under the terms of the charter of the City of Gilmer, a member of the Gilmer Volunteer Fire Department is barred by common-law incompatibility from simultaneously serving as a member of the city council. Election to the Gilmer City Council operates as ipso facto resignation from the volunteer fire department.

Opinion No. JC-0200. The Honorable Cindy Maria Garner, 349th Judicial, District Attorney, P.O. Box 1076, Crockett, Texas 75835, regarding whether chapter 110 of the Civil Practice and Remedies Code exempts a religious post- secondary educational institution from regulation by the Higher Education Coordinating Board (RQ-0134-JC).

S U M M A R Y. Chapter 110 of the Civil Practice and Remedies Code provides that a governmental agency may not substantially burden a person's free exercise of religion, unless the agency demonstrates that the burden is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that interest. Although state regulation of a religious university that grants degrees as a private postsecondary educational institution might substantially burden some person's free exercise of religion, chapter 110 does not exempt the religious university from such regulation.

Opinion No. JC-0201. Mr. William H. Kuntz, Jr., Executive Director, Texas Department of Licensing and Regulation, 920 Colorado, Austin, Texas 78701, regarding whether the Department of Licensing and Regulation may require applicants for a boxing license to submit to HIV testing as a condition of licensure (RQ-0137-JC).

S U M M A R Y. The Department of Licensing and Regulation may not by rule require that applicants for a professional boxing license submit to HIV testing as a condition of licensure. If, however, a boxer's license is suspended in another state solely on the basis of a denial of physician certification resulting from a positive HIV test, the Department is required by federal law to uphold that suspension.

Opinion No. JC-0202. The Honorable Jill Cornelius, Matagorda County Attorney, 1700 Seventh Street, Room 305, Bay City, Texas, 77414-5034, regarding whether the Port of Bay City Authority of Matagorda County is authorized to accept the conveyance of certain easements from the United States Army Corps of Engineers for the purpose of conveying them to the private property owners whose fee interests are encumbered by the easements (RQ-0143-JC)

S U M M A R Y. The Port of Bay City Authority of Matagorda County, a special purpose district whose powers are limited to those expressly delegated to it by statute or clearly implied from its express powers, is not authorized to accept the conveyance of easements from the United States Army Corps of Engineers for the purpose of conveying them to the private property owners whose fee interests are encumbered by the easements.

For further information, please call (512) 463-2110

TRD-200002218
Elizabeth Robinson
Assistant Attorney General
Office of the Attorney General
Filed: March 28, 2000

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Requests for Opinions

RQ-0196-JC. The Honorable Joe F. Grubbs, Ellis County and District Attorney, 101 West Main Street, Waxahachie, Texas 75165, regarding whether a county clerk is required to file a UCC financing statement

where the secured party is the same person named as the debtor (Request No. 0196-JC). *Briefs requested by April 17, 2000.*

RQ-0197-JC. The Honorable Bob Turner, Chair, Public Safety Committee, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910, regarding the validity of a regulation of the Texas Air National Guard that relates to "officers lacking in professional qualifications" (Request No. 0197-JC). *Briefs requested by April 21, 2000.*

RQ-0198-JC. The Honorable Jeri Yenne, Brazoria County Criminal District Attorney, 111 East Locust, Suite 408A, Angleton, Texas 77515 , regarding construction of §2 of article 42.01, Code of Criminal Procedure, which permits the count clerks to prepare a judgment "under the supervision of an attorney" (Request No. 0198-JC). *Briefs requested by April 17, 2000.*

RQ-0199-JC. The Honorable Russell W. Malm, Midland County Attorney, 200 West Wall Street, Suite 104, Midland, Texas 79701, regarding the authority of a sheriff to organize and participate in "STAR" ("Sheriffs of Texas Agreed Response"), a law enforcement tactical response team (Request No. 0199-JC). *Briefs requested by April 16, 2000.*

RQ-0200-JC. The Honorable Glen Wilson, Parker County Attorney, One Courthouse Square, Weatherford, Texas 76086, regarding subdivision plotting requirements under §232.001, Local Government Code (Request No. 0200-JC). *Briefs requested by April 17, 2000.*

RQ-0201-JC. The Honorable Yvonne Davis, Chair, Local and Consent Calendar Committee, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910, regarding the authority of a certified real estate appraiser, and related questions (Request No. 0201-JC). *Briefs requested by April 20, 2000.*

RQ-0202-JC. The Honorable Judith Zaffirini, Chair, Human Services Committee, Texas State Senate, P.O. Box 12068, Austin, Texas 78711-2068, regarding the procedure for a geographical entity to separate from an existing community college district, and related questions (Request No. 0202-JC). *Briefs requested by April 20, 2000.*

RQ-0203-JC. The Honorable William R. Archer III, M.D., Commissioner of Health, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199, regarding the computation of salary restrictions under §659.0015, Government Code, which relates to retired state employees who are reemployed, and related questions (Request No. 0203). *Briefs requested by April 20, 2000.*

RQ-0204-JC. Ms. Cathy L Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, 333 Guadalupe, Suite 2-350, Austin, Texas 78711-3942, regarding the responsibility for enforcement of the Professional Services Procurement Act, and related questions (Request No. 0204-JC). *Briefs requested by April 17, 2000.*

RQ-0205-JC. The Honorable Jane Nelson, Chair, Health Services Committee, Texas State Senate, P.O. Box 12068, E1.804, Austin, Texas 78711-2068, regarding whether "strict scrutiny" analysis applies to a state agency's interference with a parent's right to direct the upbringing of his or her children (Request No. 0205-JC). *Briefs requested by April 21, 2000.*

For further information, please call 512-463-2110.

TRD-200002209
Elizabeth Robinson
Assistant Attorney General
Office of the Attorney General
Filed: March 27, 2000

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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 1. TEXAS DEPARTMENT OF AGRICULTURE

Chapter 3. BOLL WEEVIL ERADICATION PROGRAM

Subchapter J. ORGANIC COTTON RULES

4 TAC §§3.607 - 3.609

The Texas Department of Agriculture (the department) proposes new Chapter 3, Subchapter J, §§3.607 - 3.609, concerning eligibility for indemnification and calculation of indemnity to organic cotton producers and payment of assessments by organic cotton growers. The new sections are proposed to establish eligibility and a method and procedures for the indemnification of growers of organic cotton in active boll weevil eradication zones, in accordance with the Texas Agriculture Code, §74.125, and to provide for payment of an assessment by organic cotton growers farming in an active boll weevil eradication zone.

Sections 3.607 - 3.609 were previously proposed as part of new 4 TAC, Chapter 3, Subchaper J, published in the February 11, 2000, issue of the *Texas Register* (25 TexReg 993). Upon review of the many comments received on proposed §3.607 and §3.608, the department determined that it would withdraw the original proposals and resubmit new §3.607 and §3.608, taking into consideration the comments and other information received after the comment period from both organic and conventional cotton growers and state and federal agencies dealing with cotton production. The original proposals for these sections have been withdrawn and replaced with new proposed §3.607 and §3.608. Although no comments were received on §3.609, the department is refiling that section because substantive changes were required to be made to that section to make it consistent with new §3.607 and §3.608. As with the remaining sections in Subchapter J, which have been adopted by the department in a separate submission, the department intends to review the rules again in January, 2001, and set public hearings to take public comment on whether or not changes should be made to the rules for the next growing season.

New §3.607 provides eligibility criteria for indemnification of organic cotton growers growing certified organic or transitional organic cotton in active boll weevil eradication zones. In response to comments from both conventional growers that they opposed the notion that organic growers would be paid not to grow cotton using a pre-set formula set by TDA if they could show eligibility and demonstrate to the department that their decision not to grow was based on sound farming practices, and comments from conventional growers that the department, in essence would allow and pay organic growers not to grow without input from grower steering committees, the department is now proposing a process which allows organic growers and steering committees to negotiate agreements for indemnification at any point during the growing season, up to the point at which the field triggers and is subject to destruction. There is no pre-set indemnification formula for these negotiations, however, agreements would be subject to approval by the foundation and the department. The indemnification formula proposed in new §3.608 would only apply as to indemnification due to destruction required by the department. Also, in response to comments received from cotton growers on the original proposal filed by the department for §3.607, the base acreage on which indemnification will be determined is determined by row acres planted to cotton, as opposed to land acres.

New §3.608 provides procedures for calculating indemnification to growers in the event a crop is required by the department to be destroyed. The department has based its indemnification formula on four components: APH yield, acreage, an average market price of the sum of the established price of conventional cotton and the average premium for organic cotton and a 65% rate of compensation. The department has also based indemnification on a graduated scale, based on the point in the growing season at which a crop is required to be destroyed. If a crop is required to be destroyed within the first 30 days of the growing season, indemnification will be at 50% of the prescribed formula. Thereafter, indemnification will be at the full rate of the prescribed formula. The 50% indemnification early into the season is based on the basic catastrophic insurance

coverage available from the Risk Management Agency of the United States Department of Agriculture (RMA).

The APH Yield is the Actual Production History for that farm, based on planted row acres, as determined by the RMA. The Actual Production History is a yield factor used by RMA in the federal crop insurance program. This factor takes into account up to ten years of previous production on an individual farm, removing high and low yields. Every farm, even a farm on which there has been no previous cotton production, can be assigned an APH yield. This is widely accepted in the cotton industry as the most accurate, most easily obtainable estimate of pounds of cotton produced per acre. The APH yield for all cotton is used because of lack of accurate data to establish an exclusively organic APH yield. According to information received by the department both from organic and conventional growers, the APH yield is similar for organic and conventional production.

The per pound price component was determined by using the conventional cotton price and adding a premium for organic cotton. A $0.39 cent premium is added to this price to reflect the value of organic cotton. This premium was determined by evaluating the five-year average price of conventional cotton and organic cotton lint and seed. The price of conventional cotton as determined in the definition of conventional cotton price provided in §3.608 for the 2000 crop year is $.59. The total of these brings the per pound price to $.98. This price is further supported by sales figures provided by organic growers to show an average market price of approximately one dollar.

The price and yield portions of this formula are intended to estimate the reasonable value of an organic cotton crop should it become necessary under these rules for the grower to destroy that crop during the growing season. The department is aware that if destruction of an organic cotton crop is deemed a absolutely necessary, the grower will not have put 100% of his or her cost into that crop at that point (inputs such as harvest and ginning costs would not be incurred by the grower). The department is also aware that all growers, conventional and organic, assume some amount of risk when planting cotton or any other crop. In determining the appropriate percentage of a crop's total value that a grower should be indemnified for, the department found it important to analyze the extent to which cotton growers protect themselves from the risks of natural perils. Data obtained from the RMA indicates that 94% of cotton farmers in Texas choose to insure their crops at a level of 65% through the federal crop insurance program. The department feels it is appropriate to provide this same level of protection for organic cotton crops in active boll weevil eradication zones.

Matt Brockman, special assistant for producer relations 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 government as a result of enforcing or administering the sections. Costs of administering and enforcing the sections, including the actual cost of indemnification will be borne by the Texas Boll Weevil Eradication Foundation, Inc. using other than state funds.

Mr. Brockman also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be having established procedures and requirements regarding the growing of organic crops in active boll weevil eradication zones. Considering that the boll weevil costs cotton growers millions of dollars in damages and lost revenues each year, eradication of the boll weevil will allow both traditional and organic cotton growers to become more efficient and competitive, thus providing an indirect benefit to consumers, and having a more viable cotton industry due to the eradication of the boll weevil will help sustain the economy of many parts of rural Texas. There may be a cost to organic cotton growers who operate as micro-businesses or small businesses and to individual growers who are required to Comply with the rule as proposed. The indemnification formula provided in new §3.608 is intended to reasonably compensate organic cotton growers whose cotton is destroyed or ordered to be destroyed in order to not jeopardize the eradication program. As noted previously, the indemnification formula is based several components including the eligible acreage, average yield of that acreage, and the compensation rate of 65%. In addition, indemnification will be based on the point in the growing season at which a crop is required to be destroyed. The department recognizes that such compensation may not in all cases serve to make the grower whole, and that an organic grower may incur uncompensated costs as a result of implementation of the sections, however, the department believes that the proposed formula does provide reasonable compensation to organic growers. The department is not able to determine the costs that the average organic grower might incur, as those would depend on several factors including the actual amount of organic acreage involved, the actual market price at the time, the quality of the crop, actual production costs of individual growers, the production costs not incurred by the grower due to the destruction of the crop prior to harvest, the ability of the organic grower to plant and harvest an alternative crop and the proceeds that the grower would receive from an alternative crop.

Comments on the proposal may be submitted to Matt Brockman, Special Assistant for Producer Relations, Texas Department of Agriculture, P. O. Box 12847, and Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The new sections are proposed under the Texas Agriculture Code (the Code), §74.125, which provides the department with the authority to develop rules and procedures to protect the eligibility of organic cotton growers to be certified by the commissioner of agriculture, ensure that certification by the commissioner meets national certification standards and in all events maintain the effectiveness of the boll weevil or pink bollworm eradication program administered under the Code, Chapter 74, Subchapter D, including rules that provide indemnification for organic cotton growers for reasonable losses that result from a prohibition of production of organic cotton or from any requirement of destruction of cotton; and the Code, §74.120, which provides the department with the authority to adopt reasonable rules to carry out the purposes of the Code, Chapter 74, Subchapter D.

The code that will be affected by the proposal is the Texas Agriculture Code, Chapter 74, Subchapter D.

§3.607. Eligibility for Indemnification.

(a) Certified organic and/or transitional cotton growers in active eradication zones may enter into voluntary agreements with grower steering committees to negotiate indemnification provided that those agreements are negotiated and made in good faith by both parties and are approved by the foundation and the commissioner.

(b) Until each respective zone is declared eradicated by the commissioner, certified organic and/or transitional cotton growers in

eradication zones that are active at the time this rule becomes effective will be eligible for compensation under the following conditions.

(1) The grower must have planted certified organic or transitional cotton during or prior to the 1999 crop year.

(2) The grower's base acreage will be based on the grower's choice of one of the following:

(A) row acres planted to certified organic and transitional cotton in 1999; or

(B) an average of row acres planted to certified organic and transitional cotton in the 1997, 1998, and 1999 crop years.

(3) Until each respective zone is declared eradicated by the commissioner, certified organic and/or transitional cotton growers in the Southern Rolling Plains, South Texas/Winter Garden, and Rolling Plains Central Boll Weevil Eradication Zones will be assigned a base acreage by the commissioner based upon historical production of organic and/or transitional cotton by that grower.

(c) Certified organic and/or transitional cotton growers in boll weevil eradication zones which become active after the effective date of this subchapter will be eligible for compensation under the following conditions.

(1) The grower must have an application for transitional or organic cotton approved by the department's Organic Certification Program at least one year before the date a referendum is held establishing a boll weevil eradication program and assessment and approving a budget for that zone.

(2) The grower's base acreage will be based on the growers choice of one of the following:

(A) the grower's row acreage planted to certified organic and/or transitional cotton in the year preceding the crop year on which the referendum is based; or

(B) an average of the grower's row acreage planted to certified organic and/or transitional cotton in the year preceding the crop year on which the referendum is based and the two previous years.

§3.608. Calculation of Indemnity.

(a) To be eligible for indemnification if a crop must be destroyed under § 3.606, a grower must report the Farm Service Agency farm numbers, physical locations, and row acreage on each farm that the grower will use as the base acreage calculated in §3.607 of this title (relating to Eligibility for Indemnification), to the foundation before planting each year on a form provided by the foundation.

(b) If certified organic or transitional cotton on the growers base acreage is destroyed through the requirements of this subchapter, the grower will be entitled to indemnification by October 31 of that year.

(c) If the commissioner determines that the foundation is delinquent in a payment owed to a grower, the foundation will be responsible for an additional payment to the grower of 1.5% of the amount owed per month of delinquency.

(d) The following factors will be considered when calculating indemnity payments for organic cotton growers whose cotton is required to be destroyed in accordance with §3.605 of this title (relating to Trigger Levels) and §3.606 of this title (relating to Crop Destruction; Extensions; Choice of Conventional Treatment):

(1) eligible acreage - the base acreage, in row acres planted to certified organic or transitional cotton, determined as provided in §3.607 of this title (relating to Eligibility for Indemnification), and identified for that field as described in this section; Organic or transitional cotton must be planted on this acreage by the final planting date set by the Risk Management Agency of the United States Department of Agriculture in the county in which the crop is planted.

(2) yield - the yield per acre will be determined by using the Actual Production History per row acre planted to cotton for that farm, as determined by the Risk Management Agency of the United States Department of Agriculture; and

(3) conventional cotton price - the conventional cotton price will be determined by the upland cotton price election for an APH policy in the county in which the organic or transitional cotton in question lies for the current crop year. This price for the coming crop year is published by the Risk Management Agency of the United States Department of Agriculture before December 31 of each year.

(e) When a grower is entitled to indemnification as a result of crop destruction, the foundation will indemnify the grower in accordance with the following formulas:

(1) If the notice is received by the grower less than thirty days after the final planting date in that county that destruction of a crop is required, the indemnity will be: eligible acreage x yield x (conventional cotton price + $0.39) X 50%, with no mitigation required; or

(2) If the notice is received by the grower thirty days or more after the final planting date in that county that destruction of a crop is required, the indemnity will be: eligible acreage x yield x (conventional cotton price + $0.39) X 65%, with no mitigation required.

(f) After a zone has been declared eradicated by the commissioner:

(1) any grower who plants certified organic or transitional cotton will be eligible for indemnification on an acre per acre basis only, if all or part of a crop is required to be destroyed;

(2) indemnification will only be available for certified organic and/or transitional cotton acreage that is required to be destroyed; and

(3) indemnification will be acreage x yield x (conventional cotton price + $0.39) X 75%, with no mitigation required.

(g) The commissioner will resolve any dispute between the grower and the foundation regarding the amount of indemnification.

§3.609. Payment of Assessment.

(a) Organic growers who plant certified organic or transitional cotton will be required to pay an assessment in accordance with the Code, Chapter 74, Subchapter D and rules adopted thereunder. This assessment will be in the amount set for the entire zone and will be billed in the same manner as all cotton grown in the zone.

(b) Agreements negotiated under §3.607 of this title (relating to Eligibility for Indemnification) may include provisions for payment of an assessment or reduction of payment to an organic grower in the amount of an assessment for that acreage.

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

Filed with the Office of the Secretary of State, on March 27, 2000.

TRD-200002207
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: May 7, 2000
For further information, please call: (512) 463-4075

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TITLE 16. ECONOMIC REGULATION

Part 2. PUBLIC UTILITY COMMISSION OF TEXAS

Chapter 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

Subchapter D. RECORDS, REPORTS, AND OTHER REQUIRED INFORMATION

16 TAC §§25.79, 25.80, 25.85

The Public Utility Commission of Texas (commission) proposes amendments to §25.79 relating to Equal Opportunity Reports and §25.80 relating to the Annual Report on Historically Underutilized Businesses; and proposes new §25.85 relating to Workforce Diversity Reports. The proposed new rule and amendments will implement the provisions of Senate Bill 7 (SB7), Act of May 21, 1999, 76th Legislature, Regular Session, chapter 405, 1999 Texas Session Law Service 2543, 2601 (Vernon)(codified as an amendment to the Public Utility Regulatory Act (PURA), Texas Utilities Code Annotated §39.909(c)), which require electric utilities to file an annual report to the commission and the legislature relating to the electric utility efforts to improve workforce diversity and contracting opportunities for small and historically underutilized businesses and will eliminate duplicative filing requirements. Project Number 22167 has been assigned to this proceeding.

Patricia Zacharie, Attorney, Legal Division, Office of Regulatory Affairs, has determined that for each year of the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Zacharie has determined that for each year of the first five years the proposed sections are in effect the public benefit anticipated as a result of enforcing the sections will be greater opportunities for minorities and small and historically underutilized businesses and a more diverse workforce in the State of Texas. There will be no effect on small businesses or micro-businesses as a result of enforcing these sections. There is an anticipated economic cost to persons who are required to comply with the sections as proposed, which cannot be quantified at this time.

Ms. Zacharie has also determined that for each year of the first five years the proposed sections are in effect there should be no affect on a local economy and therefore, no local employment impact statement is required under Administrative Procedure Act §2001.022.

The commission staff will conduct a public hearing on this rulemaking under Government Code §2001.029 at the commission's offices, located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, on Thursday, May 4, 2000, at 9:30 a.m.

Comments on the proposed amendments and new rule (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 30 days after publication. 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 sections. The commission will consider the costs and benefits in deciding whether to adopt these sections. The commission also invites specific comments regarding the following question: Is an exemption appropriate for electric utilities whose workforce is more than a certain percentage minority? All comments should refer to Project Number 22167.

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

The amendments and new rule are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998 and Supplement 2000) (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 §12.252, which grants the commission authority to adopt and enforce rules to require each utility subject to regulation to overcome the underuse of historically underutilized businesses; and §39.909, which grants the commission authority to adopt rules relating to workforce diversity reporting requirements for electric utilities.

Cross Reference to Statutes: Public Utility Regulatory Act §§12.252, 14.002 and 39.909.

§25.79. Equal Opportunity Reports.

(a) (No change.)

(b) Each electric utility that files any form with local, state or federal governmental agencies relating to equal employment opportunities for minority group members, (e.g., EEOC Form EEO-1, FCC Form 395, RUS Form 268, etc.) shall file copies of such completed form with the commission. If such form submitted by a multi- jurisdictional electric utility does not indicate Texas-specific numbers, the electric utility shall also prepare, and file with the commission a form indicating Texas-specific numbers, in the same format and based on the numbers contained in the form previously filed with local, state or federal governmental agencies[~~,~~ ~~indicating Texas-specific numbers~~]. Each electric utility shall also file copies of any other forms required to be filed with local, state or federal governmental agencies which contain the same or similar information, such as personnel data identifying numbers and occupations of minority group members employed by the electric utility, and employment goals relating to them[~~thereto~~], if any.

(c) (No change.)

(d) Any electric utility filing with the commission any documents described in subsections (b) and (c) of this section shall file three[~~two~~] copies of such documents with the commission's filing clerk under the project number assigned by the Public Utility Commission's Central Records Office for that year's filings. Utilities shall obtain the project number by contacting Central Records.

(e) An electric utility that files a report with local, state or federal governmental agencies and that is required by this section to file such report with the commission must file the report by December 30[~~February 15~~] of the year it is filed with the local, state or federal agencies. [~~If the report is filed with local, state or federal agencies after February 15, the electric utility shall file the report with the commission by February 15 of the next year.~~]

[~~(f) On May 1 of each year, the commission shall submit a report concerning the filed reports to the Texas legislature.~~]

§25.80. Annual Report on Historically Underutilized Businesses.

(a) (No change.)

(b) Every electric utility shall report its use of historically underutilized businesses (HUBs) to the commission on a form approved by the commission. An electric utility may submit the report on paper, or on paper and on a diskette (in [~~Lotus 1-2-3 (*.wk*) or~~] Microsoft Excel (*utility name.xl*)[(~~*.xl*~~)] format).

[~~(1) Each electric cooperative utility shall on or before December 30 of each year submit to the commission a comprehensive annual report detailing its use of HUBs for the four quarters ending on September 30 of the year the report is filed, on the Small Utilities HUB Report form.~~]

(1) [~~(2)~~] Each[~~Every~~] electric utility [~~other than those specified in paragraph (1) of this subsection~~] shall on or before December 30 of each year submit to the commission a comprehensive annual report detailing its use of HUBs for the four quarters ending on September 30 of the year the report is filed, using[~~on~~] the Large Utilities HUB Report form.

(2) [~~(3)~~] Each electric utility wishing to report indirect HUB procurements or HUB procurements made by the contractor of the utility may use the Supplemental HUB report form.

(3) [~~(4)~~] Each electric utility shall submit a text description of how it[~~the method by which it~~] determined which of its vendors is a HUB.

(4) [~~(5)~~] Each electric utility that[~~which~~] has more than 1,000 customers in a state other than Texas, or that[~~which~~] purchases more than 10% of its goods and services (other than fuel, purchased power, and wheeling) from vendors not located in Texas, shall separately report by total and category all electric utility purchases, all electric utility purchases from Texas vendors, and all electric utility purchases from Texas HUB vendors. A vendor is considered a Texas vendor if its physical location is geographically in Texas.

(5) [~~(6)~~] Each electric utility shall also file any other documents it believes appropriate to convey an accurate impression of its use of HUBs.

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

§25.85. Workforce Diversity Report.

(a) Purpose. This section establishes annual reporting requirements for electric utilities to report its efforts to improve workforce diversity and contracting opportunities for small and historically underutilized businesses.

(b) Application. This section applies to all electric utilities, as defined in the Public Utility Regulatory Act (PURA) §31.002(6), doing business in the State of Texas.

(c) Terminology. In this section, "small business" and "historically underutilized business" have the meanings assigned by Texas Government Code §481.191.

(d) Annual report of workforce diversity. A "Report on Improving Workforce Diversity" shall be filed annually with the commission. The report shall be filed on or before December 30 of each year for the four prior quarters ending on September 30 of the year the report is filed.

(e) Filing requirements. Three copies of the Workforce Diversity Report shall be filed with the commission's filing clerk under the project number assigned by the Public Utility Commission's Central Records Office for that year's filings. Electric utilities shall obtain the project number by contacting Central Records.

(f) Contents of the report. The annual report filed with the commission pursuant to this section shall be filed using the Workforce Diversity form and shall contain at a minimum the following information:

(1) An illustration of the diversity of the electric utility's workforce at the time of the report. If the electric utility is required to file an Equal Opportunity Report pursuant to §25.79 of this title (relating to Equal Opportunity Reports), a copy of that document may be attached to this report to satisfy the requirements of this paragraph.

(2) A description of the specific progress made under the workforce diversity plan filed pursuant to PURA §39.909(b), including:

(A) the specific initiatives, programs, and activities undertaken during the preceding year; and

(B) an assessment of the success of each of those initiatives, programs, and activities.

(3) An explanation of the electric utility's level of contracting with small and historically underutilized businesses.

(4) The extent to which the electric utility has carried out its initiatives to facilitate opportunities for contracts or joint ventures with small and historically underutilized businesses.

(5) A description of the initiatives, programs, and activities the electric utility will pursue during the next year to increase the diversity of its workforce and contracting opportunities for small and historically underutilized businesses.

(g) This section may not be used to discriminate against any citizen on the basis of race, nationality, color, religion, sex, or marital status.

(h) This section does not create a new cause of action, either public or private.

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

Filed with the Office of the Secretary of State, on March 24, 2000.

TRD-200002112
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: May 7, 2000

For further information, please call: (512) 936-7308

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Chapter 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICES PROVIDERS

Subchapter B. CUSTOMER SERVICE AND PROTECTION

16 TAC §26.25

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the 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 §26.25 relating to Issuance and Format of Bills. The commission is proposing a new §26.25 relating to Issuance and Format of Bills, to implement the mandates of the Public Utility Regulatory Act (PURA) §§55.012, 17.003(c), and 17.004(a)(8), and the Federal Communications Commission's (FCC) Truth-in-Billing Guidelines. Due to the extensive changes from the existing rule to the proposed rule, publishing an amendment to the existing rule is not practical. Project Number 22130 has been assigned to the proposed repeal of existing §26.25.

Rick Akin, Chief Policy Analyst, Office of Policy Development, has determined that for each year of the first five-year period this repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Akin 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 elimination of a rule that no longer meets the requirements of PURA. There will be no effect on small businesses or micro businesses as a result of repealing this section. There is no anticipated economic cost to persons as a result of repealing this section.

Mr. Akin has also determined that for each year of the first five years the repeal is in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under the Administrative Procedure Act §2001.022.

Comments on the proposed repeal (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 20 days after publication. All comments should refer to Project Number 22130.

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.

§26.25. Issuance and Format of Bills.

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

Filed with the Office of the Secretary of State, on March 24, 2000.

TRD-200002167
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: May 7, 2000
For further information, please call: (512) 936-7308

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Chapter 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

Subchapter B. CUSTOMER SERVICE AND PROTECTION

16 TAC §26.25

The Public Utility Commission of Texas proposes new §26.25 relating to Issuance and Format of Bills. The existing §26.25, relating to Issuance and Format of Bills, has been proposed for repeal. (Because of the extensive changes being proposed, publishing an amendment to the existing §26.25 is less practical than the alternative of repealing the existing section and publishing a new §26.25.) The proposed new section seeks to establish minimum telecommunication bill information standards and format guidelines, to clarify information disseminated to customers in order to reduce cramming and slamming complaints, and to streamline current bills. Proposed §26.25 establishes the minimum requirements for bill content and structure as they relate to the mandates set forth in the Public Utility Regulatory Act (PURA) §55.012, Telecommunications Billing; in PURA §17.003(c) and §17.004(a)(8); and in the Federal Communications Commission's (FCC's) Truth-in-Billing guidelines (including but not limited to identification of service provider(s), new service providers, information regarding "deniable and non-deniable" charges, understandable descriptions of charges, standardized labeling for charges resulting from federal regulatory actions, and provisions for customer complaints). Proposed §26.25 also states billing frequency, content, and record-retention standards. Project Number 22130 has been assigned to this proceeding.

Rick Akin, Chief Policy Analyst, Office of Policy Development, 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. Akin 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 to decrease the confusion associated with the proliferation of charges on telephone bills for separate services and products and of related surcharges, fees, and taxes. This proposed section would require certificated telecommunications utilities (CTUs) to provide consumers with brief, clear, non-misleading language describing the content within telephone bills that will increase bill clarity for consumers and reduce instances of slamming and cramming. There will be no effect on small businesses or micro-businesses as a result of enforcing this section. There will be some anticipated economic cost to persons who are required to

comply with the section as proposed. However, the anticipated economic cost is outweighed by the benefit to telecommunications customers in the State of Texas.

Mr. Akin has also determined that for each year of the first five years the proposed section is in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act 2001.022.

The commission staff will conduct a public hearing on this rulemaking under Government Code §2001.029 at the commission's offices, located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, on Tuesday, May 2, 2000. The hearing will be held in the Commissioners' Hearing Room from 9:00 a.m. to noon.

Comments on the proposed new section (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 20 days after publication. Reply comments may be submitted 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 proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. All comments should refer to Project Number 22130.

The commission specifically invites comments on several matters. First, parties are invited to comment on the appropriateness of the proposed effective date, November 1, 2000, for billing changes in subsection (e)(1). Second, parties are invited to comment on whether and how the rule should accommodate billing over the Internet. For example, should all CTUs be required to give customers the option of receiving their bills via the United States mail or should CTUs be allowed to bill only over the Internet? For bills sent over the Internet, how should the first-page requirements of subsection (e)(1) be handled? Third, parties may comment on whether the footnote or asterisked reference required by subsection (e)(4) must state the actual amount of the fee or surcharge or if a listing of the name of the fee or surcharge will suffice.

Lastly, parties are encouraged to work collaboratively with the commission to develop consumer-research data (through focus groups or other suitable marketing- research methods) showing that these rules will result in greater understanding by customers of their bills and will help customers to identify unauthorized telecommunications charges.

This new section is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2000) (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. PURA §17.003 and §17.004, which were added by Senate Bill 86, Act of May 30, 1999, 76th Legislature, Regular Session, chapter 1579, 1999 Texas Session Law Service 5421, 5423 (Vernon) (codified as an amendment to PURA, Texas Utilities Code Annotated §17.003 and §17.004), grant the commission the authority to require a CTU to adopt rules that present clear, uniform and understandable information to customers about rates, services, terms, customer rights, and other necessary information that the commission deems appropriate. In addition, PURA §55.012, Telecommunications Billing, added by Senate Bill 560, Act of May 30, 1999, 76th Legislature, Regular Session, chapter 1212, 1999 Texas Session Law Service 4210, 4219 (Vernon) (codified as an amendment to PURA, Texas Utilities Code Annotated §55.012), seeks to simplify and clarify bills issued by local exchange companies (LECs).

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 17.003, 17.004, 55.002, and 55.012.

§26.25. Issuance and Format of Bills.

(a) Application. The provisions of this section apply to all certificated telecommunications utilities (CTUs). The effective date for the changes required by subsection (e)(1) of this section is November 1, 2000.

(b) Purpose. The purpose of this section is to specify a user-friendly, simplified format for residential customer bills that include charges for local exchange telephone service.

(c) Frequency of bills. Bills of CTUs shall be issued monthly for any amount unless the bill covers service that is for less than one month, or unless the customer specifically requests a less frequent billing interval.

(d) Billing information.

(1) All customers shall be given an option of receiving their bill via the United States mail.

(2) Customer billing sent through the United States mail shall be sent in an envelope or by any other method that ensures the confidentiality of the customer's telephone number and/or account number.

(3) A CTU shall maintain monthly billing records for each of its accounts for at least two years after the date the bill is mailed. The billing records shall contain sufficient data to reconstruct a customer's billing for a given month. A copy of a customer's billing records may be obtained by the customer upon request.

(e) Bill content requirements.

(1) The initial page of each customer's bill for telecommunications products and services shall include the following information:

(A) the total amount being charged for basic local telecommunications service, if any, including any charges for mandatory extended/expanded calling scope services and any applicable fees or surcharges authorized by a governmental entity;

(B) the service description and total amount being charged for any optional services provided by the billing CTU, including charges for any optional extended/expanded calling scope services, and any applicable fees or surcharges authorized by a governmental entity;

(C) the service description, service provider's name and total amount being charged for any services provided by parties other than the billing CTU, with a separate line for each different provider, and any applicable fees or surcharges authorized by a governmental entity;

(D) the total amount being charged for taxes, including any taxes applicable to the charges described by subparagraphs (A) - (C) of this paragraph;

(E) the grand total amount due for all services being billed and the payment due date;

(F) the billing period or billing end date;

(G) an identification of the total amount the customer must pay to maintain basic local telecommunications service, if applicable; and

(H) a clear and conspicuous notification of any change in service provider, including notification to the customer that a new provider has begun providing service.

(2) Charges must be accompanied by a brief, clear, non-misleading, plain-language description of the service being rendered. The description must be sufficiently clear in presentation and specific enough in content to enable customers to accurately assess the services for which they are being billed. Additionally, explanations shall be provided for any non-obvious abbreviations, symbols, or acronyms used to identify specific charges.

(3) Charges for bundled-service packages which include basic local telecommunications service are not required to be separated pursuant to paragraph (1)(A) - (1)(C) of this subsection; however, a brief, clear, non- misleading, plain-language description of the services included in a bundled-service package is required to be provided either in the description or as a footnote.

(4) Flat monthly fees or surcharges, including the 911 service fee, related to state and municipal regulatory actions shall be included in the amount for basic local telecommunications service described in paragraph (1) of this subsection; the Texas Universal Service Fund (TUSF) assessment shall be allocated to all telecommunications services (basic, optional, long distance, and other telecommunications services) on a proportionate basis. Each subtotal must indicate by an asterisk or footnote any such assessments included in the subtotal. Similarly, if federal law or regulation requires that a charge be separately stated, using standardized labels, that requirement may be satisfied by use of an asterisk or footnote reference.

(5) Bills shall provide a toll-free number that a customer can call to resolve disputes and obtain information from the CTU. If the CTU is billing the customer for any services from another service provider, the bill shall identify the name of the service provider and provide a toll-free number that the customer can call to resolve disputes or obtain information from that service provider.

(6) Each customer's bill shall include specific per-call detail for time-sensitive charges, itemized by service provider and by telephone or account number (if the customer's bill is for more than one such number). Each customer's bill shall include the rate and specific number of billing occurrences for per-use services, itemized by service provider and by telephone or account number.

(7) If possible, the first page of the bill shall list each applicable telephone number or account number for which charges are being summarized on the bill. If such inclusion is not possible, the first page shall show the main telephone number or account number, and clearly reference a subsequent page where the customer's additional numbers are plainly identified.

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

Filed with the Office of the Secretary of State, on March 24, 2000.

TRD-200002166
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: May 7, 2000

For further information, please call: (512) 936-7308

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16 TAC §26.34

The Public Utility Commission of Texas (commission) proposes new §26.34 relating to Telephone Prepaid Calling Services. The proposed new rule will implement the provisions of the Public Utility Regulatory Act (PURA) §55.253 (Vernon Supplement 2000), which permits the commission to prescribe standards regarding the information a prepaid calling services provider must disclose to customers in relation to the rates and terms of service for prepaid calling services offered in Texas. Project Number 21424, *Prepaid Calling Services Disclosures*, was assigned to this proceeding on September 22, 1999. An informal workshop with commission staff and interested parties was conducted on March 2, 2000. Copies of the proposed new rule may be obtained in the commission's Central Records and on the commission's web page at http://www.puc.state.tx.us/telecomm/projects/21016/21424.cfm.

Denise E. Taylor, Senior Enforcement Investigator, Office of Customer Protection, and Betsy Tyson, Information Specialist, Office of Customer Protection, have 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 this section.

Ms. Taylor and Ms. Tyson have 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 greater protection of the public interest, a reduction in the number of public complaints concerning the use of prepaid calling services, and compliance by telecommunications utilities with the telephone prepaid calling services provisions of PURA. There will be no effect on small businesses or microbusinesses as a result of enforcing this section. There is an anticipated economic cost to persons who are required to comply with the section as proposed which cannot be quantified at this time.

Ms. Taylor and Ms. Tyson have also determined that for each year of the first five years the proposed section is in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act §2001.022.

The commission staff will conduct a public hearing on this rulemaking under Government Code §2001.029 at the commission's offices, located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, on Friday, May 26, 2000, at 9:00 a.m. in Hearing Room Gee.

Comments on the proposed new rule (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North 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. All comments should refer to Project Number 21424.

This rule is proposed under Senate Bill 1020, Act of May 26, 1999, 76th Legislature, Regular Session, chapter 410, 1999 Texas Session Law Service, 2636 (Vernon) (codified as an amendment to the Public Utility Regulatory Act (PURA)), Senate Bill 86, Act of May 26, 1999, 76th Legislature, Regular Ses-

sion, chapter 1579, §3, 1999 Texas Session Law Service, 5421, 5424 (Vernon), (codified as an amendment to PURA §§17.051-17.053), Senate Bill 560, Act of May 26, 1999, 76th Legislature, Regular Session, chapter 1212, §55, 1999 Texas Session Law Service, 4237 (Vernon) (codified as an amendment to PURA §§64.051- 64.053), and PURA, §§14.002, 15.023, 17.004, 17.051, 17.052, 55.253, 64.051, and 64.052. Section 14.002 provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction. Section 15.023 grants the commission authority to impose an administrative penalty against an entity for violation of a rule adopted under PURA. Section 17.004 grants the commission authority to adopt and enforce rules as necessary or appropriate to establish adequate customer protection standards. Sections 17.051 and 64.051 direct the commission to adopt registration requirements for all telecommunications utilities that are not dominant carriers. Sections 17.052 and 64.052 allow the commission to require registration as a condition of doing business in Texas as well as to establish customer service and protection rules. Section 55.253 grants the commission all necessary jurisdiction to adopt rules regarding the information a prepaid calling services provider shall disclose to customers in relation to the rates and terms of service for prepaid calling services offered in Texas.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 15.023, 17.004, 17.051, 17.052, 55.253, 64.051, and 64.052.

§26.34. Telephone Prepaid Calling Services.

(a) Purpose. The provisions of this section are intended to prescribe standards for the information a prepaid calling services provider shall disclose to customers about the rates and terms of service for prepaid calling services offered in this state.

(b) Application. This section applies to any "telecommunications utility" as that term is defined in §26.5 of this title (relating to Definitions). This section does not apply to a credit calling card in which a customer pays for a service after use and receives a monthly bill for such use.

(c) Liability. The prepaid calling services company shall be responsible for ensuring, either through its contracts with its network provider, distributors and marketing agents or other means, that:

(1) end-user purchased prepaid calling services remain usable in accordance with the requirements of this section; and

(2) compliance requirements of all disclosure provisions of this section are met.

(d) Definitions. The following terms used in this section shall have the following meanings, unless the context indicates otherwise:

(1) Access telephone number – The number that allows a prepaid calling services customer to access the services of a telecommunications utility to place telephone calls.

(2) Billing increment – A unit of time used to charge customers for prepaid calling services.

(3) Personal identification number (PIN) – A number assigned as an authorization code that ensures system security for a prepaid calling services customer and allows the prepaid calling services company to track minutes used.

(4) Prepaid calling services account – An amount of money paid by a customer in advance to a prepaid calling services company so that the customer can access the services of a telecommunications utility to place telephone calls. When the customer makes completed telephone calls, the value of the account decreases at a predetermined rate.

(5) Prepaid calling card – A card or any other device purchased to establish a prepaid calling services account.

(6) Prepaid calling services – Any telecommunications transaction in which:

(A) a customer pays in advance for telecommunications services;

(B) the customer's prepaid calling services account is depleted at a predetermined rate as the customer uses the service; and

(C) the customer must use a PIN and an access telephone number to use the telecommunications services.

(7) Prepaid calling services company – A company that provides prepaid calling or other telecommunications services to the public using its own telecommunications network or resold telecommunications services, or distributors who purchase PINs or telecommunications services to resell to the end-user customer.

(8) Recharge – A transaction in which the value of the prepaid calling services account is renewed. The customer must be informed verbally or electronically of the new rates at the time of recharge.

(e) Billing requirements for prepaid calling services.

(1) Billing increments shall be defined and disclosed in the prepaid calling services company's published tariffs or price list on file with the commission and on any display at the point of sale as well as on any prepaid calling card, or on any prepaid calling card packaging.

(2) A prepaid calling services account may be decreased only during the actual time a circuit is open. Station busy signals and unanswered calls shall not be considered open circuits and shall not be charged against the account.

(3) Prepaid calling services companies may not reduce the value of a prepaid calling services account by more than the company's published tariffs or price list on file with the commission plus any surcharges, fees and taxes disclosed at the time of purchase.

(4) The prepaid calling services account may be recharged by the customer at a rate different from the original rate or the last recharge rate as long as the new rate and any surcharges conform with the company's published tariff or price list on file with the commission at the time of recharge. The customer must be informed of the rates at the time of recharge.

(5) Upon verbal or written request, prepaid calling services companies must be capable of providing customers the following call detail data information at no charge:

(A) Dialing and signaling information that identifies the inbound access telephone number called or the access identifier;

(B) The number of the originating telephone;

(C) The date and time the call originated;

(D) The date and time the call terminated;

(E) The called telephone number; and

(F) The PIN and/or account number associated with the call.

(6) Prepaid calling services companies shall maintain call detail data records for at least two years.

(f) Written disclosure requirements for all prepaid calling services.

(1) Information required on prepaid calling cards. Cards must be issued with all information entirely in the language in which the card is marketed. At a minimum, a card must contain the following information printed in an eight point font:

(A) The value of the card, including charges for all services, surcharges, fees, and taxes, if applicable, expressed in minutes. If a charge cannot be expressed in minutes, such as a per-call charge, it must be printed on the same line or next line as the value of the card in minutes;

(B) The prepaid calling services company's name as registered with the commission. A "doing business as" name may only be used if officially filed with the commission. The language shall clearly indicate that the company is providing the prepaid calling services;

(C) The toll-free number as required by subsection (i) of this section;

(D) The maximum cost per minute shall be shown for local, intrastate, and interstate calls. International call prices shall be provided to the customer through a toll-free number printed on the card;

(E) Instructions on using the card correctly;

(F) Expiration date, if the card cannot be used after a date certain. If an expiration date is not disclosed on the card, it will be considered active indefinitely; and

(G) The words "VOID" or "SAMPLE" or sequential numbers, such as "999999999" on both sides of the card if the card was produced as a "non-active" card so that it is obvious to the customer that the card is not useable. If the card is not so labeled, the card is considered active and the issuing company shall honor it.

(2) Information required at a point of sale. The following information shall be legibly printed on or in any packaging in a minimum eight point font and displayed visibly in a prominent area at the point of sale so that the customer may make an informed decision before purchase:

(A) The value of the card, including charges for all services, surcharges, fees, and taxes, if applicable, expressed in minutes. If a charge cannot be expressed in minutes, such as a per-call charge, it must be printed on the same line or next line as the value of the card in minutes;

(B) The company's name as registered with the commission. A "doing business as" name may only be used if officially filed with the commission. The language shall clearly indicate that the company is providing the prepaid calling card services;

(C) The toll-free number as required by subsection (i) of this section;

(D) The billing increment expressed in minutes or fractions of minutes and maximum charge per billing increment for prepaid calling card services for local, intrastate, interstate, and international calls will be provided to the customer through a toll-free number printed on the card;

(E) The expiration policy, if the card cannot be used after a date certain. If an expiration date is not disclosed at the time of purchase, the prepaid calling services will be considered active until the prepaid calling services account is completely depleted;

(F) The recharge policy, if applicable. If an expiration date is not disclosed at the time prepaid calling services are recharged, the services will be considered active until the prepaid calling services account is completely depleted;

(G) A statement that if a customer is unable to resolve a complaint with the company that the customer has the right to contact the state regulatory agency which has jurisdiction within the state where the prepaid calling services were purchased; and

(H) A statement that:

(i) Notifies a customer of the customer's extent of liability for lost or stolen cards, if there is liability; and

(ii) Warns a customer to safeguard the card against loss or theft.

(3) If a customer asks a prepaid calling services company how to file a complaint, the company must provide the following contact information: Public Utility Commission of Texas, Office of Customer Protection, PO Box 13326, Austin, Texas 78711-3326; phone: (512) 936-7120 or in Texas (toll-free) 1-888-782-8477; fax: (512) 936-7003; e-mail address: customer@puc.state.tx.us; Internet address: www.puc.state.tx.us; TTY: (512) 936-7136; and Relay Texas (toll-free): 1-800-735-2989.

(g) Verbal disclosure requirements for prepaid calling services. Prepaid calling services companies shall provide an announcement:

(1) At the beginning of each call indicating the time remaining on the prepaid calling services account or prepaid calling card; and

(2) When the prepaid account or card balance is about to be completely depleted. This announcement must be made at least one minute before the time expires.

(h) Registration requirements for prepaid calling services companies. All prepaid calling services companies shall register with the commission in accordance with §26.107 of this title (relating to Registration of Nondominant Telecommunications Carriers).

(i) Business and technical assistance requirements for prepaid calling services companies. A prepaid calling services company shall provide a toll-free number with a live operator to answer incoming calls 24 hours a day, seven days a week or electronically voice record customer requests or complaints. A combination of live operators or recorders may be used. If a recorder is used, the prepaid calling services company shall attempt to contact each customer no later than the next business day following the date of the recording. Personnel must be sufficient in number and expertise to resolve customer inquiries. If an immediate resolution is not possible, the prepaid calling services company shall resolve the inquiry by calling the customer or, if the customer so requests, in writing within ten working days of the original request.

(j) Requirements for refund of unused balances. If a prepaid calling services company fails to provide services at the rates disclosed at the time of initial purchase or at the time an account is recharged, or fails to meet technical standards, the prepaid calling services company shall either refund the customer for any unused prepaid calling services or provide equivalent services.

(k) Requirements when a prepaid calling services company terminates operations in this state.

(1) When a prepaid calling services company expects to terminate operations in this state for any reason, the company shall at least 30 days prior to the termination of operations:

(A) Notify the commission in writing:

(i) That operations will be ending;

(ii) Of the date of the termination of operations; and

(iii) That the company certifies that the actions required by this subsection have been completed;

(B) Notify each customer at the address on file with the company, if applicable, that operations will be ending the date of the termination of operations, and explain how customers may receive a refund or equivalent services for any unused services;

(C) Announce the termination of operations at the beginning of each call, including the date of termination and a toll-free number to call for more information; and

(D) Provide to customers via its toll-free customer service number the procedure for obtaining refunds and continue to provide this information for at least 60 days after the date the company terminates operations.

(2) Within 24 hours after ceasing operations, the prepaid calling services company shall deliver to the commission a list of names, if known, and account numbers of all customers with unused balances. For each customer, the list shall include the following:

(A) The identification number used by the company for billing and debit purposes; and,

(B) The unused time, stated in minutes, as applicable, and the unused dollar amount of the prepaid calling services account.

(l) Date of compliance for prepaid calling card services companies. All prepaid calling services offered for sale in the state of Texas and all prepaid calling services companies shall be in compliance with this rule within 90 days of the effective date of this rule.

(m) Compliance and enforcement.

(1) Administrative penalties. If the commission finds that a prepaid calling services company has violated any provision of this section, the commission shall order the company to take corrective action, as necessary, and the company may be subject to administrative penalties and other enforcement actions pursuant to the Public Utility Regulatory Act, Chapter 15.

(2) Enforcement. The commission shall coordinate its enforcement efforts against a prepaid calling services company for fraudulent, unfair, misleading, deceptive, or anticompetitive business practices with the Office of the Attorney General in order to ensure consistent treatment of specific alleged violations.

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

Filed with the Office of the Secretary of State, on March 24, 2000.

TRD-200002164
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: May 7, 2000
For further information, please call: (512) 936-7308

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Subchapter D. RECORDS, REPORTS, AND OTHER REQUIRED INFORMATION

16 TAC §§26.79, 26.80, 26.85

The Public Utility Commission of Texas (commission) proposes amendments to §26.79 relating to Equal Opportunity Reports and §26.80 relating to the Annual Report on Historically Underutilized Businesses; and proposes new §26.85 relating to Workforce Diversity Reports. The proposed new rule and amendments will implement the provisions of Senate Bill 560 (SB560), Act of May 30, 1999, 76th Legislature, Regular Session, chapter 1212, 1999 Texas Session Law Service 4210, 4215 (Vernon) (codified as an amendment to the Public Utility Regulatory Act (PURA), Texas Utilities Code Annotated §52.256(b)), which require telecommunication utilities to file an annual report to the commission and the legislature relating to the telecommunications utility efforts to improve workforce diversity and contracting opportunities for small and historically underutilized businesses and will eliminate duplicative filing requirements. Project Number 22166 has been assigned to this proceeding.

Patricia Zacharie, Staff Attorney, Legal Division, Office of Regulatory Affairs, has determined that for each year of the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Zacharie has determined that for each year of the first five years the proposed sections are in effect the public benefit anticipated as a result of enforcing the sections will be greater opportunities for minorities and small and historically underutilized businesses and a more diverse workforce in the State of Texas. There will be no effect on small businesses or micro-businesses as a result of enforcing these sections. There is an anticipated economic cost to persons who are required to comply with the sections as proposed, which cannot be quantified at this time.

Ms. Zacharie has also determined that for each year of the first five years the proposed sections are in effect there should be no affect on a local economy and therefore, no local employment impact statement is required under Administrative Procedure Act §2001.022.

The commission staff will conduct a public hearing on this rulemaking under Government Code §2001.029 at the commission's offices, located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, on Thursday, May 4, 2000, at 9:30 a.m.

Comments on the proposed amendments and new rule (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 30 days after publication. 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 sections. The commission will consider the costs and benefits in deciding whether to adopt these sections. The commission also invites

specific comments regarding the following question: Is an exemption appropriate for (1) utilities that have fewer than a certain number of employees, (2) utilities that do not do any contracting in Texas, (3) resellers only, (4) utilities whose workforce is more than a certain percentage minority or, (5) utilities that were not formed before January 1, 2000? All comments should refer to Project Number 22166.

The amendments and new rule are proposed under Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998 and Supp. 2000) (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 §12.252, which grants the commission authority to adopt and enforce rules to require each utility subject to regulation to overcome the underuse of historically underutilized businesses; and §52.256, which grants the commission authority to adopt rules relating to workforce diversity reporting requirements for telecommunications utilities.

Cross Reference to Statutes: Public Utility Regulatory Act §§12.252, 14.002, and 52.256.

§26.79. Equal Opportunity Reports.

(a) (No change.)

(b) Each utility that files any form with local, state or federal governmental agencies relating to equal employment opportunities for minority group members, (e.g., EEOC Form EEO-1, FCC Form 395, RUS Form 268, etc.) shall file copies of such completed form with the commission. If such form submitted by a multi- jurisdictional utility does not indicate Texas-specific numbers, the utility shall also prepare, and file with the commission a form indicating Texas-specific numbers, in the same format and based on the numbers contained in the form previously filed with local, state or federal governmental agencies[~~, indicating Texas-specific numbers~~]. Each utility shall also file copies of any other forms required to be filed with local, state or federal governmental agencies which contain the same or similar information, such as personnel data identifying numbers and occupations of minority group members employed by the utility, and employment goals relating to them[~~thereto~~], if any.

(c) (No change.)

(d) Any utility filing with the commission any documents described in subsections (b) and (c) of this section shall file three[~~two~~] copies of such documents with the commission's filing clerk under the project number assigned by the Public Utility Commission's Central Records Office for that year's filings. Utilities shall obtain the project number by contacting Central Records.

(e) A utility that files a report with local, state or federal governmental agencies and that is required by this section to file such report with the commission must file the report by December 30[~~February 15~~] of the year it is filed with the local, state or federal agencies. [~~If the report is filed with local, state or federal agencies after February 15, the utility shall file the report with the commission by February 15 of the next year.~~]

[~~(f) On May 1 of each year, the commission shall submit a report concerning the filed reports to the Texas legislature.~~]

§26.80. Annual Report on Historically Underutilized Businesses.

(a) (No change.)

(b) Every utility shall report its use of historically underutilized businesses (HUBs) to the commission on a form approved by the commission. A utility may submit the report on paper, or on paper and on a diskette (in [~~Lotus 1-2-3 (*.wk*) or~~] Microsoft Excel (*utility name.xl*)[~~(*.xl*)~~] format).

(1) Each small local exchange company and telephone cooperative utility shall on or before December 30 of each year submit to the commission a comprehensive annual report detailing its use of HUBs for the four quarters ending on September 30 of the year the report is filed, using [~~on~~] the Small Utilities HUB Report form.

(2) Every utility other than those specified in paragraph (1) of this subsection, shall on or before December 30 of each year submit to the commission a comprehensive annual report detailing its use of HUBs for the four prior quarters ending on September 30 of the year the report is filed, using [~~on~~] the Large Utilities HUB Report form.

(3) Each utility wishing to report indirect HUB procurements or HUB procurements made by a contractor of the utility may use the Supplemental HUB report form.

(4) Each utility shall submit a text description of how it [~~the method by which it~~]determined which of its vendors is a HUB.

(5) Each utility that [~~which~~] has more than 1,000 customers in a state other than Texas, or that [~~which~~] purchases more than 10% of its goods and services from vendors not located in Texas, shall separately report by total and category all utility purchases, all utility purchases from Texas vendors, and all utility purchases from Texas HUB vendors. A vendor is considered a Texas vendor if its physical location is geographically in Texas.

(6) Each utility shall also file any other documents it believes appropriate to convey an accurate impression of its use of HUBs.

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

§26.85. Workforce Diversity Report.

(a) Purpose. This section establishes annual reporting requirements for telecommunications utilities to report its efforts to improve workforce diversity and contracting opportunities for small and historically underutilized businesses.

(b) Application. This section applies to all telecommunications utilities, as defined in the Public Utility Regulatory Act §51.002(11), doing business in the State of Texas.

(c) Terminology. In this section, "small business" and "historically underutilized business" have the meanings assigned by the Texas Government Code §481.191.

(d) Annual report of workforce diversity. A "Report on Improving Workforce Diversity" shall be filed annually with the commission. The report shall be filed on or before December 30 of each year for the four prior quarters ending on September 30 of the year the report is filed.

(e) Filing requirements. Three copies of the Workforce Diversity Report shall be filed with the commission's filing clerk under the project number assigned by the Public Utility Commission's Central Records Office for that year's filings. Telecommunications utilities shall obtain the project number by contacting Central Records.

(f) Contents of the report. The annual report filed with the commission pursuant to this section shall be filed using the Workforce Diversity form and shall contain at a minimum the following information:

(1) An illustration of the diversity of the telecommunications utility's workforce in the State of Texas at the time of the

report. If the telecommunications utility is required to file an Equal Opportunity Report pursuant to §26.79 of this title (relating to Equal Opportunity Reports), a copy of that document may be attached to this report to satisfy the requirements of this paragraph.

(2) A description of the specific progress made under the workforce diversity plan filed pursuant to PURA §52.256(b), including

(A) the specific initiatives, programs, and activities undertaken during the preceding year; and

(B) an assessment of the success of each of those initiatives, programs, and activities.

(3) An explanation of the telecommunications utility's level of contracting with small and historically underutilized businesses in the State of Texas.

(4) The extent to which the telecommunications utility has carried out its initiatives to facilitate opportunities for contracts or joint ventures with small and historically underutilized businesses.

(5) A description of the initiatives, programs, and activities the telecommunications utility will pursue during the next year to increase the diversity of its workforce and contracting opportunities for small and historically underutilized businesses in the State of Texas.

(g) This section may not be used to discriminate against any citizen on the basis of race, nationality, color, religion, sex, or marital status.

(h) This section does not create a new cause of action, either public or private.

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

Filed with the Office of the Secretary of State, on March 24, 2000.

TRD-200002113
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: May 7, 2000
For further information, please call: (512) 936-7308

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Subchapter E. CERTIFICATION, LICENSING AND REGISTRATION

16 TAC §§26.109, 26.111, 26.114

The Public Utility Commission of Texas (commission) proposes amendments to §26.109 relating to Standards for Granting of Certificates of Operating Authority (COAs) and §26.111 relating to Standards for Granting Service Provider Certificates of Operating Authority (SPCOAs); and new §26.114, relating to Suspension or Revocation of Certificates of Operating Authority (COAs) and Service Provider of Certificates of Operating Authority (SPCOAs). The proposed amendments and proposed new section will implement the provisions of the Public Utility Regulatory Act (PURA) §§17.051-17.053 and §§64.051-64.053 (Vernon Supplement 2000), which direct the commission to adopt registration requirements for all telecommunications utilities that are not dominant carriers, allow the commission to require registration as a condition of doing business in the state of Texas as well as to establish customer service and protection rules, suspend or revoke certificates or registrations for repeated violations of this chapter or commission rules, and require telecommunications service providers to submit reports concerning any matter over which the commission has authority. Project Number 21456, *Amendments to Substantive Rules §§26.107, 26.109, 26.111 and 26.113 Regarding Certification, Registration, and Reporting Requirements in Relation to SB 560 and Miscellaneous Revisions*, was assigned to this proceeding on September 29, 1999.

A strawman of the proposed amendments and proposed new section, the revised Application or Amendment of A Service Provider Certificate of Operating Authority or a Certificate of Operating Authority, and a proposed Annual Information Reporting Requirements for a Service Provider Certificate of Operating Authority or a Certificate of Operating Authority were filed in Central Records on February 18, 2000, and posted to the commission's web page on February 22, 2000. Interested parties filed comments with the commission on February 28, 2000, on the strawman, application, and the annual information reporting form. Copies of the proposed amendments, proposed new section, revised application, and proposed annual information reporting form may be obtained in the commission's Central Records and on the commission's web page at http://www.puc.state.tx.us/telecomm/projects/21016/21456.cfm. The revised application and proposed annual information reporting form will not be published in the *Texas Register.*

Tamarian Stevens, Network Analysis II, Telecommunications Industry Analysis, Office of Regulatory Affairs and Denise E. Taylor, Senior Enforcement Investigator, Office of Customer Protection, have determined that for each year of the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mrs. Stevens and Ms. Taylor have determined that for each year of the first five years the proposed sections are in effect the public benefit anticipated as a result of enforcing the sections will be greater protection of the public interest, a more uniform process of certifying and registering telecommunications utilities in the state of Texas, a reduction in the number of public complaints against telecommunications utilities concerning the provision of service and quality of service, and an increase in compliance by telecommunications utilities with the certification, registration, and reporting requirements of PURA. There will be no effect on small businesses or micro-businesses as a result of enforcing these sections. There is an anticipated economic cost to persons who are required to comply with these sections as proposed which cannot be quantified at this time.

Ms. Stevens and Ms. Taylor have also determined that for each year of the first five years the proposed sections are in effect there should be no affect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act §2001.022.

The commission staff will conduct a public hearing on this rulemaking under Government Code §2001.029 at the commission's offices, located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, on Wednesday, May 31, 2000, at 9:00 a.m. in Hearing Room Gee.

Comments on the proposed amendments, proposed new section, revised application, and revised annual information report-

ing form (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North 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 sections. The commission will consider the costs and benefits in deciding whether to adopt these sections. All comments should refer to Project Number 21456.

The amendments and new section are proposed under Senate Bill 86, Act of May 26, 1999, 76th Legislature, Regular Session, chapter 1579, §3, 1999 Texas Session Law Service, 5424 (Vernon) (codified as an amendment to the Public Utility Regulatory Act (PURA, Texas Utilities Code Annotated §§17.051 - 17.053); Senate Bill 560, Act of May 26, 1999, 76th Legislature, Regular Session, chapter 1212, §55, 1999 Texas Session Law Service, 4237 (Vernon) (codified as an amendment to PURA, Texas Utilities Code Annotated §§64.051 - 64.053); and PURA §§14.002, 15.023, 17.004, 17.051, 17.052, 17.053, 54.008, 64.051, 64.052, and 64.053. Section 14.002 provides the commission with the authority to make and enforce rules reasonably required in the exercise of its power and jurisdiction. Section 15.023 grants the commission authority to impose an administrative penalty against an entity for violation of a rule adopted under PURA. Section 17.004 grants the commission authority to adopt and enforce rules as necessary or appropriate to establish customer protection standards. Sections 17.051 and 64.051 direct the commission to adopt registration requirements for all telecommunications utilities that are not dominant carriers. Sections 17.052 and 64.052 allow the commission to require registration as a condition of doing business in Texas, establish customer service and protection rules, and suspend or revoke certificates or registrations for repeated violations of this chapter or commission rules. Sections 17.053 and 64.053 allow the commission to require a telecommunications service provider to submit reports to the commission concerning any matter over which it has authority under this chapter. Section 54.008 grants the commission the authority to revoke or amend a certificate of operating authority or a service provider certificate of operating authority after notice and hearing if the commission finds that the certificate holder has never provided or is no longer providing service in all or any part of the certificated area.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 15.023, 17.051, 17.052, 17.053, 54.008, 64.051, 64.052, and 64.053.

§26.109. Standards for Granting of Certificates of Operating Authority (COAs).

(a) Scope and purpose. This section applies to the certification of persons and entities to provide [~~basic local exchange telephone service,~~]basic local telecommunications service, and switched access service as holders of certificates of operating authority established in the Public Utility Regulatory Act (PURA), Chapter 54, Subchapter C. Through this section, the commission strives to protect the public interest against entities that are not qualified to provide [~~basic local exchange telephone service,~~]basic local telecommunications service, and switched access service. The commission's overall goal is to encourage the development of a competitive marketplace for local exchange telecommunications services, free of unreasonable barriers to entry, that will provide consumers with the best services at the lowest cost.

(b) Automatic disqualification. This section contains reasons an applicant would be prohibited from acquiring a COA. An applicant is automatically disqualified from obtaining a COA:

(1) if the applicant is a municipality; or

(2) if the applicant has not created a proper separation of business between an affiliate and a holder of a certificate of convenience and necessity as required by PURA §54.102.

(c) [~~(b)~~] Standards for granting certification to COA applicants.

(1) The commission shall consider the factors listed in subparagraphs (A) - (F)[~~(A) -(E)~~] of this paragraph in deciding whether to grant a COA to an applicant proposing to serve an exchange[~~of an incumbent local exchange company (ILEC)~~].

(A) Whether the applicant has satisfactorily provided all of the information required in the Application for a Certificate of Operating Authority.

(B) Whether the applicant is financially qualified to be a facilities-based local service provider. To prove financial qualification as a facilities-based utility, an applicant shall provide evidence sufficient to establish that:

(i) Applicant possesses the greater of $100,000 cash or cash equivalent or sufficient cash or cash equivalent to meet start-up expenses, working capital requirements and capital expenditures, liquid and readily available to meet the applicant's start-up expenses, working capital requirements and capital expenditures for the first two years of its Texas operations; or

(ii) Applicant is an established business entity and is able to demonstrate evidence of profitability in existing operations for two years preceding the date of application by submitting a balance sheet and income statement audited or reviewed by a certified public accountant establishing all of the following:

(I) A long-term debt to capitalization ratio of less than 60%;

(II) A return-on-assets ratio of at least 10%; and,

(III) The greater of $50,000 cash or cash equivalent or sufficient cash or cash equivalent to meet start-up expenses, working capital requirements and capital expenditures, liquid and readily available to meet the applicant's start-up expenses, working capital requirements and capital expenditures for a minimum of the first two years of its Texas operations.

(C) Whether the applicant is technically qualified. The commission shall determine whether an applicant possesses sufficient technical qualifications to be awarded a COA based upon a review of the following information.

(i) Prior experience by the applicant or one or more of the applicant's principals or employees in the telecommunications industry or a related industry.

[(ii) ~~Any complaint history at the Public Utility Commission of Texas regarding the applicant, applicant's telecommunications affiliates, predecessors in interest, shareholders, and principals.~~]

(ii) [~~(iii)~~] Any complaint and/or compliance history regarding the applicant, applicant's telecommunications or public utility affiliates, predecessors in interest, shareholders, and principals at the Public Utility Commission of Texas, the Office of the Attorney General, the Attorney General in other states, and any other relevant

regulatory agency[~~with Public Utility Commissions or Public Service Commissions in other states where the applicant is doing business~~]. If available, relevant[~~Relevant~~] information shall include, but not be limited to, the type of complaint, status of complaint, resolution of complaint and the number of customers in each state where complaints occur.

[~~(iv)~~ ~~Any complaint history regarding the applicant, applicant's telecommunications affiliates, predecessors in interest, shareholders, and principals on file with the Office of the Texas Attorney General and the Attorney General in other states where the applicant is doing business.~~]

(iii) [~~(v)~~] If available, an affirmation that [~~The compliance record of~~]the applicant, applicant's telecommunications or public utility affiliates, predecessors in interest, shareholders, and principals are in good standing at the Texas Comptroller's Office, active in the Texas Secretary of State files, and current in its Texas Universal Service Fund assessment.

(iv) A summary of any history of bankruptcy, dissolution, merger or acquisition of the applicant or any predecessors in interest it the two calendar years immediately preceding the application.

(v) A statement indicating whether the applicant is currently under investigation, either in this state or in another state or jurisdiction for violation of any deceptive trade or consumer protection law or regulation, and whether the applicant has been fined, sanctioned or otherwise penalized either in this state or in another state or jurisdiction for violation of any consumer protection law or regulation.

[~~(vi)~~ ~~The compliance record of the applicant, applicant's telecommunications affiliates, predecessors in interest, shareholders, and principals at the Public Utility Commission of Texas.~~]

(D) Whether the applicant is able to meet the commission's quality of service standards. Quality of service standards shall include, but not be limited to, 911 compliance and[~~,~~] local number portability capability[~~and Y2K compliance of all telecommunications equipment~~].

(E) The applicant will be required to meet the customer protection rules and disclosure requirements applicable to certificate holders set forth in Chapter 26, Subchapter B of this title (relating to Customer Service and Protection).

(F) [~~(E)~~] Whether certification of the applicant is in the public interest.

(2) If, after considering the factors in this subsection, the commission finds it to be in the public interest to do so, the commission may limit the geographic scope of the COA.

(3) If the applicant is an affiliate of a certificate of convenience and necessity (CCN) holder, the applicant must show that the affiliated CCN holder is in compliance with federal law and Federal Communications Commission rules governing affiliates and structural separation. The applicant shall file an affidavit from the affiliated CCN holder attesting to this compliance, and provide reference to the Federal Cost Allocation Manual (CAM) filed with the commission.

(d) [~~(c)~~] Financial instruments that will meet the cash requirements established in this section.

(1) Applicants for COAs shall be permitted to use any of the financial instruments set out in subparagraphs (A)-(F) of this paragraph to satisfy the cash requirements established in this rule to prove financial qualification.

(A) Cash or cash equivalent, including cashier's check or sight draft.

(B) A certificate of deposit with a bank or other financial institution.

(C) A letter of credit issued by a bank or other financial institution, irrevocable for a period of at least 12 months beyond certification of the applicant by the commission.

(D) A line of credit or other loan, issued by a bank or other financial institution, irrevocable for a period of at least 12 months beyond certification of the applicant by the commission and payable on an interest-only basis for the same period.

(E) A loan issued by a subsidiary or affiliate of applicant, or a corporation holding controlling interest in the applicant, irrevocable for a period of at least 12 months beyond certification of the applicant by the commission, and payable on an interest-only basis for the same period.

(F) A guaranty issued by a shareholder or principal of applicant, a subsidiary or affiliate of applicant, or a corporation holding controlling interest in the applicant, irrevocable for a period of at least 12 months beyond the certification of the applicant by the commission.

(2) To the extent that the applicant relies upon a loan or guaranty provided in paragraph (1)(E) or (F) of this subsection, the applicant shall provide evidence sufficient to establish that the lender or guarantor possesses sufficient cash or cash equivalent to fund the loan or guaranty.

(3) All cash and instruments listed in paragraph (1) (A) - (F) of this subsection shall be unencumbered by pledges as collateral and shall be subject to verification and review by the commission prior to certification of the applicant and for a period of 12 months beyond the date of certification of the applicant by the commission. Failure to comply with this requirement may void an applicant's certification or result in such other action as the commission deems in the public interest, including, but not limited to, assessment of reasonable penalties and all other available remedies under the Public Utility Regulatory Act.

(e) [~~(d)~~] Name on certificates.

(1) All [~~basic local exchange telephone service,~~]basic local telecommunications service, and switched access service provided under a COA shall be provided in the name under which certification was granted by the commission. The commission shall grant the certificate in only one name.

(A) If the applicant is a corporation, the commission shall issue the certificate in the corporate or assumed name of the applicant.

(B) If the applicant is an unincorporated business entity or an individual, the commission shall issue the certificate in the assumed name of the entity or the individual.

(C) The commission[~~Commission staff~~] shall review the requested name to determine if the name is deceptive, misleading, vague, inappropriate, or duplicative of an existing certificated telecommunications utility. If the staff determines that the requested name is deceptive, misleading, vague, inappropriate, or duplicative, it shall notify the applicant and the applicant shall modify the name to

alleviate the staff's concerns. If the name is not adequately modified, the application may be denied.

(2) The holder of a COA may request commission approval to change the name on the certificate by filing an application to amend its certificate with the commission.

(f) Non-use of certificates. Applicants will use their COA certificates expeditiously.

(1) COA certificate holders that have not been used on an on-going basis for a period of 12 months must provide a sworn affidavit to the commission attesting that:

(A) They still expect to use their certificate within the next 12 months; and,

(B) They continue to possess the technical and financial resources necessary to provide the level of service proposed in their initial application.

(2) A COA certificate holder not providing service within 48 months of the certificate being granted by the commission, may have its certificate suspended or revoked, as defined by §26.114 of this title (relating to Suspension or Revocation of Certificates of Operating Authority (COAs) and Service Provider Certificates of Operating Authority (SPCOAs)), after due process or undergo certification re-qualification.

(A) Certification re-qualification shall consist of a filing certifying that the certificate holder continues to possess the technical and financial resources necessary to provide the level of service proposed when the certificate was approved.

(B) Any certification re-qualification must be filed at the commission before the expiration of the 48-month period.

(g) [~~(e)~~] Reporting requirements.

(1) All COA holders shall file an annual report with the commission[~~updated information set forth in paragraph (2) of this subsection on an annual basis,~~] by June 30 of each year using the commission-prescribed form *Annual Information Reporting Requirements for a Service Provider Certificate of Operating Authority and/or a Certificate of Operating Authority.* This form may be obtained from the commission's Central Records and the commission's website.

(2) If the certificate holder has any change during the year in the information requested in Section One of the annual report form, then the certificate holder shall file an updated form correcting the information in Section One within 30 days of the change. [~~Annual reportable information shall consist of, but not be limited to the following:~~]

[~~(A) Changes in addresses, telephone numbers, authorized contacts and other information for contacting COA holders in Project Number 19421, *Notification of Changes in Address, Contact Representative, and/or Telephone Numbers, Pursuant to P.U.C. Substantive Rule.* ~~]

[~~(B) A description of the type(s) of communications services being provided and the exchanges in which the services are being provided.~~]

(3) The completed annual report form shall be filed in the commission's Central Records in a project number designated annually by the Filing Clerk.

(4) A certificate holder shall also file annual reports as required by §26.89 of this title (relating to Information Regarding Rates and Services of Nondominant Carriers).

(h) Compliance enforcement.

(1) Administrative penalties. If the commission finds that a certificate holder has violated any provision of this section, the commission shall order the certificate holder to take corrective action, as necessary, and the certificate holder may be subject to administrative penalties and other enforcement actions pursuant to PURA, Chapter 15.

(2) Revocation or suspension. If the commission finds that a certificate holder is repeatedly in violation of PURA or commission rules, the commission may suspend or revoke a COA certificate pursuant to PURA Chapter 17.

(3) Enforcement. The commission shall coordinate its enforcement efforts of fraudulent, misleading, deceptive, and anticompetitive business practices with the Office of the Attorney General in order to ensure consistent treatment of specific alleged violations.

§26.111. Standards for Granting of Service Provider Certificates of Operating Authority (SPCOAs).

(a) Scope and purpose. This section applies to the certification of persons and entities to provide[~~basic local exchange telephone service,~~] basic local telecommunications service, and switched access service as holders of service provider certificates of operating authority, established in the Public Utility Regulatory Act (PURA), Chapter 54, Subchapter D. Through this section, the commission strives to protect the public interest against entities that are not qualified to provide[~~basic local exchange telephone service,~~] basic local telecommunications service, and switched access service. The commission's overall goal is to encourage the development of a competitive marketplace for local exchange telecommunications services, free of unreasonable barriers to entry, that will provide consumers with the best services at the lowest cost.

(b) Automatic disqualification. This section contains the reasons that an applicant would be prohibited from acquiring a SPCOA. An applicant is disqualified from obtaining a SPCOA:

(1) if the applicant is a municipality;

(2) if the applicant has not created the proper separation of business between an affiliate and a holder of a certificate of convenience and necessity as required by PURA §54.102; or

(3) if the applicant, together with its affiliates, has more than 6.0% of the total intrastate switched access minutes of use as measured for the most recent 12-month period.

(c) [~~(b)~~] Standards for granting certification to SPCOA applicants.

(1) The commission may condition or limit the scope of a SPCOA's service in at least the following ways:

(A) Facility-based;

(B) Resale-only;

(C) Data-only;

(D) Geographic scope;

(E) Some combination of the above, as appropriate.

(2) The commission shall consider the [~~following~~]factors listed in subparagraphs (A) -(H) of this paragraph in deciding whether

and how to condition or limit a SPCOA to an applicant proposing to serve an exchange:

(A) Whether the applicant has satisfactorily provided all of the information required in the application for a SPCOA.

(B) Whether the applicant is financially qualified as a facilities-based SPCOA. To prove financial qualifications as a facilities-based SPCOA, the applicant shall meet the standards set forth in §26.109(c)(1)(B)[~~§26.109(b)(1)(B)~~] of this title (relating to Standards for Granting Certificates of Operating Authority).

(C) Whether the applicant is financially qualified as a resale-only SPCOA. To prove financial qualifications as a resale-only SPCOA, an applicant shall provide evidence sufficient to establish that:

(i) Applicant possesses the greater of $25,000 cash or cash equivalent or sufficient cash or cash equivalent to meet start-up expenses, working capital requirements and capital expenditures, liquid and readily available to meet the applicant's start-up expenses, working capital requirements and capital expenditures for the first year of its Texas operations; or

(ii) Applicant is an established business entity and is able to demonstrate evidence of profitability in existing operations for two years preceding the date of application by submitting a balance sheet and income statement audited or reviewed by a certified public accountant establishing all of the following:

(I) A long-term debt to capitalization ratio of less than 60%;

(II) A return-on-assets ratio of at least 10%; and,

(III) The greater of $10,000 cash or cash equivalent or sufficient cash or cash equivalent to meet start-up expenses, working capital requirements and capital expenditures, liquid and readily available to meet the applicant's start-up expenses, working capital requirements and capital expenditures for the first year of its Texas operations.

(D) Whether the applicant is technically qualified. The commission shall determine whether an applicant possesses sufficient technical qualifications to be awarded a facilities-based SPCOA certification or whether applicant should be restricted to a resale-only SPCOA certification, based upon a review of the following information.

(i) Prior experience by the applicant or one or more of the applicant's principals or employees in the telecommunications industry or a related industry.

(ii) Any complaint and/or compliance history regarding the applicant, applicant's telecommunications or public utility affiliates, predecessors in interest, shareholders, and principals on file at the Public Utility Commission of Texas, the Office of the Texas Attorney General, the Attorney General in other states, and any other relevant regulatory agency[~~, the Texas Attorney General, or with the Public Utility Commissions, Public Service Commissions, or Attorneys General in other states where the applicant is doing business~~]. If available, relevant[~~Relevant~~] information shall include, but not be limited to, the type of complaint, status of complaint, resolution of complaint, and the number of customers in each state where complaints have occurred.

(iii) If available, an affirmation that [~~The compliance record of~~]the applicant, applicant's telecommunications or public utility affiliates, predecessors in interest, shareholders, and principals are in good standing at the Texas Comptroller's Office, active in the Texas Secretary of State files, and current in its Texas Universal Service Fund assessment.

(iv) A summary of any history of bankruptcy, dissolution, merger or acquisition of the applicant or any predecessors in interest it the two calendar years immediately preceding the application. [~~The compliance record of the applicant, applicant's telecommunications affiliates, predecessors in interest, shareholders, and principals at the Public Utility Commission of Texas.~~]

(v) A statement indicating whether the applicant is currently under investigation, either in this state or in another state or jurisdiction for violation of any deceptive trade or consumer protection law or regulation, and whether the applicant has been fined, sanctioned or otherwise penalized either in this state or in another state or jurisdiction for violation of any consumer protection law or regulation.

(E) Whether the applicant is able to meet the commission's quality of service standards. The quality of service standards shall include, but not be limited to, 911 compliance, local number portability capability[~~and Y2K compliance of all telecommunications equipment~~].

(F) The applicant will be required to meet the customer protection rules and disclosure requirements applicable to certificate holders set forth in Chapter 26, Subchapter B of this title (relating to Customer Service and Protection).

(G) [~~(F)~~] Whether certification of the applicant is in the public interest.

[~~(G) Whether the applicant, together with affiliates, had in excess of 6.0% of the total intrastate switched access minutes of use as measured by the most recent 12 month period preceding the fling of the application for which data is available.~~]

(H) Whether the applicant has limited its operation to data-only services. If the applicant is limited to data-only services, the applicant will be eligible for a data-only SPCOA, and the applicant shall be waived from 911 and local number portability compliance as related to switched voice services. If the applicant intends to add voice services at a future date, the applicant must first file an amendment, subject to approval of the commission, which shows that the applicant is in compliance with all of the commission's quality of service standards.

(3) If, after considering the factors in this subsection, the commission finds it to be in the public interest to do so, the commission may limit the geographic scope of the SPCOA.

(4) If the applicant is an affiliate of a certificate of convenience and necessity (CCN) holder, the applicant must show that the affiliated CCN holder is in compliance with federal law and Federal Communications Commission rules governing affiliates and structural separation. The applicant shall file an affidavit from the affiliated CCN holder attesting to this compliance, and provide reference to the Federal Cost Allocation Manual (CAM) filed with the commission.

(d) [~~(c)~~] Financial instruments that will meet the cash requirements established in this section.

(1) Applicants for SPCOAs shall be permitted to use any of the financial instruments set out in subparagraphs (A)-(F) of this paragraph to satisfy the cash requirements established in this rule to prove financial qualification.

(A) Cash or cash equivalent, including cashier's check or sight draft.

(B) A certificate of deposit with a bank or other financial institution.

(C) A letter of credit issued by a bank or other financial institution, irrevocable for a period of at least 12 months beyond certification of the applicant by the commission.

(D) A line of credit or other loan, issued by a bank or other financial institution, irrevocable for a period of at least 12 months beyond certification of the applicant by the commission and payable on an interest-only basis for the same period.

(E) A loan issued by a subsidiary or affiliate of applicant, or a corporation holding controlling interest in the applicant, irrevocable for a period of at least 12 months beyond certification of the applicant by the commission, and payable on an interest-only basis for the same period.

(F) A guaranty issued by a shareholder or principal of applicant, a subsidiary or affiliate of applicant, or a corporation holding controlling interest in the applicant, irrevocable for a period of at least 12 months beyond the certification of the applicant by the commission.

(2) To the extent that the applicant relies upon a loan or guaranty provided in paragraph (1)(E) or (F) of this subsection, the applicant shall provide evidence sufficient to establish that the lender or guarantor possesses sufficient cash or cash equivalent to fund the loan or guaranty.

(3) All cash and instruments listed in paragraph (1) (A) - (F) of this subsection shall be unencumbered by pledges as collateral and shall be subject to verification and review by the commission prior to certification of the applicant and for a period of 12 months beyond the date of certification of the applicant by the commission. Failure to comply with this requirement may void an applicant's certification or result in such other action as the commission deems in the public interest, including, but not limited to, assessment of reasonable penalties and all other available remedies under the Public Utility Regulatory Act.

(e) [~~(d)~~] Name on certificates.

(1) All [~~basic local exchange telephone service,~~]basic local telecommunications service, and switched access service provided under an SPCOA shall be provided in the name under which certification was granted by the commission. The commission shall grant the certificate in only one name.

(A) If the applicant is a corporation, the commission shall issue the certificate in the corporate or assumed name of the applicant.

(B) If the applicant is an unincorporated business entity or an individual, the commission shall issue the certificate in the assumed name of the entity or the individual.

(C) The commission[~~Commission staff~~] shall review the requested name to determine if the name is deceptive, misleading, vague, inappropriate, or duplicative of an existing certificated telecommunications utility. If the staff determines that the requested name is deceptive, misleading, vague, inappropriate, or duplicative, it shall notify the applicant and the applicant shall modify the name to alleviate the staff's concerns. If the name is not adequately modified, the application may be denied.

(2) The holder of an SPCOA may request commission approval to change the name on the certificate by filing an application to amend its certificate with the commission

(f) Non-use of certificates. Applicants will use their SPCOA certificates expeditiously.

(1) SPCOA certificate holders that have not been used on an on-going basis for a period of 12 months must provide a sworn affidavit to the commission attesting that:

(A) They still expect to use their certificate within the next 12 months; and

(B) They continue to possess the technical and financial resources necessary to provide the level of service proposed in their initial application.

(2) A SPCOA certificate holder not providing service within 48 months of the certificate being granted by the commission, may have its certificate suspended or revoked, as defined by §26.114 of this title (relating to Suspension or Revocation of Certificates of Operating Authority (COAs) and Service Provider Certificates of Operating Authority (SPCOAs)), after due process, or undergo certification re-qualification.

(A) Certification re-qualification shall consist of a filing certifying that the SPCOA holder continues to possess the technical and financial resources necessary to provide the level of service proposed when the certificate was approved.

(B) Any certification re-qualification must be filed at the commission before the expiration of the 48-month period.

(g) [~~(e)~~] Reporting requirements.

(1) All certificate [~~SPCOA~~]holders shall file an annual report with the commission[~~updated information set forth in paragraph (2) of this subsection on an annual basis,~~] by June 30 of each year using the commission-prescribed form, *Annual Information Reporting Requirements for a Service Provider Certificate of Operating Authority and/or a Certificate of Operating Authority.* This form may be obtained from the commission's Central Records and the commission's website.

(2) If the SPCOA holder has any change during the year in the information requested in Section One of the annual report form, then the SPCOA holder shall file an updated form correcting the information in Section One within 30 days of the change. [~~Annual reportable information shall consist of, but not be limited to the following:~~]

[~~(A) Changes in addresses, telephone numbers, authorized contacts and other information for contacting SPCOA holders. in Project Number 19421, *Notification of Changes in Address, Contact Representative, and/or Telephone Numbers, Pursuant to P.U.C. Substantive Rule.* ~~]

[~~(B) A description of the type(s) of communications services being provided and the exchanges in which the services are being provided.~~]

(3) The completed annual report form shall be filed in the commission's Central Records in a project number designated annually by the Filing Clerk.

(4) An SPCOA holder shall also file annual reports required by §26.89 of this title (relating to Information Regarding Rates and Services of Nondominant Carriers).

(h) Compliance and enforcement.

(1) Administrative penalties. If the commission finds that a SPCOA holder has violated any provision of this section, the commission shall order the SPCOA holder to take corrective action,

as necessary, and the SPCOA holder may be subject to administrative penalties and other enforcement actions pursuant to PURA, Chapter 15.

(2) Revocation or suspension. If the commission finds that a certificate holder is repeatedly in violation of PURA or commission rules, the commission may suspend or revoke a COA certificate pursuant to PURA Chapter 17.

(3) Enforcement. The commission shall coordinate its enforcement efforts of fraudulent, misleading, deceptive, and anticompetitive business practices with the Office of the Attorney General in order to ensure consistent treatment of specific alleged violations.

§26.114. Suspension or Revocation of Certificates of Operating Authority (COAs) and Service Provider Certificates of Operating Authority (SPCOAs).

(a) Scope and purpose. This section addresses the suspension or revocation of COAs and SPCOAs. A COA or a SPCOA may be suspended or revoked by the commission.

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

(1) Revocation - The cessation of all telecommunications business operations in the state of Texas pursuant commission order.

(2) Suspension - The cessation of all telecommunications business operations in the state of Texas associated with adding new customers.

(c) Suspension and revocation.

(1) The commission may initiate an investigation for suspension or revocation of a COA or SPCOA. Grounds for initiating an investigation that may result in the suspension or revocation may include, but not be limited to the following:

(A) Nonuse of approved certificate for a period of 24 months, without re- qualification prior to the expiration of the 24-month period;

(B) Complaints reported to the commission, the Attorney General, or other governmental agencies;

(C) Intentionally providing false information to the commission;

(D) Failing to maintain continuous and reliable service pursuant to §26.51 of this title (relating to Continuity of Service);

(E) Bankruptcy, insolvency, failure to meet financial obligations on a timely basis, or the inability to obtain the financial resources needed to provide adequate service;

(F) Repeated violation of the Public Utility Regulatory Act (PURA) or any commission rule or order applicable to the certificate holder;

(G) Violation of any state or federal law applicable to the certificate holder;

(H) Suspension or revocation of a telecommunications certification or registration by any other state or federal authority;

(I) Conviction of a felony crime by the owner, partner, and/or key company personnel;

(J) Failure to meet reporting requirements pursuant to §26.109 of this title (relating to Standards for Granting of Certificates of Operating Authority (COAs)) and §26.111 of this title (relating to Standards for Granting of Service Provider Certificates of Operating Authority (SPCOAs));

(K) Other actions as established by the commission in docketed proceedings; or

(L) Failure to meet reporting requirements pursuant to §26.465 of this title (relating to Methodology for Counting Access Lines and Reporting Requirements for Certificated Telecommunications Providers) and §26.467 of this title (relating to Rates, Allocation, Compensation, Adjustments and Reporting).

(2) Any certificate holder whose certificate is revoked or suspended by the commission shall comply with the standards for relinquishment in §26.113 of this title (relating to Amendment of Certificate of Operating Authority (COA) or Service Provider Certificate of Operating Authority (SPCOA)).

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

Filed with the Office of the Secretary of State, on March 27, 2000.

TRD-200002201
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: May 7, 2000
For further information, please call: (512) 936-7308

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Subchapter J. COSTS, RATES AND TARIFFS

16 TAC §26.223

The Public Utility Commission of Texas proposes new §26.223 relating to Prohibition of Excessive COA/SPCOA Usage Sensitive Intrastate Switched Access Rates. The purpose of the new section is to implement the Public Utility Regulatory Act (PURA) §52.155, which addresses the usage sensitive intrastate switched access rates that can be charged by holders of certificates of operating authority (COA) and service provider certificate of operating authority (SPCOA) holders. Project Number 21174 has been assigned to this proceeding.

Ms. Melanie Malone, Senior Economic Analyst, and Mr. Stephen Journeay, Director of the Office of Policy Development, have determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering this section.

Ms. Malone and Mr. Journeay also have determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcing this section will be to prevent excessive usage sensitive switched access rates.

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

For each year of the first five years the section is in effect, there will be no effect on small businesses or micro-businesses as a result of enforcing the proposed section.

Ms. Malone and Mr. Journeay have further determined that for each year of the first five years the proposed section is in effect there shall be no effect on a local economy, and

therefore no local employment impact statement is required under Administrative Procedure Act §2001.022.

Comments on the proposed rule (15 copies) may be submitted to Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas, 78701-3326, within 30 days after publication. Reply comments may be submitted within 45 days after publication. All comments should refer to Project Number 21174. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the section. The commission will consider the costs and benefits in deciding whether to adopt the section.

The commission staff will conduct a public hearing on this rulemaking under Texas Government Code §2001.029 at the Commission's Offices, located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, on Monday, May 22, 2000 in the Commissioners' Hearing Room from 1:00 p.m. to 5:00 p.m.

This section is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2000) (PURA), which provides the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, PURA §52.155 which grants the commission all jurisdiction necessary to enforce the prohibition of excessive access charges.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §52.155.

§26.223. Prohibition of Excessive COA/SPCOA Usage Sensitive Intrastate Switched Access Rates.

(a) Purpose. The purpose of this section is to implement Public Utility Regulatory Act (PURA) §52.155, which addresses the usage sensitive intrastate switched access rates that can be charged by a telecommunications utility that holds a certificate of operating authority (COA) or a service provider certificate of operating authority (SPCOA) (COA/SPCOA).

(b) Applicability. This section applies to usage sensitive intrastate switched access rates of COA/SPCOA holders, including but not limited to, originating and terminating carrier common line (CCL), originating and terminating local switching (LS), originating and terminating switched transport (TR), originating and terminating tandem switching (TS), originating and terminating tandem switched transport (TST), and originating and terminating residual interconnection charge (RIC).

(c) Requirements for COA/SPCOA usage sensitive intrastate switched access rates. A telecommunications utility that holds a COA or a SPCOA may not charge a higher amount for any originating or terminating usage sensitive intrastate switched access rate element than the prevailing rates charged by the holder of the certificate of convenience and necessity (CCN) in whose territory the call originated or terminated unless:

(1) the commission specifically approves the higher rate; or

(2) subject to commission review, the telecommunications utility establishes statewide average composite originating and terminating usage sensitive intrastate switched access rates based on a reasonable approximation of traffic originating and terminating between all holders of certificates of convenience and necessity in this state.

(d) Statewide average composite rates. The commission shall establish weighted statewide average composite usage sensitive intrastate switched access rates within 60 days of the effective date of this section. Weighted statewide average composite usage sensitive intrastate switched access rates will be developed based upon the submission of CCN holders' compliance filings pursuant to subsection (f) of this section.

(1) Methodology. The commission shall employ the following methodology for development of the weighted statewide average composite usage sensitive intrastate switched access rates for each rate element in subsection (b) of this section:

(A) Each CCN holder's individual rate elements' rates will be multiplied by the total actual minutes of use (MOUs) for that rate element, producing a total revenue for each rate element for each CCN holder.

(B) Revenues for each CCN holder's rate element will be added to create a statewide total revenue for that rate element.

(C) The actual MOUs for each CCN holder's rate element will be added to create a statewide total actual MOUs for that rate element.

(D) The statewide total revenue for that rate element will be divided by the statewide total actual MOUs for that rate element, producing a weighted statewide average composite usage sensitive intrastate switched access rate for that switched access rate element.

(2) Recalculation.

(A) The commission shall re-calculate the weighted statewide average composite usage sensitive intrastate switched access rates biennially based upon the submissions of the CCN holders, as required in subsection (f) of this section. The re-calculated rates will become effective November 1 of that year.

(B) Any certificated telecommunications utility may file a petition requesting that the commission re-calculate the weighted statewide average composite usage sensitive intrastate switched access rates at any time, but no sooner than six months from the effective date of this section or most recent re-calculation. The commission shall initiate re-calculation if it concludes that the petition has provided just cause for re-calculation.

(C) As provided in subsection (f) of this section, the commission may also require compliance submissions by CCN holders for re-calculation of the weighted statewide average composite usage sensitive intrastate switched access rates as appropriate because of significant changes in usage sensitive intrastate switched access rates or in response to the request of affected parties, as specified in subparagraph (B) of this paragraph.

(e) Approval of higher rates.

(1) A COA/SPCOA holder seeking approval of usage sensitive intrastate switched access rates higher than those charged by the CCN holder in the COA/SPCOA's territory may do so by filing an application with the commission subject to the procedures outlined in Procedural Rule §22.33 of this title (relating to Tariff Filings). The COA/SPCOA's application must provide, at a minimum, the following information:

(A) Cost justification for each rate element.

(B) Rationale for implementation of the higher rate for each rate element.

(2) A COA/SPCOA holder's application must address all of the applicable switched access rate elements in subsection (b) of this section.

(3) The commission shall publish notice of the application in the *Texas Register*.

(f) Requirement for CCN holders compliance submissions.

(1) Within 30 days from the effective date of this section, all CCN holders must provide the following intrastate data to the commission as a compliance filing:

(A) The current tariffed rate for originating and terminating CCL.

(B) The current tariffed rate for originating and terminating LS.

(C) The current tariffed rate for originating and terminating RIC.

(D) The current tariffed rate for originating and terminating TR.

(E) The current tariffed rate for originating and terminating TS.

(F) The current average per minute rate for originating and terminating TST.

(G) The current originating and terminating tariffed rate(s) for any other usage sensitive intrastate switched access rate element(s).

(H) The total actual originating and terminating MOUs for the most recent 12 month period for each rate element in subparagraphs (A) - (G) of this paragraph.

(2) Biennially all CCN holders must provide the following intrastate data to the commission as a compliance filing by June 1 of the year:

(A) The current tariffed rate for originating and terminating CCL.

(B) The current tariffed rate for originating and terminating LS.

(C) The current tariffed rate for originating and terminating RIC.

(D) The current tariffed rate for originating and terminating TR.

(E) The current tariffed rate for originating and terminating TS.

(F) The current average per minute rate for originating and terminating TST.

(G) The current originating and terminating tariffed rate(s) for any other usage sensitive intrastate switched access rate element(s).

(H) The total actual originating and terminating MOUs for the most recent 12 month period for each rate element in subparagraphs (A) - (G) of this paragraph.

(g) Requirements of COA/SPCOA holders compliance submissions.

(1) Within 90 days of the effective date of this section, each COA/SPCOA holder shall either:

(A) file an application under subsection (e) of this section;

(B) file compliance tariffs/price lists effective 125 days from the effective date of this section containing originating and terminating usage sensitive intrastate switched access rates that do not exceed the prevailing rates charged by the CCN holder in each territory in which the COA/SPCOA holder operates;

(C) file compliance tariffs/price sheets with originating and terminating usage sensitive intrastate switched access rates that equal the weighted statewide average composite usage sensitive switched access rates established by the commission effective 125 days from the effective date of this section; or

(D) file a letter with the commission demonstrating that no rate revisions are necessary in order to comply with this section.

(2) If the commission subsequently recalculates the weighted statewide average composite usage sensitive switched access rates, no later than 30 days after the commission recalculates the weighted statewide average composite usage sensitive switched access rates, COA/SPCOA holders shall either:

(A) file an application under subsection (e) of this section;

(B) file compliance tariffs/price lists effective 45 days from the filing date of the compliance tariffs/price lists containing originating and terminating usage sensitive intrastate switched access rates that do not exceed the prevailing rates charged by the CCN holder in each territory in which the COA/SPCOA holder operates;

(C) file compliance tariffs/price sheets with originating and terminating usage sensitive intrastate switched access rates that equal the recalculated weighted statewide average composite usage sensitive switched access rates established by the commission effective 45 days from the filing date of the compliance tariffs/price sheets; or

(D) file a letter with the commission demonstrating that no rate revisions are necessary in order to comply with this section.

(3) If a COA/SPCOA holder establishes usage sensitive intrastate switched access rates pursuant to paragraphs (1)(B) or (2)(B) of this subsection and the underlying CCN holder(s) whose rates were the basis for the COA/SPCOA holder's usage sensitive intrastate switched access rates are modified, no later than 30 days after said CCN holder's rates are modified, the COA/SPCOA holder shall either:

(A) file an application under subsection (e) of this section;

(B) file compliance tariffs/price lists effective 45 days from the filing date of the compliance tariffs/price lists containing originating and terminating usage sensitive intrastate switched access rates that do not exceed the prevailing rates charged by the CCN holder in each territory in which the COA/SPCOA holder operates;

(C) file compliance tariffs/price sheets with originating and terminating usage sensitive intrastate switched access rates that equal the most recent commission established weighted statewide average composite usage sensitive switched access rates established by the commission effective 45 days from the filing date of the compliance tariffs/price sheets; or

(D) file a letter with the commission demonstrating that no rate revisions are necessary in order to comply with this section.

(h) Texas Register notice. Notice shall be published in the *Texas Register* at the time of a CCN holder's application with the commission to revise its usage sensitive intrastate switched access rates or when the commission re-calculates the weighted statewide average composite usage sensitive intrastate switched access rates.

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

Filed with the Office of the Secretary of State, on March 24, 2000.

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Rhonda Dempsey
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Public Utility Commission of Texas
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TITLE 19. EDUCATION

Part 2. TEXAS EDUCATION AGENCY

Chapter 61. SCHOOL DISTRICTS

Subchapter AA. COMMISSIONER'S RULES

Division 2. SCHOOL FINANCE

19 TAC §61.1012

The Texas Education Agency (TEA) proposes new §61.1012, concerning school finance. This proposed new §61.1012 replaces an earlier version that was filed as proposed in the October 1, 1999, issue of the *Texas Register* (24 TexReg 8405), which has been withdrawn. The notice of withdrawal can be found in the Withdrawn Rules section in this issue.

Like the earlier version, the new section sets a maximum tuition charge for transfer students, as well as the maximum of tuition that can be applied to a property value adjustment, authorized under Texas Education Code (TEC), Chapter 25, as amended by Senate Bill (SB) 4, 76th Texas Legislature, 1999. The methodology for the calculation of the tuition limit has been refined from the previous withdrawn version.

Under prior law, the amount of tuition was determined by local school boards without a specific methodology in rule or statute. The change in law allows the commissioner of education to set a ceiling for tuition. The primary purpose of that limit is to assure that the cost of educating transfer students under the Foundation School Program is approximately recognized in the district providing the educational services.

Joe Wisnoski, coordinator for school finance and fiscal analysis, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state government as a result of enforcing or administering the new section. There will be fiscal implications for local government. The proposed new section may reduce tuition charges in some school districts, especially in the 2000-2001 school year. The amount of reduction will depend on current rate practices and will vary from district to district. The change may represent reduced cost to some districts, but reduced revenue to others. Some school districts may experience a loss of revenue if they have been charging more for tuition than will be allowed under the proposed new rule, while other districts may experience a savings if they have been paying more.

Mr. Wisnoski and Criss Cloudt, associate commissioner for policy planning and research, have determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be setting limits on amounts charged for tuition for transfer students. The limits assure that the cost of educating transfer students under the Foundation School Program is recognized in the district providing the educational services. Also, the section clarifies the changes authorized by SB 4, 76th Texas Legislature, 1999, for school districts. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed new section.

Comments on the proposal may be submitted to Criss Cloudt, Policy Planning and Research, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701. Comments may also be submitted electronically to *rules@tmail.tea.state.tx.us* or faxed to (512) 475-3499. All requests for a public hearing on the proposed section submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in the section has been published in the *Texas Register*.

The new section is proposed under the Texas Education Code, §25.039, as amended by Senate Bill 4, 76th Texas Legislature, 1999, which authorizes the commissioner of education to adopt rules that specify the amount of tuition that can be charged for the education of students transferring outside the school district and apply that limitation to a property value adjustment.

The new section implements the Texas Education Code, §25.039, as amended by Senate Bill 4, 76th Texas Legislature, 1999.

§61.1012. Contracts and Tuition for Education Outside District.

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

(1) Home district - District of residence of a transferring student.

(2) Receiving district - District to which a student is transferring for the purpose of obtaining an education.

(3) Tuition - Amount charged to the home district by the receiving district to educate the transfer student.

(b) Tuition charge for transfer students. Tuition charged to a home district for a transfer student in payment for that student's education may not exceed an amount per enrollee calculated for each receiving district. The calculated limit applies only to tuition paid to a receiving district for the education of a student at a grade level not offered in the home district. The calculation will utilize the most currently available data in an ongoing school year to determine the limit that applies to the subsequent school year.

(1) Excess maintenance and operations (M&O) revenue per enrollee. A district's excess M&O revenue per enrollee is defined as the sum of state aid in accordance with Texas Education Code (TEC), Chapter 42, Subchapters B, C, and F, plus M&O tax

collections, with the sum divided by enrollment, less the state aid gained by the addition of one transfer student. M&O taxes exclude the local share of any lease purchases funded in the Instructional Facilities Allotment (IFA) as referenced in TEC, Chapter 46, Subchapter A.

(A) The data for this calculation are derived from the Public Education Information Management System (PEIMS) fall data submission (budgeted M&O tax collections and student enrollment) and the Legislative Payment Estimate (LPE) data (Foundation School Program (FSP) student counts and property value).

(B) The state aid gained by the receiving district from the addition of one transfer student is computed by the commissioner of education. The calculation assumes that the transfer student participates in the special programs at the average rate of other students in the receiving district.

(2) Excess debt revenue per enrollee. A district's excess debt revenue per enrollee is defined as Interest and Sinking Fund (I&S) taxes budgeted to be collected that surpass the taxes equalized by the IFA pursuant to TEC, Chapter 46, Subchapter A, and the Existing Debt Allotment (EDA) pursuant to TEC, Chapter 46, Subchapter B, divided by enrollment.

(A) The local share of the IFA for bonds and the local share of the EDA are subtracted from debt taxes budgeted to be collected as reported through PEIMS.

(B) The estimate of enrollment includes transfer students.

(3) Base tuition limit. The base tuition limit per transfer student for the receiving district is a percentage of its state and local entitlement per enrollee from both tiers of the FSP. The entitlement includes the Texas Education Agency's estimate for the current year for the total of allotments in accordance with TEC, Chapter 42, Subchapters B and C, plus the state and local shares of the guaranteed yield allotment (GYA) in accordance with TEC, Subchapter F.

(A) For this purpose, the GYA is calculated as the product of the elements guaranteed leave (GL) multiplied by weighted average daily attendance (WADA), then multiplied by district tax rate (DTR), and finally by 100. All applicable limits for DTR apply to the calculation as specified in §105.1011 of this title (relating to Distribution of Foundation School Fund), and GL is limited as directed in TEC, §42.152(t).

(B) The applicable proportions of the entitlement are 20% in the 2000-2001 school year, 15% in the 2001-2002 school year, and 10% in the 2002-2003 school year and beyond.

(4) Calculated tuition limit. The calculated tuition limit is the sum of the excess M&O revenue per enrollee, the excess debt revenue per enrollee, and the base tuition limit, as calculated in subsections (b)(1), (b)(2), and (b)(3) of this section, respectively.

(5) Notification and appeal process. In the spring of each school year, the commissioner will provide each district with its calculated tuition limit and a worksheet with a description of the derivation process. A district may appeal to the commissioner if it can provide evidence that the use of projected student counts from the LPE in making the calculation is so inaccurate as to result in an inappropriately low authorized tuition charge and undue financial hardship. The commissioner's decision regarding the appeal is final.

(c) Maximum tuition amount in property value adjustment. For the 1999-2000 school year, the maximum amount of tuition that can be applied to the property value adjustment for school districts offering fewer than all grade levels in accordance with TEC, §42.106, may not exceed the greater of the amount per student computed in subsection (b)(4) of this section or the amount per student actually paid during the 1998-1999 school year. For subsequent years, the maximum amount is limited to the amount per student computed in subsection (b)(4) of this section.

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

Filed with the Office of the Secretary of State, on March 27, 2000.

TRD-200002203
Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
Earliest possible date of adoption: May 7, 2000
For further information, please call: (512) 463-9701

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TITLE 22. EXAMINING BOARDS

Part 2. TEXAS STATE BOARD OF BARBER EXAMINERS

Chapter 51. PRACTICE AND PROCEDURE

Subchapter B. BARBER COLLEGES, SCHOOLS, AND STUDENTS

22 TAC §§51.13, 51.15-51.21, 51.23-51.26; 51.30, 51.39, 51.40

The Texas State Board of Barber Examiners proposes amendments to §§51.13; 51.15; 51.16; 51.17; 51.18; 51.19; 51.20; 51.21; 51.23; 51.24; 51.25; 51.26; 51.30; 51.39; 51.40, concerning Barber Colleges, Schools, and Students. The amendments are proposed in accordance with the board's Rule Review Plan adopted pursuant to Article IX, §167 of the Appropriations Act. The proposed amendment to §51.13 Change of Ownership of Barber School specifies that the new owner should notify the board of the change no later than the 10th day. Naming whom will inspect the new owner's school, and after the new owner completes the new contract and returns it with the new fee, the board will issue a new permit within 20 days. The proposed amendment to §51.15 Barber Chairs per Student changes the wording clinic floor to practical floor. The proposed amendment to §51.16 Equipment for Students requires the school to furnish each student with a current hand book containing the Barber Laws, and list the tools the school or college must ensure each student is equipped with. The proposed amendment to §51.17 Specialty Equipment states each student enrolled the school or college will have enough equipment. The proposed amendment to §51.18 Classroom Consultants requires the school or college to have a valid Texas barber teacher teaching at all times. The proposed amendment to §51.19 Absence of Teachers is adding no student shall accrue hours for either practical or theory for the duration of the absence of a teacher. The proposed amendment to §51.20 Applying for Enrollment states all records are subject to inspection by the board or any of its officers or employees and the school or college is responsible for submitting the student application. The proposed amendment to §51.21 Enrollment Application Deadline changes the deadline the application for enrollment must be sent to the of-

fice within seven days of the date on the physician certificate. The proposed amendment to §51.23 Student Certificate states the student certificate is not valid without a photograph attached and changes the student certificate to expire every 12 months. The proposed amendment to §51.24 Interruption of Attendance when a student withdraws or interrupts his or her training the school or college has seven days to return the student certificate to the board. The proposed amendment to §51.25 Reenrollment Notification changes the title of the rule to Reenrollment or Transfer, places the responsibility of filing the enrollment, reenrollment application and transfer notification on the school or college owners. The proposed amendment to §51.26 Student Progress Reports changes the wording from "acquired" to "accrued" in addition to changes the required forms prescribed by the board to requiring the information listed in §51.38. The proposed amendment to §51.30 changes the hours in anatomy, physiology, and histology from 80 to 50; the hours of Texas Barber Law from five to 35; change the wording from "boys'" to "children's" haircutting; the hours of manicuring from 25 to 1; professional ethics hours are changed from 10 to 22, and barber shop management hours from 10 to 22. The proposed amendment to 51.39 Barber Refresher Course removes the words "or country" from the requirements for the refresher course and changes the haircutting hours from 150 to 160, and removes the manicuring hours. This amendment also adds the requirement of adding the student in the barber refresher course to the monthly progress report. The proposed amendments to 51.40 All Other Businesses Prohibited in a Barber College allows the placement of vending machines and retail products directly relating to hair care.

Will K. Brown, Executive Director, has determined that, for each of the first five years that the proposed rules will be in effect: (1) there are no foreseeable implications relating to cost or revenues of the state or local governments as a result of enforcing for administering the rules; (2) the public benefit of the proposed rules will be clarification of the board's requirements of examinees and licensees and the provision of a secure method of handling funds submitted by examinees and licensees; and (3) there is no foreseeable economic cost to persons required to comply with the proposed rules. Mr. Brown has also determined that there will be no effect on small businesses as a result of the proposed amendments.

Comments on the proposed rules may be submitted to Will K. Brown, Executive Director, Texas State Board of Barber Examiners, 333 Guadalupe, Suite 2-110, Austin, Texas 78701 no later than 30 days from the date that these proposed amendments are published in the *Texas Register*.

The amendments are proposed under Texas Barber Law, former Texas Civil Statutes, Article 8407a, §28(a),(repealed) now recodified laws House Bill 3155 as Chapter 1601 OCCUPATIONS CODE (1999) which vest the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties, to establish standards of conduct and ethics for all persons licensed or practicing under the provision of the Texas Barber Law, and to regulate the practice and teaching of barbering in keeping with the intent of the Texas Barber Law and to ensure strict compliance with the Texas Barber Law.

The following sections of the Texas Civil Statute, Article 8407a are effected by the proposed amendments as follows: 51.13 Change of Ownership of Barber School - §§9,9a; 51.15 Barber Chairs per Student - §§9(g)3,8; 51.16 Equipment for Student - §§9(f),9(u); 51.17 Specialty Equipment - §9(f); 51.18 Classroom Consultant - §9(j); 51.19 Absents of Teachers - §§ 9(j), 9(k); 51.20 Applying for Enrollment - §§7,8,9(b); 51.21 Enrollment Application Deadline - §§8, 9(b); 51.23 Student Certificate - §§9(b), 8,21(b); 51.24 Interruption of Attendance - §§9(e); 51.25 Reenrollment or Transfer - §9(e); 51.26 Student Progress Reports - §9(e); 51.30 Registered Barber Course - §§9(d),9(f),12; 51.39 Barber Refresher Course - §§9(d), 9(f); 51.40 All Other Businesses Prohibited in a Barber College - §§9(a),9(y).

§51.13. Change of Ownership of Barber School.

(a) If a barber school or college changes ownership, the new owner shall notify the board of the transfer not later than the 10th day before the date on which the change becomes effective. [~~Two board members or one board member and the board's executive director shall inspect a barber school or college which has changed ownership to determine that it fulfills all requirements of the board and of the Texas Barber Law, §9.~~]

(b) Two board members or one board member and the board's executive director shall inspect a barber school or college which has changed ownership to determine that it fulfills all requirements of the board and of the Texas Barber Law, §9. [~~A new permit fee and contract shall be required from a barber school or college which has changed ownership.~~]

(c) A new permit fee and contract shall be required from a barber school or college which has changed ownership. [~~The new owner of the school shall execute a new contract for approval with the board and shall secure a new permit within 30 days.~~]

(d) The new owner of the school shall execute a new contract for approval with the board and shall secure a new permit within 30 days.

§51.15. Barber Chairs per Student.

A barber school or college must have one barber chair available for each student in attendance on the practical [~~clinic~~] floor. Additional students in attendance must be assigned to the beginner's department or theory classroom.

§51.16. Equipment for Students.

(a) A [~~The~~] barber school or college shall furnish each student [~~must issue~~] within seven days of the students enrollment [~~each student~~] his or her own copy of the current hand book published by the board containing the laws and regulation governing the practice of barbering. [~~textbook or books which shall contain all subjects referred to in the Texas Barber Law, §9. The board will approve each textbook or book before it may be used in the barber school or college curriculum.~~]

(b) The barber school or college must issue within seven days of enrollment each student his or her own textbook or books which shall contain all subjects referred to in the Texas Barber Law, §9. The board will approve each textbook or books before it may be used in the barber school or college curriculum. [~~Each student must be equipped with all the necessary barber's tools equivalent to any Class A barber's kit, and shall have his or her own new personal tools which shall be issued within 30 days of enrollment including the following tools:~~]

[~~(1) one professional electric clipper of modern design;~~]

[~~(2) one neck duster;~~]

[~~(3) one barber shears;~~]

[~~(4) one thinning shears;~~]

[~~(5) one tweezers;~~]

[~~(6) one razor;~~]

[~~(7) three barber combs;~~]

[~~(8) one styptic powder;~~]

[~~(9) one tool kit (carrying it);~~]

[~~(10) one hair styling brush;~~]

[~~(11) one neck clip;~~]

[~~(12) one can clipper oil;~~]

[~~(13) two washable uniforms;~~]

[~~(14) one hand electric hair dryer;~~]

[~~(15) one T-edger or outliner.~~]

(c) A barber school or college shall furnish to or ensure that each student is equipped with his or her own personal tools within 30 days which must include the following:

(1) one professional electric clipper of modern design;

(2) one neck duster;

(3) one barber shears;

(4) one thinning shears;

(5) one razor equipped with disposable blades;

(6) three barber combs;

(7) one styptic powder or liquid styptic;

(8) one tool kit (carrying kit);

(9) one hair styling brush;

(10) one neck clip;

(11) one can clipper oil

(12) two washable uniforms;

(13) one hand held hair dryer; and

(14) one T-edger or outliner

(d) [~~(c)~~] Optional equipment for the kit will be as follows:

(1) one razor strop;

(2) one razor hone; and

(3) one straight razor.

(e) No student may take instruction or accrue hours for practical work unless he or she is equipped with these tools.

§51.17. Specialty Equipment.

Each barber school or college shall have:

(1) for each student in attendance on the practical floor, enrolled in a manicurist course outlined in §51.31, one complete manicure table , one complete set of manicuring implements for plain and sculptured nails, and one textbook with complete instructions ;

(2) and adequate supply of permanent wave rods [~~complete set of manicuring implements for plain and sculptured nails with textbook of complete instructions~~];

(3) an adequate supply of permanent wave rods;

(4) a minimum of two canvas-type wig blocks;

(5) two mannequins, one long-haired and one short-haired;

(6) a minimum of one wig, one hairpiece, and one hairwoven piece;

(7) clock;

(8) bulletin board;

(9) fire extinguisher with current inspection report; and

(10) teacher's desk in classroom.

§51.18. Classroom Consultants.

(a) Each classroom consultant to theory instruction in a barber school or college shall have a valid Texas barber teacher's certificate , [~~or~~] an academic degree or specialized training or expertise in the subject being taught if the subject pertains to [~~extension~~] material relating to barbering.

(b) A student teacher may instruct theory only if assisted [~~accompanied~~] by a person holding a teaching certificate [~~licensed teacher~~].

§51.19. Absence of Teachers.

(a) Whenever an approved barber school or college is without the services of at least one teacher who has a valid Texas barber teacher's certificate for all or any portion of three consecutive business days, the owner, manager, or authorized agent of the school must notify the board in writing.

(b) This notification must be on or before the seventh calendar day following the first day of the absence.

(c) The written notice must explain the absence and its duration or expected duration.

(d) No instruction may be provided, and no student shall accrue hours for either practical work or theory for the duration of such absence.

§51.20. Applying for Enrollment.

(a) Each person enrolling in an approved barber school or college in Texas must apply on forms furnished by the board.

(b) This record is subject to inspection by the board or any of its officers or employees. [~~The application for enrollment is prepared by the board in triplicate form. The original must be sent to the office of the board and two copies must be retained by the school.~~]

(c) A barber school or college shall submit each application for enrollment which shall include the following four items; [~~This record is subject to inspection by the board or any of its officers or employees.~~]

(1) The original of the application for enrollment form, completed and notarized. If the applicant is attending on a part-time basis, he or she shall specify that on the upper right corner of the original.

(2) Proof of a seventh-grade education or its equivalency. This shall be in the form of a transcript or photostatic copy of the diploma, equivalency certificate, or record.

(3) Two recent, identical, permanent-type photographs, size two-inch by two-inch, with applicant's signature on front. No Polaroid photographs will be accepted.

(4) A current health certificate, signed by a physician or doctor of osteopathic medicine and notarized. The board will furnish a health certificate form.

[~~(d) Each applicant must submit to the board the following.~~]

[~~(1) The original of the application for enrollment form, completed and notarized. If the applicant is attending on a part-time basis, he or she shall specify that on the upper right corner of the original.~~]

[~~(2) Proof of a seventh-grade education or its equivalency. This shall be in the form of a transcript or photostatic copy of the diploma, equivalency certificate, or record.~~]

[~~(3) Two recent, identical, permanent-type phonographs, size two-inch by two-inch, with applicant's signature on front. No Polaroid photographs will be accepted.~~]

[~~(4) A current health certificate, signed by a physician or doctor of osteopathic medicine and notarized. The board will furnish a health certificate form.~~]

§51.21. Enrollment Application Deadline.

Application for enrollment in a barber school or college must be sent to the [~~office of the~~] board in complete form within seven days of actual date of enrollment[~~.~~] , which shall be no earlier than the date of the physician statement required by §51.20.

§51.23. Student Certificate.

(a) After the board receives the completed application for enrollment [~~enrollment application is accepted,~~] the board will issue a student certificate which gives the student the right to do barber service only in the school. Affixed to the student certificate issued by the board will be a current photograph furnished by the student to the school in accordance with §51.20. No student certificate is valid unless this photograph is attached thereto.

(b) The student certificate shall show the date of enrollment, which shall be no earlier than the date of the physician statement, and the expiration date, which shall be 12 months after the date of enrollment. If a student has not completed the 1500 hours required by §51.30 within this 12 month period, upon request by the school or college the board will issue a new student certificate for an additional 12 month period. [~~The manager or owner of the barber school or college shall be responsible for keeping the student certificate with photograph and producing it upon request by any board member, officer, or inspector.~~]

(c) The manager or owner of a barber school or college is responsible for ensuring that a student certificate is on display at all times during the students enrollment at or near the students work station. No student may accrue hours for practical work or theory unless the certificate is displayed in accordance with this subsection. [~~The student certificate shall show the date of enrollment (first day attending) and the expiration date (date on which the student will complete the course if attendance is regular).~~]

§51.24. Interruption of Attendance.

When a student withdraws or otherwise interrupts his or her training in a barber school, for more than 60 days, after last date of attendance, the school shall send the student certificate to the board within seven days after such withdraw, or interruption. The manager or owner of the barber school or college shall write on the back of the certificate the last day of the student's attendance and the number of credit hours accrued by the student and shall sign the student certificate. [~~the student certificate shall be sent to the office of the board at once. The date of interruption (last day attending) and the number of hours credit accumulated shall be written on the back of the certificate and signed by the manager or owner.~~]

§51.25. Reenrollment or Transfer [~~Notification~~].

(a) If a student returns to the same school or college [~~or transfers to another school~~] after [~~an~~] interruption [~~,~~] the school or college shall notify the board in writing and a new student certificate shall [~~will~~] be issued. [~~The reenrollment notification shall be in the office of the board no later than seven days after the date of reenrollment.~~]

(b) When a barber school or college accepts a transfer of a student from another school or college the accepting school, shall on behalf of the student, submit to the board in writing the student's enrollment application and a request that the board issue a new student certificate for the transferring student. [~~The school shall provide the office of the board with the date of reenrollment (first day student returns to classes).~~]

(1) Upon receipt of the accepting schools notification of transfer the board shall notify the school or college at which the student was formerly enrolled of such transfer.

(2) upon receipt of the boards transfer notification the manager or owner of the barber school or college shall, within seven days of receipt of the boards transfer notification, send to the board the student certificate with the following information written on the back:

(A) the last day of the student's attendance;

(B) the number of credit hours accrued by the student;

(C) and the managers or owners signature.

(c) No reenrolled or transferred students may take instruction or accrue hours for practical work or theory unless the new student certificate issued by the board is on display at or near the students work station. [~~If a student is a transfer, the board requires the name of the school from which he or she transferred and the approximate date of enrollment in that school.~~]

(d) A student who is reenrolled after a period of 90 days interruption shall furnish the office of the board with a new health certificate.

§51.26. Student Progress Reports.

(a) Each barber school or college must send to the office of the board a monthly progress report of hours accrued [~~acquired~~] by each student enrolled.

(b) The report shall contain the information listed in §51.38. [~~The report is to be made on forms prescribed by the board and printed, secured, or reproduced at the school's or college's expense. Computer printouts will be accepted provided the formatting is the same.~~]

(c) The report is due in the board's office no later than the 15th day of the month following the month covered in the report.

(d) The executive director or the board may refuse to accept student hours for:

(1) schools' failure to staff school with qualified instructors and teachers;

(2) lack of presence of presence of qualified instructors and teachers in the schools; and

(3) schools' failure to conduct required instruction in theory and practical training.

[~~(e) Hours not accepted by the executive director or the board may be reinstated at the discretion of the board or the executive director, upon correction of existing conditions.~~]

§51.30. Registered Barber Course.

The curriculum to prepare a student for the examination for the registered barber license will consist of 1,500 hours to include the following:

(1) Eight hours of orientation, consisting of:

(A) rules and regulations of the school;

(B) introduction to school personnel and students; and

(C) outlay of school facilities conducted.

(2) One hundred and eighty hours of theory, consisting of:

(A) history of barbering, one hour;

(B) professional ethics, four hours;

(C) hygiene and good grooming, one hour;

(D) bacteriology, sterilization, and sanitation, thirty hours;

(E) barber implements, one hour;

(F) honing and stropping, one hour;

(G) shaving, five hours;

(H) haircutting, male and female, two hours;

(I) cutting and processing curly and over-curly hair, two hours;

(J) mustaches and beards, one hour;

(K) shampooing and rinsing, two hours;

(L) scalp, hair treatments and skin, five hours;

(M) theory of massage of scalp, face and neck, two hours;

(N) facial treatments, one hour;

(O) anatomy, physiology, and histology, 50 [~~80~~] hours, consisting of the study of:

(i) hair;

(ii) skin;

(iii) muscles;

(iv) nerves;

(v) cells

(vi) circulatory system

(vii) digestion; and

(viii) bones;

(P) disorders of the skin, scalp, and hair, 10 hours;

(Q) electricity and light therapy, one hour;

(R) chemistry, five hours;

(S) barber shop management, five hours;

(T) Texas Barber Law, 35 [~~five~~] hours;

(U) Scientific fundamentals of barbering, four hours'

(V) Cosmetic preparations, three hours;

(W) Sanitary professional techniques, four hours; and

(X) Salesmanship, five hours.

(3) One thousand, three hundred and twelve hours of instruction in practical work, consisting of the study of:

(A) barber implements, 10 hours;

(B) shaving, 80 hours;

(C) haircutting or the process of cutting, tapering, trimming, processing, and molding and dressing the hair, 800 hours, consisting of:

(i) men's haircutting;

(ii) children's [~~boys'~~] haircutting;

(iii) women's haircutting;

(iv) cutting and processing curly and over-curly hair; and

(v) razor cutting;

(D) shampooing and rinsing, 40 hours;

(E) scalp, hair treatments, and tonics, 10 hours;

(F) message and facial treatments, 10 hours;

(G) bleaching and dyeing of the hair, 30 hours;

(H) arranging, 10 hours;

(I) beautifying, 10 hours;

(J) beards and mustaches, 15 hours;

(K) processing, 15 hours;

(L) manicuring, 1 hour [~~25 hours~~];

(M) styling, 55 hours;

(N) cleansing, 25 hours;

(O) curling, 15 hours;

(P) dressing, 15 hours;

(Q) shaping, 15 hours;

(R) singeing, 7 hours;

(S) straightening, 25 hours;

(T) waving hair, 28 hours;

(U) clipping, 15 hours;

(V) hair weaving and hairpieces, 17 hours;

(W) scientific fundamentals of barbering, 10 hours;

(X) professional ethics, 22 [~~10~~] hours;

(Y) barber shop management, 22 [~~10~~] hours;

(Z) first aid and safety precautions, 10 hours;

§51.39. Barber Refresher Course.

(a) The purpose of a barber refresher course is to renew or update the skills of a currently licensed ,or one barber who has not practiced for a period of time, or to prepare a formerly licensed barber for the state board examination.

(b) An applicant for a barber refresher course must hold a current or expired barber license issued by the State of Texas or another state [~~or country~~].

(c) An applicant for a barber refresher course must comply with all standard student enrollment requirements, and must submit

a photocopy of said current or expired barber license with the enrollment application.

(d) The curriculum for a barber refresher course will consist of 300 hours to include.

(1) 10 hours of theory instruction in Texas barber laws;

(2) 290 hours of instruction in practical work, to include:

(A) haircutting- 160 [~~150~~],

(B) permanent waving and chemical application-75;

(C) styling, curling, and blow-drying-55 . [~~; and~~]

[~~(D) manicuring-10.~~]

(e) All hours earned by a student in a barber refresher course must be reported to the board on the school's monthly progress report, and the student certificate must be returned by the school owner or manager with in 7 days [~~promptly~~] to the board office when the student has completed 300 hours.

(f) A licensed barber who is enrolled in a barber refresher course cannot at the same time be employed or serve as a manager or instructor in the school.

§51.40. All Other Businesses Prohibited in a Barber College.

No business other than the teaching and practicing of barbering can be operated on the premises of a barber school or college[~~.~~] , with the exception of vending machines or retail products directly relating to hair care.

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

Filed with the Office of the Secretary of State, on March 21, 2000.

TRD-200002063
Will K. Brown
Executive Director
Texas State Board of Barber Examiners
Earliest possible date of adoption: May 7, 2000
For further information, please call: (512) 305-8475

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22 TAC §§51.22, 51.36, 51.37

(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 State Board of Barber Examiners or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas State Board of Barber Examiners proposes the repeal of §§51.22; 51.36, and 51.37 concerning Barber Colleges, Schools, and Students. The board proposes repealing these rules in accordance with the board's Rule Review Plan adopted pursuant to Article IX, §167 of the Appropriations Act. The proposed repeal of § 51.22 Date of Enrollment eliminates a rule that has become obsolete due to the proposed amendment to §51.21. The proposed repeal of §§ 51.36, and 51.37 will remove forms from the board's formal rules, thereby allowing greater flexibility for the board to change its forms from time to time without the requirement of a rulemaking proceeding to do so.

Will K. Brown, Executive Director, has determined that, for each of the first five years that the proposed repeal is in effect: (1) there are no foreseeable implications relating to cost or revenues of the state or local governments as a result of the repeal; (2) the public benefit of the proposed repeal will be the reduction in time to implement revision of forms and the elimination of a rule that has become obsolete; (3) there is no foreseeable economic cost to persons required to comply with the proposed repeal. Mr Brown has also determined that there will be no effect on small businesses as a result of the proposed repeal.

Comments on the proposed repealed rules may be submitted to Will K. Brown, Executive Director, Texas State Board of Barber Examiners, 333 Guadalupe, Suite 2-110, Austin, Texas 78701 no later than 30 days from the date that the proposed action is published in the *Texas Register*.

The repeals are proposed under former Texas Barber Law, Texas Civil Statutes, Article 8407a, Section 28 (a), (repealed) now recodified by House Bill 3155 as Chapter 1601 OCCUPATIONS CODE (1999) which vest the board to make and enforce all rules and regulations necessary for the performance of its duties.

The following are the Statutes, Articles, or codes effected by the proposed repealed rules: §51.22 Date of Enrollment - §§9(b), 9(e); 51.36 Enrollment Application Form - §§8, 9(b); 51.37 Student Certificate Form - §8.

§51.22. Date of Enrollment.

§51.36. Enrollment Application Form.

§51.37. Student Certificate Form.

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

Filed with the Office of the Secretary of State, on March 21, 2000.

TRD-200002064
Will K. Brown
Executive Director
Texas State Board of Barber Examiners
Earliest possible date of adoption: May 7, 2000
For further information, please call: (512) 305-8475

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Subchapter D. BARBER SHOPS

(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 State Board of Barber Examiners or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

22 TAC §51.91, §51.93

The Texas State Board of Barber Examiners proposes the repeal of §51.91 and §51.93, concerning Barber Shops. The board proposes repealing these rules in accordance with the board's Rule Review Plan adopted pursuant to Article IX, §167 of the Appropriations Act. The proposed repeal of §51.91 Separation of Barber Shop and Beauty Parlor eliminates a rule that has become obsolete. The proposed repeal of §51.93 Inspection Report will remove the form from the board's formal rules, thereby allowing greater flexibility for the board to change its forms from time to time without the requirement of a rulemaking proceeding to do so.

Will K. Brown, Executive Director, has determined that, for each of the first five years that the proposed repeal is in effect: (1) there are no foreseeable implications relating to cost or revenues of the state or local governments as a result of the repeal; (2) the public benefit of the proposed repeal will be the reduction in time to implement revision of forms and the elimination of a rule that has become obsolete; (3) there is no foreseeable economic cost to persons required to comply with the proposed repeal. Mr. Brown has also determined that there will be no effect on small businesses as a result of the proposed repeal.

Comments on the proposed repealed rules may be submitted to Will K. Brown, Executive Director, Texas State Board of Barber Examiners, 333 Guadalupe, Suite 2-110, Austin , Texas 78701 no later than 30 days from the date that the proposed action is published in the *Texas Register*.

The repeals are proposed under former Texas Barber Law, Texas Civil Statutes, Article 8407a, Section 28a, (repealed) now recodified by House Bill 3155 as Chapter 1601 OCCUPATIONS CODE (1999) which vest the board to make and enforce all rules and regulations necessary for the performance of its duties.

The following are the Statutes, Articles, or codes effected by the proposed repealed rules: §51.91 Separation of Barber Shop and Beauty Parlor - §§3, 4; §51.93 Inspection Report - §§1, 2.

§51.91. Separation of Barber Shop and Beauty Parlor.

§51.93. Inspection Report.

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

Filed with the Office of the Secretary of State, on March 21, 2000.

TRD-200002066

Will K. Brown

Executive Director

Texas State Board of Barber Examiners

Earliest possible date of adoption: May 7, 2000

For further information, please call: (512) 305-8475

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Chapter 51 PRACTICE AND PROCEDURE

The Texas State Board of Barber Examiners proposes amendments to §§51.92; 51.95; 51.97, concerning Barber Shops and §51.101, concerning Advertising. The amendments are proposed in accordance with board's Rule Review Plan adopted pursuant to Article IX, §167 of the Appropriations Act. The proposed amendments to §51.92 Barber Pole (Symbol of Barbering Since Ancient Days) (a) changes the traditional barber pole colors to red, white and the optional blue. In (b) adds or any phrase containing the word "Barber" and removes (c) in its entirety. The proposed amendments to §51.95 No Other Businesses in a Barber Shop or Specialty Shop changes (a) adding the word "consumption" and that all food and drink must be disposed of in a closed container. This amendment also removes (d) in its entirety. The proposed amendments to §51.97 Booth Rental Permit clarifies if the barber pays there own withholding taxes, have no proof or documentation of employment they are required to have a booth rental permit. The proposed amendments to §51.101 Barber Advertisements states only a barber school or a licensed barber may advertise in the yellow pages in a telephone directory under "Barber."

Will K. Brown, Executive Director, has determined that, for each of the first five years that the proposed rules will be in effect: (1) there are no foreseeable implications relating to cost or revenues of the state or local governments as a result of enforcing for administering the rules; (2) the public benefit of the proposed rules will be clarification of the board's requirements of examinees and licensees and the provision of a secure method of handling funds submitted by examinees and licensees; and (3) there is no foreseeable economic cost to persons required to comply with the proposed rules. Mr. Brown has also determined that there will be no effect on small businesses as a result of the proposed amendments.

Comments on the proposed rules may be submitted to Will K. Brown, Executive Director, Texas State Board of Barber Examiners, 333 Guadalupe, Suite 2-110, Austin, Texas 78701 no later than 30 days from the date that these proposed amendments are published in the *Texas Register*.

Subchapter D. BARBER SHOPS

22 TAC §§51.92, 51.95, 51.97

The amendments are proposed under Texas Barber Law, former Texas Civil Statutes, Article 8407a, §28(a), (repealed) now recodified laws House Bill 3155 as Chapter 1601 OCCUPATIONS CODE (1999) which vest the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties, to establish standards of conduct and ethics for all persons licensed or practicing under the provision of the Texas Barber Law, and to regulate the practice and teaching of barbering in keeping with the intent of the Texas Barber Law and to ensure strict compliance with the Texas Barber Law.

The following sections of the Texas Civil Statute, Article 8407a are effected by the proposed amendments as follows: 51.92 Barber Pole (Symbol of Barbering Since Ancient Days) - §§2, 4; 51.95 No Other Businesses in a Barber Shop or Specialty Shop - §§3, 4, 15A, 18; 51.97 Booth Rental Permit - §§1,2;.

§51.92. Barber Pole (Symbol of Barbering Since Ancient Days).

(a) Each barber shop may display a barber pole this pole shall be the traditional red, white with the optional blue. [~~on the exterior or visible of the shop. This pole shall be red, white, and blue, and a minimum of 12 inches high.~~]

(b) In addition, barber shops shall display the words "Barber Shop" or "Barber Salon" or any phrase containing the word "Barber"on the entrance door or window of the shop in letters at least three inches high.

(c) This rule [~~section~~] applies to all existing shops and all new shops licensed by the board [~~without barber poles and words "Barber Shop" or "Barber Salon" as specified above. (Note: At the board meeting July 5, 1976, the members agreed that a barber pole in the form of a painting on the window or a decal of a barber pole on the window or door will be acceptable, provided it is 12 inches tall and of a permanent type)~~].

§51.95. No Other Businesses in a Barber Shop or Specialty Shop.

(a) A barber shop or specialty shop shall not prepare for sale [~~selling and~~] or consumption food and drink except by vending machine, any food or drink must be disposed of in a closed container and the shop shall be separated by a solid wall and have a separate entrance if located in the same building with a restaurant or food preparation area. This rule will not apply to a licensed barber shop or specialty shop in a department store when the sale of food and drink is not immediately adjacent to the shop.

(b) No products may be sold in a barber shop or specialty shop other than products related to the practicing of barbering, including, but not limited to shampoos and treatment products, hair dyes, bleaches, wigs, toupees and hairpieces, cosmetic preparations and skin treatments, manicuring preparations, and implements, appliances, or ornaments used on the hair, skin, or nails.

(c) No services may be sold or in any way offered in a barber shop or specialty shop other than services traditionally associated with the practice of barbering, including the cleaning and shining of shoes

[~~(d) Businesses selling products and/or services not related to the practice of barbering and located adjacent to a barber shop or specialty shop shall be separated from the shop by a solid wall and have a separate entrance.~~]

§51.97. Booth Rental Permit.

(a) Licensed barbers or specialist that contract, lease, or rent a booth in a barber shop or specialty shop must have an individual booth rental permit.

(b) Booth rental is defined as a shop within a shop. Even though you do not own the shop, you are responsible for the area in which you rent.

(c) If you are issued a W2 form by the owner of the shop at the end of the year, the owner of the shop pays your withholding taxes. You are not required to have a booth rental permit.

(d) If you are self employed and pay your own withholding taxes, or have no proof or documentation of employment you are required to have a booth rental permit.

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

Filed with the Office of the Secretary of State, on March 21, 2000.

TRD-200002067
Will K. Brown
Executive Director
Texas State Board of Barber Examiners
Earliest possible date of adoption: May 7, 2000
For further information, please call: (512) 305-8475

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Subchapter E. ADVERTISING

22 TAC §51.101

The amendments are proposed under Texas Barber Law, former Texas Civil Statutes, Article 8407a, §28(a), (repealed) now recodified laws House Bill 3155 as Chapter 1601 OCCUPATIONS CODE (1999) which vest the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties, to establish standards of conduct and ethics for all persons licensed or practicing under the provision of the Texas Barber Law, and to regulate the practice and teaching of barbering in keeping with the intent of the Texas Barber Law and to ensure strict compliance with the Texas Barber Law.

The following sections of the Texas Civil Statute, Article 8407a are effected by the proposed amendments as follows:.51.101 Barber Advertisements - §§26c, 27a.

§51.101. Barber Advertisements.

Only a[~~A~~] barber school or a person who is a licensed barber may advertise in the yellow pages of the telephone directory under "Barber." The board may [~~will~~] notify the administration of any [~~the~~] telephone company or yellow page provider [~~for Texas~~] of this ruling.

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

Filed with the Office of the Secretary of State, on March 21, 2000.

TRD-200002068
Will K. Brown
Executive Director
Texas State Board of Barber Examiners
Earliest possible date of adoption: May 7, 2000
For further information, please call: (512) 305-8475

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TITLE 25. HEALTH SERVICES

Part 5. CENTER FOR RURAL HEALTH INITIATIVES

Chapter 500. EXECUTIVE COMMITTEE FOR THE CENTER FOR RURAL HEALTH INITIATIVES

Subchapter H. RURAL EMERGENCY MEDICAL SERVICES SCHOLARSHIP INCENTIVE PROGRAM

25 TAC §§500.501, 500.503, 500.505, 500.507, 500.509, 500.511, 500.513, 500.515, 500.517, 500.519, 500.521, 500.523, 500.525, 500.527

The Center for Rural Health Initiatives (center) proposes new §§500.501, 500.503, 500.505, 500.507, 500.509, 500.511, 500.513, 500.515, 500.517, 500.519, 500.521, 500.523, 500.525, 500.527 concerning a state grant program to match funds committed by qualified rural communities to cover training of Emergency Medical Services (EMS) providers.

These rules are proposed to implement the Medicare Rural Hospital Flexibility Program, under 42 United States Code §1395i-4. The Center received federal funds to develop and implement the Critical Access Hospital Program in the State of Texas, of which emergency services are a critical component. The federal program specifically includes EMS as one of the stakeholders in the Critical Access Hospital program; in the State of Texas, EMS representatives have been involved in the program development. In order to assist Critical Access Hospitals and the rural communities in their efforts to maintain EMS services, the availability of trained, qualified EMS personnel was reported as a major concern. This program will allow these entities to "grow their own" EMS professionals and retain them in their rural communities, thus helping to ensure the availability of EMS services in those communities.

The sections are needed to accomplish the following: define terms; provide the center's philosophy in making the grants; discuss the sources and allocation of funds; establish who is eligible to receive the grants; provide the requirements for receiving the grants; establish the procedures for grant announcements; establish the procedures for grant applications; describe

the competitive review process; and outline the selection criteria for awarding grants.

The center's proposed definition for a rural county is one that has a population in the most recent decennial United States census of 50,000 or less, or with respect to a county that has a population of more than 50,000 and contains a geographic area that is not delineated as urbanized by the federal census bureau, that part of the county that is not delineated as urbanized.

The center would like comments on its proposal to award grants to communities to help cover the costs of training EMS professionals. The center would also like comments on the funding amounts proposed in the rules. The center would like comments on the selection criteria. The center would like comments on whether the preferred criteria should be required or if there are additional criteria that should be preferred.

Regional Advisory Councils are not eligible for this program as they do not qualify as a political subdivision, nor are they able to provide for the community service requirement, which is a requirement for accepting program funds. Volunteer Emergency Medical Service groups who meet the qualifications in §500.505 would be eligible. Also, this fund is meant only to train Emergency Medical Technicians, Emergency Medical Technician-Intermediate and Emergency Medical Technician-Paramedic, not to assist existing Emergency Medical Service professionals in maintaining their required Continuing Medical Education hours. First responder personnel would be eligible, so long as they are supported by an eligible community and the candidate's training results in at least an Emergency Medical Technician certificate. Emergency Care Attendant training would not be sufficient for the purposes of this program.

Robt. J. "Sam" Tessen, MS, has also determined that for the first five years that the rules will be in effect, there will be an effect on state government, the center, to administer the grant program. The cost each year is estimated to be $2000.00. Because local governments will qualify for grants, it is estimated that there will be a positive impact on local governments in an amount equal to the amount of grants that local governments receive. Political subdivisions of the state or non-profit entities governed by council members, commissioners, or a board of trustees are eligible to receive these grants, therefore some portion of the funds appropriated may be granted to political subdivisions of the state or non-profit entities which own or provide emergency medical services in rural counties. Because non-profit entities will also qualify for grants, it is not possible to determine the exact dollar amount that will go to local governments.

Robt. J. "Sam" Tessen, MS, has also determined that for the first five years the sections are in effect, the public benefit anticipated is an increase in the number of EMS professionals to be vital links in the health care safety net by providing funds to train individuals that have been selected by and to serve in their local communities; however, grantees must match the funds received from the center and may have nominal administrative costs in applying for the grants. There is no anticipated cost to small businesses or micro-businesses since they are not eligible for these funds. There will be no anticipated impact on local employment.

Comments on the proposal may be submitted to Robt. J. "Sam" Tessen, MS, Executive Director, Center for Rural Health Initiatives, P.O. Drawer 1708, Austin, Texas, 78767-1708, (512) 479-8891. Comments will be accepted for 30 days following the date of publication of this proposal in the *Texas Register*.

The new sections are proposed under the Health and Safety Code, §106.021(j) which provides the center with the authority to adopt rules to implement chapter 106.

The new sections affect the Health and Safety Code, §106.025.

§500.501. Purpose.

(a) Purpose. This subchapter establishes rules for the allocation of grant funds to qualified communities through the Rural Emergency Medical Services (EMS) Scholarship Incentive Program. State grants match funds committed by rural communities to cover training for EMS providers. EMS plays a critical role in ensuring access to health care services in rural areas. The professionals that provide these services and the training they receive correlates directly with the quality of the emergency medical services available in any given area. The goal is to partner with rural communities to ensure that they receive the same level of emergency medical services that their urban counterparts rely on and also to help in the retention of trainees by identifying candidates from within the local community.

(b) Funding. This subchapter describes the criteria and procedures to be used by the Center for Rural Health Initiatives (center) in determining the applicant's eligible for funding and the funding allocation method.

(c) Administration. The center shall allocate funds to eligible applicants based on the procedures specified in this subchapter.

§500.503. Definitions.

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

(1) Applicant–A community that is requesting assistance through the Rural EMS Scholarship Incentive Program.

(2) Candidate–An individual who a community has selected to receive the training eligible through the Rural EMS Scholarship Incentive Program.

(3) Center–The Center for Rural Health Initiatives.

(4) Contracting community–An applicant that is contracted to receive funds through the Rural EMS Scholarship Incentive Program.

(5) Director–Executive Director of the Center for Rural Health Initiatives or his or her designee.

(6) Emergency medical services (EMS)–Services used to respond to an individual's perceived need for immediate medical care and to prevent death or aggravation of physiological or psychological illness or injury.

(7) EMT–An emergency medical technician meeting any of the following training or certification levels:

(A) Emergency medical technician (EMT-Basic)–An individual who is certified by the Texas Department of Health as minimally proficient to perform emergency prehospital or interfacility care that is necessary for basic life support and that includes the control of hemorrhaging and cardiopulmonary resuscitation.

(B) Emergency medical technician-intermediate (EMT-I)–An individual who is certified by the Texas Department of Health as minimally proficient in performing skills required to provide emergency prehospital or interfacility care by initiating

under medical supervision certain procedures, including intravenous therapy and endotracheal or esophageal intubation or both.

(C) Emergency medical technician-paramedic (EMT-P)–An individual who is certified by the Texas Department of Health as minimally proficient to provide emergency prehospital or interfacility care by providing advanced life support that includes initiation under medical supervision of certain procedures, including intravenous therapy, endotracheal or esophageal intubation or both, electrical cardiac defibrillation or cardioversion, and drug therapy.

(8) Executive committee–The Executive Committee of the Center for Rural Health Initiatives.

(9) Rural county–A county that has a population in the most recent decennial United States census of 50,000 or less, or with respect to a county that has a population of more than 50,000 and contains a geographic area that is not delineated as urbanized by the federal census bureau, that part of the county that is not delineated as urbanized.

(10) Training–Costs associated with an EMT training program, including tuition, fees, books, supplies and travel. Training must be for the purpose of upgrading a candidate's EMT-I or EMT-P certification or for a candidate to obtain the level of EMT-Basic.

§500.505. Eligibility Criteria for a Rural EMS Scholarship Incentive Program Applicant.

To be eligible to participate in this program, an applicant must:

(1) be located in a rural county;

(2) exist in perpetuity as a political subdivision of the state or a non-profit entity governed by council members, commissioners, or a board of trustees that:

(A) is responsible to and serves the community in which it is located;

(B) is legally authorized to raise funds and/or accept grants and financial gifts from citizens, scholarship funds, or private foundations;

(C) assures a commitment from the community of at least $2,000 or an amount equal to that granted by the center, whichever is less, in contributions toward EMT training;

(D) assures that applicant contributions will include no federal or state funds; and

(E) assures the availability of an emergency medical services position for a candidate;

(3) apply for state matching funds available through this program; and

(4) contract with a candidate to complete the training program and to provide emergency medical services in the community for at least one year following disbursement of the state funds and to reimburse the center and the community for all funds if the candidate breaches the contract.

§500.507. Candidate Eligibility Criteria.

(a) To qualify for funding from this program for EMT-Basic training, a candidate must:

(1) be at least 18 years of age; and

(2) have a high school diploma or GED certificate.

(b) To qualify for funding from this program for EMT-I or EMT-P training, a candidate must:

(1) hold a current license as an EMT (for EMT-I training) or EMT-I (for EMT-P training) from the State of Texas;

(2) have contracted with the applicant (that has made a financial commitment of at least the minimum contribution level) to provide emergency medical services in the community for at least one year;

(3) have never defaulted on nor currently owe a refund on any state, federal, or local student financial aid;

(4) have authorized a credit check and background check, the results of which are satisfactory to the applicant; and

(5) have never been convicted of a felony.

§500.509. Procedures to Apply for Funds.

(a) Application cycle. The center shall publish an annual notice of availability of funds in the *Texas Register*.

(b) Issuing office. A Request for Application (RFA) shall be issued by the center. Potential applicants may request a copy of the RFA from the center.

(c) Purpose. The RFA shall provide the applicant with information and forms necessary to apply for funding.

(d) Application submission.

(1) The center must receive the application by the due date specified in the RFA.

(2) Applicants must submit an original and two copies of the application to the center.

(3) The application must be on the forms and in the format prescribed by the center.

(4) The center shall return late or incomplete applications with an explanation. Otherwise, all applications shall be considered for funding.

§500.511. Application Requirements.

Applications must contain the following information:

(1) a description of the applicant which at a minimum shall include:

(A) the applicant's full name and address;

(B) the name, title, mailing address, physical address, and telephone number of a contact person;

(C) the applicant's status as a political subdivision of the state or nonprofit entity (including a certified copy of the organization's nonprofit charter, if applicable) and ability to comply with §500.505(2)(B) of this title (relating to Eligibility Criteria for a Rural EMS Scholarship Incentive Program Applicant);

(D) the name of the person responsible for the candidate's progress and employment; and

(E) the name of the person authorized to execute contracts on behalf of the applicant; and

(2) a description of the candidate which at a minimum shall include:

(A) the candidate's full name and address; and

(B) the candidate's qualifications (including education level and/or certification held).

§500.513. Evaluation of Application.

(a) The executive committee delegates to the director the necessary powers, duties and functions to administer this program.

(b) The center shall review each complete application to determine program eligibility, to prioritize community need among applicants, and to make recommendations for funding.

(c) An application which contains false information, shall be denied consideration for the duration of the application period.

(d) The center may renegotiate the amount of matching funds to be awarded to any applicant.

(e) The center may limit award amounts based on the availability of funds.

(f) The director of the center may waive provisions of this subchapter if necessary to address unusual or exceptional applicant or candidate eligibility issues.

§500.515. Contract Award.

(a) After a review of staff recommendations, the director shall announce the applicants selected for funding.

(b) Applicants will be notified in writing of the approval or denial of the application.

(c) Any applicant who is denied funds under this program may file a written request for an administrative review of the denial. The request shall be mailed to the center within ten working days of the postmarked date of the center's letter of denial. Upon receipt of the request, the director shall conduct an administrative review, resulting in a final decision. The center will mail a written notice of the decision either upholding or overruling the denial to the applicant.

(d) Contract awards shall not exceed $2,000 per applicant unless the center has determined that the application demonstrates exceptional financial need.

§500.517. Methodology for Prioritizing Neediest Communities.

The center will prioritize the applicants found eligible for participation in the program to assure that the neediest communities are provided grants. The prioritization process will quantify indicators of need (not listed in any assigned priority order) which may include, but are not limited to, the following:

(1) communities needing basic and intermediate emergency medical services personnel;

(2) highest level of service currently available in the county;

(3) volunteer EMS staffing level;

(4) average EMS call volume by category of county;

(5) designation by the United States Department of Health and Human Services as a medically underserved area (MUA);

(6) communities located in a frontier area as defined by the Federal Census Bureau;

(7) number of hospitals and EMS providers in the county;

(8) distance to the nearest level III, II and I trauma centers;

(9) average EMS transportation distance;

(10) county mortality rate for unintentional injury;

(11) county mortality rate for motor vehicle injury;

(12) county mortality rate for stroke;

(13) county mortality rate for heart disease; and

(14) county population over 64 years of age.

§500.519. Contribution Procedures.

The center may provide up to $2,000 in matching funds per candidate to the neediest communities as determined under §500.517 of this title (relating to Methodology For Prioritizing Neediest Communities).

§500.521. Contract.

(a) The center will execute a written contract with each selected applicant concerning use of the state matching funds allocated under this program. The contract shall provide that:

(1) the applicant has obtained a credit check, background check, verification of education level achieved and verification of any current EMS certification held by the candidate;

(2) the applicant has executed a contract with an eligible candidate containing at least the following provisions:

(A) the candidate shall engage in emergency medical services in the contracting community for at least one year following disbursement of the state funds; and

(B) during the one-year service obligation, the candidate shall not discriminate among patients seeking care based on their ability to pay or whether payment will be made though Medicaid or Medicare.

(b) The contracting community will provide proof of program completion (candidate's EMS certification) upon completion of the candidate's training.

§500.523. Funding Allocation Procedure.

A state warrant for the prescribed disbursement will be released to a contracting community representative following execution of the required contract.

§500.525. Breach of Contract

(a) Binding contract. A contract executed under this subchapter between the center and the contracting community is a binding contract.

(b) A contracting community shall notify the center in writing within thirty days of any change in its status or that of the candidate.

(c) The center may find that the contracting community has breached the contract if they have failed to:

(1) provide the full amount of funding specified in the contract; or

(2) fulfill any other conditions specified in the contract.

(d) If the center finds that the contracting community has breached the contract, the center may require the following:

(1) cancellation of the candidate's service obligation to the contracting community;

(2) reimbursement by the contracting community to the center of state matching funds; and

(3) forfeiture of the opportunity to participate in the program in the future.

(e) If the center finds that a candidate has breached his or her contract with a contracting community, the candidate will not be eligible to participate in the program in the future.

§500.527. Reporting and Monitoring.

(a) The contracting community shall provide semi-annual reports reflecting the candidate's total training costs to date and progress during and after training.

(b) The candidate shall provide the center with their employment location, one year after their commitment to the community has been completed.

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

Filed with the Office of the Secretary of State, on March 24, 2000.

TRD-200002117
Robt. J. "Sam" Tessen
Executive Director
Center for Rural Health Incentives
Earliest possible date of adoption: May 7, 2000
For further information, please call: (512) 479-8891

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TITLE 28. INSURANCE

Part 1. TEXAS DEPARTMENT OF INSURANCE

Chapter 5. PROPERTY AND CASUALTY INSURANCE

Subchapter F. INLAND MARINE INSURANCE

28 TAC §5.5002

The Texas Department of Insurance proposes an amendment to 28 TAC §5.5002 relating to the definition of inland marine insurance. The amendment deletes language that currently excludes automobiles or motor vehicles from coverage as inland marine floor plan policies. The amendment also adds language which is necessary to clarify the intent of this paragraph as a result of the deletion. A floor plan policy is a defined classification of risk that may be insured as inland marine insurance. The regulatory status of floor plan policies is designated in the rule as "filed" which indicates that the rules, rates, and forms must be filed with the department and approved by the commissioner. Traditionally, the Texas definition of inland marine has excluded automobiles and/or motor vehicles from being covered as inland marine floor plan policies. The amendment is necessary to allow insurers to provide coverage for dealers' automobile inventories as inland marine floor plan policies, provided that the inventories otherwise meet the eligibility requirements. Typically, dealers' automobile inventories meet such requirements. Pursuant to the amendment, insurers in Texas will now have the option of providing automobile dealers coverage for their inventories as either inland marine insurance or as motor vehicle insurance.

Currently, insurers in Texas can only provide coverage for dealers' automobile inventories as motor vehicle insurance under a single contract or as a part of a commercial multi-peril package policy. Dealers' automobile inventories have historically been regulated under motor vehicle insurance, subject to rates, rules and forms prescribed for motor vehicles. For monoline automobile policies, coverage for dealers' automobile inventories is filed and approved for use on an individual risk basis.

Since the 1992 adoption of 28 TAC §5.9101, Multi-Peril Polices, insurers have also been allowed to include coverage for dealers' automobile inventories in their commercial multi-peril package policies. Insurers may include coverage for dealers' automobile inventories in their commercial multi-peril package policies but not as a type of inland marine insurance. The policy forms and endorsements for commercial multi-peril package policies are subject to prior approval, and the rates are file and use.

Motors Insurance Corporation (MIC) filed an original and two supplemental petitions with the Chief Clerk, requesting that the department amend subparagraph (K) of §5.5002 to remove the language which excludes automobiles or motor vehicles from being covered as floor plan policies under inland marine insurance. MIC is particularly interested in writing dealers' automobile inventories as inland marine floor plan policies. MIC wants to use data it has collected to calculate premiums and rates individually based on the experience of specific automobile dealership locations. In order to use specific dealership experience at this time, MIC must submit each risk as an individual risk submission. MIC argues that the rating laws for inland marine insurance are intended for policies such as dealers' automobile inventories. MIC also requests that automobile floor plan coverage be allowed to be written as either automobile insurance, subject to the Texas Automobile Rules and Rating Manual, or as inland marine insurance.

The department believes that dealers' automobile inventories should be allowed to be regulated as inland marine insurance, while also continuing to allow dealers' automobile inventories to be covered as motor vehicle insurance. Insurers, including county mutuals, that currently provide coverage for dealers' automobile inventories as motor vehicle insurance can continue to do so, while other insurers can choose to provide coverage as inland marine floor plan policies. Pursuant to the amendment, insurers will have more options for providing coverage for dealers' automobile inventories.

David Durden, associate commissioner for the property and casualty division of the Texas Department of Insurance, has determined that for each of the first five years the proposed amendment will be in effect, there will be no fiscal impact to state and local units of government as a result of the enforcement or administration of the section. Mr. Durden also has determined there will be no other implications for the local economy and no impact on local employment as a result of administering the proposed amendment.

Mr. Durden 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 or administering the proposed amendment will be greater flexibility for insurers when providing coverage to dealers or financial institutions for their automobile inventories. The amendment will lead to the more efficient processing of policies by insurers choosing to take advantage of this new coverage option and allow insurers to react more quickly to market conditions. This will enable consumers seeking this coverage to obtain the desired coverage in a more timely and efficient manner. For insurers who choose to write this coverage as an inland marine floor plan, rates, rules, and forms are filed once as opposed to annually. Insurers providing this coverage no longer would be required to file individual risk submissions with the department nor incur the cost associated with such filings. Dealers would benefit from a rate that reflects their individual experience. The proposed amendment will result in more efficiency in the department's review process. Insurers will have a new coverage option to offer whether they are providing such coverage as a single policy or as a part of a commercial multi-peril package policy.

There is no anticipated adverse economic effect on large, small or micro insurers who are authorized to write inland marine insurance and that choose to provide coverage pursuant to this amendment. Any cost incurred as a result of this amendment is purely voluntary. It is anticipated that there would be a benefit to both large and small insurers with the addition of automobile inventories as a class of inland marine insurance since the cost of doing business in Texas may be reduced. Insurers not previously authorized to write inland marine insurance will incur some costs only if they choose to cover dealers' automobile inventories as inland marine floor plan policies. These insurers may incur costs associated with changing their articles of incorporation or drafting new forms; and they will incur the cost of having their certificates of authority changed by the department. The cost of changing certificates of authority with the department is $50.00. Any costs incurred may be offset by the fact that the insurers will not have to make individual risk submissions to the department.

To be considered, all comments must be received no later than 5:00 p.m. on May 8, 2000 by Lynda H. Nesenholtz, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment must be submitted simultaneously to David Durden, Associate Commissioner, Property and Casualty Division, Mail Code 104-5A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Any requests for a public hearing should be submitted separately to the Office of the Chief Clerk.

The amendment is proposed pursuant to the Insurance Code Articles 5.02, 5.53, 5.98, and §36.001. Article 5.02 authorizes the commissioner to determine if motor vehicle insurance is also subject to other insurance rating laws. Article 5.53 authorizes the commissioner to adopt definitions and classes of inland marine insurance. Article 5.98 authorizes the commissioner to adopt reasonable rules and rates that are appropriate to accomplish the purposes of Chapter 5. Section 36.001 provides that the Commissioner of Insurance may adopt rules to execute the duties and functions of the Texas Department of Insurance only as authorized by statute.

The following articles are affected by this proposal: Insurance Code Article 5.53

§5.5002. Texas Definition of Inland Marine Insurance.

Inland marine insurance is defined and classified as follows.

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

(5) Other inland marine risks.

(A)-(J) (No change.)

(K) Floor plan policies (filed). Covering property for sale while in possession of dealers under a floor plan or any similar plan under which the dealer borrows money from a bank or lending institution with which to pay the manufacturer, provided:

(i) such merchandise is specifically identifiable as encumbered to the bank or lending institution;

(ii) the dealer's right to sell or otherwise dispose of such merchandise is conditioned upon its being released from encumbrance by the bank or lending institution; and

(iii) that such policies cover the merchandise in transit and do not extend beyond the termination of the dealer's interest and shall not cover [~~provided such policies shall not cover automobiles or motor vehicles;~~] merchandise for which the dealer's collateral is the stock or inventory as distinguished from merchandise specifically identifiable as encumbered to the lending institution.

(L)-(PP) (No change.)

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

Filed with the Office of the Secretary of State, on March 27, 2000.

TRD-200002205
Lynda Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: May 7, 2000
For further information, please call: (512) 463-6327

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Chapter 9. TITLE INSURANCE

Subchapter A. BASIC MANUAL OF RULES, RATES, AND FORMS FOR THE WRITING OF TITLE INSURANCE IN THE STATE OF TEXAS

28 TAC §9.1

The Texas Department of Insurance proposes amendments to Procedural Rule P-45, Texas Reverse Mortgage Endorsement (T-43) and the Texas Reverse Mortgage Endorsement (Form T-43) regarding reverse mortgages that are contained in the Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas (the Basic Manual). The department proposes to amend §9.1 which concerns the adoption by reference of certain amendments to the Basic Manual. The 76th Legislature adopted Senate Joint Resolution 12 proposing a constitutional amendment to amend the constitutional requirements for reverse mortgages on Texas homestead property. By voter approval on November 2, 1999, Section 50, Article XVI, Texas Constitution was amended to change and clarify the requirements regarding reverse mortgages. The department has received a petition from Title Underwriters of Texas, Inc. (TUT) proposing to amend Form T-43 and Procedural Rule P-45 in the Basic Manual to facilitate the issuing of reverse mortgages on homestead property. The proposed amended procedural rule and form will enable title insurance companies to issue reverse mortgages on Texas homestead property. These mortgages heretofore have not been issued because of previous ambiguities and inconsistencies in the law. Prior to November 2, 1999, Texas law had required that one of the applying spouses be 55 years or older, which was inconsistent with the requirements of the Federal National Mortgage Association (Fannie Mae) and the Department of Housing and Urban Development (HUD) that the qualifying age be 62 years. As a result of the amendment to the constitutional requirements, Fannie Mae is more likely to purchase reverse mortgage loans; therefore, it is necessary that title insurance coverage be available that is consistent with the constitutional amendment. The proposed changes to Form T-43 make the form more consistent with the new constitutional amendment and clarify the types of title insurance coverage for those aspects of reverse mortgages which can be underwritten by title companies in a form acceptable to Fannie Mae. These coverages provide insurance against invalidity of the lien of the

insured mortgage because of: (1) failure to comply with the requirement that one of the spouses (if married, or the owner if not) be 62 years or older; (2) failure of the owner to execute at closing a document stating that the owner received counseling regarding the advisability and availability of reverse mortgages and other financial alternatives; or (3) failure of the owner to receive a disclosure at closing relating to the circumstances under which the lender can require payment of the loan (for example, death of borrowers, sale of home, cessation of occupancy of home for 12 months without approval). The proposed revisions to the Procedural Rule P-45, Texas Reverse Mortgage Endorsement (T-43), retain the current wording of the procedural rule and add the general requirements and limitations for the issuance of coverage in insuring a lien that secures an extension of credit made pursuant to subsection (a)(7) of Section 50, Article XVI, Texas Constitution, regarding a reverse mortgage. The rule also provides that the title insurance company may delete certain of the provisions in the endorsement if the company does not consider the additional risk insurable, and it must delete certain provisions of the endorsement in instances such as if the insured mortgage and promissory note are not executed at the office of a title company.

The department has filed a copy of the proposed amended procedural rule and form with the Secretary of State's Texas Register section. Persons desiring copies of the proposed amended procedural rule and form can obtain them from the Office of the Chief Clerk, Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas, 78714-9104. To request copies, please contact Sylvia Gutierrez at 512/463-6327.

Robert R. Carter, Jr., deputy commissioner for the title division, has determined that for each year of the first five years that the proposal will be in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the sections. Mr. Carter has also determined that there will be no adverse effect on local employment or the local economy.

Mr. Carter has also determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of administering and enforcing the amendments will be to ensure the appropriate endorsement language is utilized in title insurance policies covering reverse mortgage loans. To the extent that reverse mortgage loans will be more available in Texas, title insurance companies will be able to offer coverages to the public that will facilitate the closing of this type of loan. There are no anticipated costs to those title insurance companies required to comply with the proposal since the anticipated premium for a mortgagee policy of title insurance should fully compensate for the costs of producing the revised endorsement. The sale of such policies with the endorsement is voluntary and imposes no additional regulatory costs on companies that decide to participate in the market. Furthermore, the department anticipates that the premium schedule will fully compensate both small, large, and micro-businesses, and, therefore, expects no differential impact between small, large, and micro-businesses that decide to participate in such sales. The cost per hour of labor would not vary between small, large, and micro-businesses. It is also neither legal nor feasible to exempt small or micro-businesses or to waive compliance with the proposal considering the purpose of the constitutional amendment to allow reverse mortgages on homestead property.

To be considered, all comments on the proposal must be submitted in writing no later than 5:00 p.m. on May 8, 2000, to Lynda H. Nesenholtz, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments must be submitted simultaneously to Robert R. Carter, Jr., Deputy Commissioner, Title Division, Mail Code 106-2T, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Request for a public hearing should be submitted separately to the Chief Clerk's office.

This amended section is proposed pursuant to the Insurance Code, Articles 9.07, 9.21, and §36.001 and Section 50, Article XVI, Texas Constitution. Article 9.07 authorizes and requires the commissioner to promulgate or approve rules and policy forms of title insurance and otherwise to provide for the regulation of the business of title insurance. Article 9.21 authorizes the commissioner to promulgate and enforce rules prescribing underwriting standards and practices, and to promulgate and enforce all other rules necessary to accomplish the purposes of chapter 9, concerning regulation of title insurance. Section 36.001 authorizes the Commissioner of Insurance to adopt rules for the conduct and execution of the duties and functions of the Texas Department of Insurance only as authorized by statute. By voter approval on November 2, 1999, Section 50, Article XVI, Texas Constitution was amended to change and clarify the requirements regarding reverse mortgages.

The following statutes are affected by this proposal: Insurance Code Articles 9.07 and 9.21

§9.1. Basic Manual of Rules, Rates, and Forms for the Writing of Title Insurance in the State of Texas.

The Texas Department of Insurance adopts by reference the Basic Manual of Rules, Rates, and Forms for the Writing of Title Insurance in the State of Texas as amended effective June 12, 2000 [~~November 1, 1999~~]. The document is available from and on file at the Texas Department of Insurance, Title Division, Mail Code 106-2T, 333 Guadalupe Street, Austin, Texas 78701-1998.

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

Filed with the Office of the Secretary of State, on March 22, 2000.

TRD-200002092
Lynda Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: May 7, 2000
For further information, please call: (512) 463-6327

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TITLE 30. ENVIRONMENTAL QUALITY

Part 1. TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

Chapter 101. GENERAL AIR QUALITY RULES

The Texas Natural Resource Conservation Commission (commission) proposes amendments to §101.27, Emissions Fees, and §101.333, Allocation of Allowances. These sections are

also proposed as a revision to the State Implementation Plan (SIP).

BACKGROUND AND SUMMARY OF THE FACTUAL BASE FOR THE PROPOSED RULES

The 76th Legislature passed Senate Bill (SB) 766 in 1999. In general, SB 766 recategorized the new source review authorizations under the Texas Clean Air Act (TCAA) and created the new program for the voluntary permitting of grandfathered facilities. Prior to the revisions by SB 766, the TCAA authorized the commission to issue permits for the construction or modification of facilities that will emit air contaminants; standard permits adopted by rule; and exemptions from permitting, also adopted by rule. SB 766 modified this structure by authorizing the commission to issue standard permits using a process that does not require each standard permit to be in a rule. SB 766 provided a new name, permits by rule, for authorizations of certain types of facilities which would not make a significant contribution of air contaminants to the atmosphere. Exemptions from permitting now authorize only changes at insignificant facilities. Finally, the commission is now authorized to develop criteria for facilities that emit a de minimis amount of air contaminants that do not need preconstruction authorization. Within the category of permits, SB 766 created two new permitting options: the Voluntary Emission Reduction Permit (VERP) program for permitting of grandfathered facilities, and the multiple plant permit (MPP). SB 766 also amended TCAA, §382.0621(d) to require increasing emissions fees for the largest grandfathered facilities which do not have a permit application pending on or after September 1, 2001.

The commission is implementing this legislation in two phases. The first phase of the implementation of SB 766 was adopted by the commission on December 16, 1999. Included in the first phase were the VERP program and the new standard permit issuance procedures.

This proposal implements elements of SB 766 relating to emissions fees, adds the ability for the commission to accept fee payments via electronic funds transfer, and makes administrative revisions. Other elements of SB 766, including MPPs, de minimis criteria, exemptions from permitting, and permits by rule are addressed in concurrent proposals for new and amended sections in 30 TAC Chapter 106 and Chapter 116. The authority for emissions fees is in TCAA, §382.0621, concerning Operating Permit Fee.

SECTION BY SECTION DISCUSSION

The proposed amendments to §101.27 would insert a new §101.27(c)(2) to implement the emissions fees required by TCAA, §382.0621(d). For grandfathered facilities with emissions in excess of 4,000 tons per year (tpy) which do not have a permit application pending on or after September 1, 2001, all emissions from the facility, including those emissions in excess of 4,000 tpy would be used to calculate the emissions fees required by §101.27. Currently, §101.27 only requires emissions fees to be calculated using a maximum of 4,000 tpy of each regulated air pollutant. Under the proposed amendment, for the first 4,000 tons, per pollutant, the emissions fee would be $26 per ton. Emissions fees for emissions in excess of 4,000 tpy would be $78 per ton for fiscal year 2002, and would triple each fiscal year thereafter. Thus, for fiscal year 2003, the fee for emissions in excess of 4,000 tpy per regulated air pollutant would be $234 per ton. The amended section also allows for fee payments to be made by electronic funds transfer, updates the emissions fee rate table to include Fiscal Years 1998-2000, would reflect the recent reorganization of the commission's permitting offices, corrects a reference to 40 Code of Federal Regulations Part 70, and would revise citations to reflect insertion of a new §101.27(c)(2).

Section 101.333 would be amended to correct an inadvertent omission of the term "NO_x."

FISCAL NOTE

Bob Orozco, Strategic Planning and Appropriations Section, has determined that for the first five-year period the proposed amendment is in effect there will be no significant fiscal implications for the commission and other units of state and local government as a result of administration or enforcement of the proposed amendment. The proposed amendment to Chapter 101, General Air Quality Rules, would implement certain provisions of SB 766, 76th Legislature, 1999, relating to the issuance of certain permits for the emission of air contaminants. The first phase of the implementation of SB 766 was adopted by the commission on December 16, 1999. Included in the first phase were the VERP program, except for the requirement for increasing emissions fees, and the new standard permit issuance procedures. The proposed amendment is the second phase of the commission's implementation of SB 766. Other elements of SB 766 are addressed in concurrent proposals for new and amended sections in Chapters 106 and 116.

The proposed amendment would implement elements of SB 766 relating to emissions fees, add the ability for the commission to accept fee payments via electronic funds transfer, and make administrative revisions to this chapter. The proposed amendment would affect major source grandfathered facilities with over 4,000 tons of emissions per year. A survey of grandfathered facilities in Texas indicated that 14 facilities at seven sites have emissions over 4,000 tons per year. Currently, emissions fees for each regulated pollutant are capped at 4,000 tons per year at $26 per ton or $104,000 per year per pollutant. SB 766 specifies that the commission shall impose a fee on grandfathered facilities that do not have a permit application pending on or after September 1, 2001 for all emissions, including emissions in excess of 4,000 tons; and triple the amount of the fee imposed for emissions in excess of 4,000 tons each fiscal year. In the proposed amendment, grandfathered facilities with emissions in excess of 4,000 tons per year that do not have a permit application pending on or after September 1, 2001 would be assessed emissions fees of $26 per ton for the first 4,000 tons of emissions of a pollutant, $78 per ton for each ton over 4,000 tons in fiscal year 2002, $234 per ton in 2003, and $702 per ton in 2004. The fee for emissions in excess of 4,000 tons of a pollutant would continue to triple each fiscal year thereafter. For example, with the proposed amendment, the fiscal impact on a facility with emissions of one pollutant totaling 6,450 tons per year would be $295,100 in 2002, $677,200 in 2003, and $1.8 million in 2004. It is anticipated that most or all of the facilities that emit over 4,000 tons per year will apply for a VERP or another permit because of the increasing emissions fees.

PUBLIC BENEFIT

Mr. Orozco has also determined that for each year of the first five years the proposed amendment is in effect, the public benefit anticipated from enforcement of and compliance with the proposed amendment will be a potential reduction of air contaminants by providing an increased incentive for owners

or operators of grandfathered facilities to apply for a permit by September 1, 2001.

The proposed amendment would affect major source grandfathered facilities with over 4,000 tons of emissions per year. A survey of grandfathered facilities in Texas indicated that 14 facilities at seven sites have emissions over 4,000 tons per year. Currently, emissions fees for each regulated pollutant are capped at 4,000 tons per year at $26 per ton or $104,000 per year per pollutant. SB 766 specifies that the commission shall impose a fee on grandfathered facilities that do not have a permit application pending on or after September 1, 2001 for all emissions, including emissions in excess of 4,000 tons; and triple the amount of the fee imposed for emissions in excess of 4,000 tons each fiscal year. In the proposed amendment, grandfathered facilities with emissions in excess of 4,000 tons per year that do not have a permit application pending on or after September 1, 2001 would be assessed emissions fees of $26 per ton for the first 4,000 tons of emissions of a pollutant, $78 per ton for each ton over 4,000 tons in fiscal year 2002, $234 per ton in 2003, and $702 per ton in 2004. The fee for emissions in excess of 4,000 tons of a pollutant would continue to triple each fiscal year thereafter. For example, with the proposed amendment, the fiscal impact on a facility with emissions of one pollutant totaling 6,450 tons per year would be $295,100 in 2002, $677,200 in 2003, and $1.8 million in 2004. It is anticipated that most or all of the facilities that emit over 4,000 tons per year will apply for a VERP or another permit because of the increasing emissions fees.

SMALL AND MICRO-BUSINESS ANALYSES

No significant adverse effects are anticipated to small or micro-businesses as a result of implementing the proposed amendment to Chapter 101 because there are no known small or micro-businesses in Texas that are considered major sources or that emit in excess of 4,000 tons of a pollutant per year.

Therefore, there are no known small or micro-businesses in Texas that will be affected by the proposed amendment to this chapter.

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 does not meet the definition of a "major environmental rule" as defined in that statute. "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendment is intended to protect the environment and reduce risks to human health from environmental exposure. The amendment requires emissions fees for grandfathered facilities that do not have a permit application pending on or after September 1, 2001, on all emissions, including emissions in excess of 4,000 tons; and triple the amount of the fee imposed for emissions in excess of 4,000 tons each fiscal year. These increasing fees could adversely affect 14 facilities at seven sites in Texas which emit over 4,000 tons of emissions if those facilities do not have a permit application pending on or after September 1, 2001. However, implementation of the statutorily mandated fees will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Section 2001.0225(a) only applies to a major environmental rule, the result of which is to: 1. exceed a standard set by federal law, unless the rule is specifically required by state law; 2. exceed an express requirement of state law, unless the rule is specifically required by federal law; 3. exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4. adopt a rule solely under the general powers of the agency instead of under a specific state law.

This rulemaking does not meet any of these four applicability requirements of §2001.0225(a). Specifically, the proposed amendment does not exceed a standard set by state or federal law, but complies with provisions in SB 766 and the Texas Health and Safety Code, concerning Operating Permit Fees. The proposed amendment does not exceed a requirement of a delegation agreement and was not developed solely under the general powers of the agency, but was specifically developed to implement the provisions of the Texas Health and Safety Code as amended by SB 766. The commission invites public comment on the draft regulatory impact analysis.

TAKINGS IMPACT ANALYSIS

The commission has prepared a takings impact assessment for the proposed rule under Texas Government Code, §2007.043. The following is a summary of that assessment. The proposed rule would increase emissions fees on emissions in excess of 4,000 tpy for grandfathered facilities that do not have a permit application pending on or after September 1, 2001. This proposed action does not restrict or limit an owner's right to their property that would otherwise exist in the absence of governmental action and therefore does not constitute a takings. This action meets an exception to §2007.043, because it is implementing the specific requirement of TCAA, §382.0621(d).

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has determined that this rulemaking relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 et seq.), and the commission's rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with 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, commission 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 with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council. The proposed rule is intended to provide incentive for the reduction of emissions at grandfathered facilities, and the commission has determined that the rule is consistent with the applicable CMP goal expressed in 31 TAC §501.12(1) of protecting and preserving the quality and values of coastal natural resource areas, and the policy in 31 TAC §501.14(q), which requires that the commission protect air quality in coastal areas. This action does not authorize any new emissions. This action is consistent with Title 40 Code of Federal Regulations because it does not authorize an emission rate in excess of that specified by federal requirements. Interested persons may submit comments during

the public comment period on the consistency of the proposed rule with the CMP goals and policies.

PUBLIC HEARING

The commission will hold a public hearing on this proposal in Austin at 10:00 a.m. on May 4, 2000 in Room 201A of Texas Natural Resource Conservation Commission Building B, located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, 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.

SUBMITTAL OF COMMENTS

Comments may be submitted to Lisa Martin, MC 205, Office of Environmental Policy, Analysis, and Assessment, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Log Number 1999-029B-116-AI. Comments must be received by 5:00 p.m., May 8, 2000. For further information, please contact Beecher Cameron, Policy and Regulations Division, (512) 239-1495.

Subchapter A. GENERAL RULES

30 TAC §101.27

STATUTORY AUTHORITY

The amendment is proposed under TCAA, §382.0621, which authorizes the commission to triple emissions fees for grandfathered facilities over 4,000 tpy which do not have a permit application pending on or after September 1, 2001. The amendment is also proposed under TCAA, §382.011, which authorizes the commission to administer the requirements of the TCAA; §382.012, which provides the commission with the authority to develop a comprehensive plan for the state's air; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; and §382.0622, which defines Clean Air Act fees and their use.

The proposed amendment implements TCAA, §382.0621, concerning Emission Fees; §382.011, concerning General Powers and Duties; §382.012, concerning State Air Control Plan; and §382.017, concerning Rules.

§101.27. Emissions Fees.

(a) Applicability. The owner or operator of each account to which this rule applies shall remit to the commission an emissions fee each fiscal year. A fiscal year is defined as the period from September 1 through August 31. A fiscal year, having the same number as the next calendar year, begins on the September 1 prior to that calendar year. An account subject to both an emissions fee and an inspection fee, under §101.24 of this title (relating to Inspection Fees), is required to pay only the greater of the two fees. Each account will be assessed a separate emissions fee. Provisions of this section apply to all accounts, including accounts which have not been assigned specific commission account numbers. The owner or operator of an account subject to an emissions fee requirement is responsible for contacting the appropriate commission regional office to obtain an account number. The commission will not initiate the combination or separation of accounts solely for fee assessment purposes. If an account is operated at any time during the fiscal year for which the fee is assessed, a full emissions fee is due. If the commission is notified in writing that the plant is not and will not be in operation during that fiscal year, a fee will not be due. All regulated air pollutants, as defined in subsection (c)(4) [~~(3)~~] of this section, including, but not limited to, those emissions from point and fugitive sources during normal operations with the exception of (for applicability purposes only) hydrogen, oxygen, carbon dioxide, water, nitrogen, methane, and ethane, are used to determine applicability of this section. In accordance with rules promulgated [~~proposed~~] by EPA [~~the United States Environmental Protection Agency (EPA)~~] at 40 Code of Federal Regulations (CFR) 70, concerning the use of fugitive emissions in major source determinations, fugitive emissions shall be considered toward applicability of this section only for those source categories listed at 40 CFR 51.166(b)(1)(iii). For purposes of this section, an affected account shall have met one or more of the following conditions:

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

(b) Payment. Fees shall be remitted by check , electronic funds transfer, or money order made payable to the Texas Natural Resource Conservation Commission (TNRCC) [~~TNRCC~~] and sent to the TNRCC address printed on the fee return form. A completed fee return form shall accompany fees remitted. The fee return form shall include, at least, the company name, mailing address, site name, air emissions inventory [~~OAQ~~] account number, Standard Industrial Classification (SIC) category, the allowable levels and/or actual emissions of all regulated air pollutants at the account for the reporting period, and the name and telephone number of the person to contact in case questions arise regarding the fee payment.

(c) Basis for fees.

(1) The emissions fee shall be based on allowable levels and/or actual emissions at the account during the last full calendar year preceding the beginning of the fiscal year for which the fee is assessed. For purposes of this section, the term "allowable levels" are those limits as specified in an enforceable document such as a permit or Commission Order which are in effect on the date the fee is due. The fee applies to the tonnage of regulated pollutants at the account, including those emissions from point and fugitive sources during normal operations. Although certain fugitive emissions are excluded for applicability determination purposes under subsection (a) of this section, all fugitive emissions must be considered for fee calculations after applicability of the fee has been established. A maximum of 4,000 tons of each regulated pollutant will be used for fee calculations except as provided in paragraph (2) of this subsection. The fee for each fiscal year is set at the following rates.
Figure: 30 TAC §101.27(c)(1)

(2) On and after September 1, 2001, a grandfathered facility, as defined in §116.10(6) of this title (relating to General Definitions) that does not have a permit application pending under Chapter 116 of this title (relating to Control of Air Pollution by Permits For New Construction or Modification) shall use all emissions, including emissions in excess of 4,000 tons per pollutant, for fee calculations. For the first 4,000 tons per pollutant, the rate in paragraph (1) of this subsection shall apply. For emissions in excess of 4,000 tons, the rate will be $78 per ton for fiscal year 2002 and will triple, each fiscal year, thereafter.

(3) [~~(2)~~] The emissions tonnage for the account for fee calculation purposes will be the sum of those allowable levels and/or actual emissions for individual emission points or process units at the account rounded up to the nearest whole number, as follows.

(A) Where there is an enforceable document, such as a permit or Commission Order, establishing allowable levels, actual emissions may be used only if a completed Emissions

Inventory Questionnaire for the account is submitted with the fee payment. For stacks or vents, the inventory must include verifiable data based on continuous emission monitor measurements, other continuously monitored values, such as fuel usage and fuel analysis, or stack testing performed during normal operations using EPA approved methods and quality-assured by the executive director [~~OAQ~~]. All measurements, monitored values, or testing must have been performed during the basis year as defined in subsection (c)(1) of this section or if not performed during the basis year, must be representative of the basis year as defined in subsection (c)(1) of this section. Actual emission rates may be based upon calculations for fugitive sources, flares, and storage tanks. Actual production, throughput, and measurement records must be submitted, along with complete documentation of calculation methods. Thorough justification is required for all assumptions made and factors used in such calculations. If the actual emissions rate submitted for fee purposes is less than 60% of the allowable emission rate, an explanation of the discrepancy must be submitted. Where inadequate or incomplete documentation is submitted, the executive director may direct that the fee be based on allowable levels. Where a complete and verifiable inventory is not submitted, allowable levels shall be used.

(B) Where there is not an enforceable document, such as a permit or a Commission Order, establishing allowable levels actual emissions shall be used. Actual production, throughput, or measurement records must be submitted along with complete documentation of calculation methods. Thorough justification is required for all assumptions made and factors used in such calculations.

(4) [~~(3)~~] For purposes of this section, the term "regulated pollutant" shall include any VOC [~~volatile organic compound~~], any pollutant subject to the FCAA, §111, any pollutant listed as a hazardous air pollutant under the FCAA, §112, each pollutant for which a national primary ambient air quality standard has been promulgated (including carbon monoxide), and any other air pollutant subject to requirements under commission rules, regulations, permits, orders of the commission, or court orders. The term "normal operations" shall mean all operations other than those documented under §101.6 of this title (relating to Upset Reporting and Recordkeeping Requirements) or §101.7 of this title (relating to Maintenance, Start-up and Shutdown Reporting, Recordkeeping, and Operational Requirements).

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

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

Filed with the Office of the Secretary of State, on March 24, 2000.

TRD-200002118
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: August 2, 2000
For further information, please call: (512) 239-1966

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Subchapter H. EMISSIONS BANKING AND TRADING

Division 2. EMISSIONS BANKING AND TRADING OF ALLOWANCES

30 TAC §101.333

STATUTORY AUTHORITY

The amendment is proposed under Texas Utilities Code (TUC), §39.264, which authorizes the commission to require the permitting of grandfather electric generating facilities and issue allowances to meet those permit emission restrictions; TCAA, §382.011, which authorizes the commission to administer the requirements of the TCAA; §382.012, which provides the commission with the authority to develop a comprehensive plan for the state's air; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; and §382.0622, which defines Clean Air Act fees and their use.

The proposed amendment implements TUC, §39.264, concerning emission reductions of "Grandfathered Facilities"; TCAA, §382.011, concerning General Powers and Duties; §382.012, concerning State Air Control Plan; and §382.017, concerning Rules.

§101.333. Allocation of Allowances.

Allowances will be allocated according to the requirements of this section.

(1) Except as provided in paragraphs (2) and (3) of this section, allowances will be calculated for grandfathered electric generating facilities (EGF) using the following equation:
Figure: 30 TAC §101.333(1)

(A) In the East Texas Region:

(i) 0.14 pound nitrogen oxides (NO_x) per MMBtu; and

(ii) 1.38 pounds sulfur dioxide (SO_2) per MMBtu only for coal-fired grandfathered EGFs.

(B) In the West Texas and El Paso Regions, 0.195 pounds NO_x [~~pound~~] per MMBtu.

(2)-(7) (No change.)

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

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Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
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For further information, please call: (512) 239-1966

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Chapter 106. PERMITS BY RULE

The Texas Natural Resource Conservation Commission (commission) proposes amendments to Chapter 106, Subchapter A, §§106.1, 106.2, 106.4, 106.6, and 106.13, General Requirements; Subchapter C, §§106.101 - 106.103, Domestic and Comfort Heating and Cooling; Subchapter D, §§106.121 - 106.124, Analysis and Testing; Subchapter E, §§106.141 - 106.150, Aggregate and Pavement; Subchapter F, §§106.161 - 106.163, Animal Confinement; Subchapter G, §§106.181 - 106.183, Combustion; Subchapter H, §§106.201

- 106.203, Concrete Batch Plants; Subchapter I, §§106.221, §106.223-106.229, and 106.231, Manufacturing; Subchapter J, §§106.241 - 106.245, Food Preparation and Processing; Subchapter K, §§106.261 - 106.266, General; Subchapter L, §§106.281 - 106.283, 106.291, 106.301, and 106.302, Feed, Fiber, and Fertilizer; Subchapter M, §§106.311 - 106.322, Metallurgy; Subchapter N, §§106.331- 106.333, Mixers, Blenders, and Packaging; Subchapter O, §§106.351 - 106.355, Oil and Gas; Subchapter P, §§106.371 - 106.376, Plant Operations; Subchapter Q, §§106.391 - 106.396, Plastics and Rubber; Subchapter R, §§106.411 - 106.419, Service Industries; Subchapter S, §§106.431 - 106.436, Surface Coating; Subchapter T, §§106.451 - 106.454, Surface Preparation; Subchapter U, §§106.471 - 106.478, Tanks, Storage, and Loading; Subchapter V, §§106.491 - 106.496, Thermal Control Devices; Subchapter W, §106.511, and §106.512, Turbines and Engines; and Subchapter X, §§106.531 - 106.534, Waste Processes and Remediation.

BACKGROUND AND SUMMARY OF THE FACTUAL BASE FOR THE PROPOSED RULES

The 76th Legislature passed Senate Bill (SB) 766 in 1999. In general, SB 766 recategorized the new source review authorizations under the Texas Clean Air Act (TCAA) and created the new program for the voluntary permitting of grandfathered facilities. Prior to the revisions by SB 766, the TCAA authorized the commission to issue permits for the construction or modification of facilities that will emit air contaminants; standard permits adopted by rule; and exemptions from permitting, also adopted by rule. SB 766 modified this structure by authorizing the commission to issue standard permits using a process that does not require each standard permit to be in a rule. SB 766 provided a new name, permits by rule, for authorization of certain types of facilities which would not make a significant contribution of air contaminants to the atmosphere. Exemptions from permitting now authorize only changes at insignificant facilities. Finally, the commission is now authorized to develop criteria for facilities that emit a de minimis amount of air contaminants that do not need preconstruction authorization. Within the category of permits, SB 766 created two new permitting options: the Voluntary Emission Reduction Permit (VERP) program for permitting of grandfathered facilities, and the multiple plant permit. SB 766 also amended TCAA, §382.0621(d) to require increasing emission fees for the largest grandfathered facilities which do not have a permit application pending on or after September 1, 2001.

The commission is implementing this legislation in two phases. The first phase of the implementation of SB 766 was adopted by the commission on December 16, 1999. Included in the first phase were the VERP program and the new standard permit issuance procedures. This proposal implements the elements of SB 766 relating to exemptions from permitting and permits by rule. Other elements of SB 766, including emissions fees, multiple plant permits, and de minimis criteria, as well as additional elements relating to exemptions from permitting and permits by rule, are being addressed in concurrent proposals for new and amended sections in 30 TAC Chapter 101 and Chapter 116.

Prior to passage of SB 766, under TCAA, §382.057, the commission had the authority to exempt, from permitting requirements, changes within any facility and certain types of facilities that would not make a significant contribution of air contaminants to the atmosphere. These exemptions from permitting are currently contained in Chapter 106, and are also considered to be permits by rule, with many containing emission control requirements or operational restrictions to ensure insignificance. In order to remove the appearance that these insignificant facilities were exempt from environmental regulation in addition to being exempt from permitting, the new TCAA, §382.05196 gives the commission authority to adopt permits by rule for certain types of facilities that will not make a significant contribution of air contaminants to the atmosphere if all of the conditions of an applicable permit by rule are observed. Permits by rule may be used to authorize new construction and/or modifications or changes at the types of facilities listed in Subchapters C-X of this chapter.

The authority for exemptions from permitting is in TCAA, §382.057, concerning Exemption. The authority for permits by rule is in TCAA, §382.051, concerning Permitting Authority of the Commission; Rules; and in TCAA, §382.05196, concerning Permits by Rule.

SECTION BY SECTION DISCUSSION

The proposed new title for Chapter 106 is "Permits by Rule."

The proposed amendments to Subchapter A, concerning General Requirements, clarify that the general requirements apply to permits by rule. Section 106.13 would be amended to clarify that the authorizations formerly known as standard exemptions and exemptions from permitting would be referred to as permits by rule in commission rules, though the conditions of their use would not change.

The proposed amendments to Subchapters C-X revise these sections to delete the word "exempt" and insert the term "permit by rule." The proposal also contains administrative changes, such as changing references to the Office of Air Quality to references to the Office of Permitting, Remediation, and Registration. In addition, the name of §106.332 is proposed to be changed from "Coating" to "Chlorine Repackaging." This name change corrects a mistake made during a previous adoption.

Sections 106.201, 106.202, and 106,203 of Subchapter H, concerning Concrete Batch Plants, would be amended to state that registrations for concrete batch plants under those sections would no longer be accepted by the commission upon issuance of a concrete batch plant standard permit. The commission is currently developing a standard permit for concrete batch plants, with issuance anticipated in August 2000. Until the standard permit is issued, registrations for these exemptions will continue to be accepted. Since standard permits will be issued by the commission during a commission agenda, the affected public will have notice of the action prior to issuance.

This proposal would delete the cross-reference to old exemption from permitting numbers currently listed after the title of each exemption.

FISCAL NOTE

Bob Orozco, Strategic Planning and Appropriations Section, has determined that for the first five-year period the proposed new sections and amendments are in effect there will be no significant fiscal implications for the commission and other units of state and local government as a result of administration or enforcement of the proposed new sections and amendments. The proposed amendments to Chapter 106, Exemptions from Permitting and Permits by Rule, would implement certain

provisions of SB 766, 76th Legislature, 1999, relating to the issuance of certain permits for the emission of air contaminants. The commission is implementing this legislation in two phases. The first phase of the implementation of SB 766 was adopted by the commission on December 16, 1999.

Included in the first phase were the VERP program and the new standard permit issuance procedures. These proposed amendments are the second phase of the commission's implementation of SB 766. Other elements of SB 766 are addressed in concurrent proposals for new and amended sections in Chapters 101 and 116.

The proposed changes to Chapter 106 are primarily administrative in nature, do not add any additional regulatory requirements, and clarify that certain facilities, while being exempt from case-by- case permitting, are not exempt from environmental regulation. In addition, other changes to §§106.201 - 106.203 would only have an impact upon issuance of a standard permit for concrete batch plants. The fiscal implications, if any, would be addressed during the development process for the standard permit, which includes opportunity for public comment. Prior to the passage of SB 766, the commission had the authority to exempt from permitting requirements, changes within any facility and certain types of facilities that would not make a significant contribution of air contaminants to the atmosphere. Exemptions from permitting are currently contained in Chapter 106 and are also considered to be permits by rule, with many containing emission control requirements or operational restrictions to ensure that these facilities' emissions remain insignificant contributors of contaminants to the atmosphere. The proposal would clarify that the authorizations formerly known as standard exemptions and exemptions from permitting would be referred to as permits by rule in commission rules, though the conditions of their use would not change.

PUBLIC BENEFIT

Mr. Orozco has also determined that for each year of the first five years the proposed new sections and amendments are in effect, the public benefit anticipated from enforcement of and compliance with the proposed amendments will be clarification that certain facilities, while being exempt from case-by-case permitting, are not exempt from environmental regulation.

The proposed amendments to Chapter 106 are not anticipated to have adverse fiscal implications to any person or business as a result of implementing the proposed amendments. The proposed amendments are administrative in nature, do not add any additional regulatory requirements, and clarify that certain facilities, while being exempt from case-by-case permitting, are not exempt from environmental regulation. In addition, other changes to §§106.201 - 106.203 would only have an impact upon issuance of a standard permit for concrete batch plants. The fiscal implications, if any, would be addressed during the development process for the standard permit, which includes opportunity for public comment. Prior to the passage of SB 766, the commission had the authority to exempt from permitting requirements, changes within any facility and certain types of facilities that would not make a significant contribution of air contaminants to the atmosphere. Exemptions from permitting are currently contained in Chapter 106 and are also considered to be permits by rule, with many containing emission control requirements or operational restrictions to ensure that these facilities' emissions remain insignificant contributors of air contaminants to the atmosphere. The proposal would clarify that the authorizations formerly known as standard exemptions and exemptions from permitting would be referred to as permits by rule in commission rules, though the conditions of their use would not change.

SMALL AND MICRO-BUSINESS ANALYSES

No significant adverse effects are anticipated to small or micro-businesses as a result of implementing the proposed amendments. The proposed amendments are administrative in nature, do not add any additional regulatory requirements, and clarify that certain facilities, while being exempt from case-by-case permitting, are not exempt from environmental regulation. In addition, other changes to §§106.201 - 106.203 would only have an impact upon issuance of a standard permit for concrete batch plants. The fiscal implications, if any, would be addressed during the development process for the standard permit, which includes opportunity for public comment. Exemptions from permitting are currently contained in Chapter 106 and are also considered to be permits by rule, with many containing emission control requirements or operational restrictions to ensure that these facilities' emissions remain insignificant contributors of air contaminants to the atmosphere. The proposal would clarify that the authorizations formerly known as standard exemptions and exemptions from permitting would be referred to as permits by rule in commission rules, though the conditions of their use would not change. Existing facilities at small or micro-businesses currently authorized under Chapter 106 would be able to retain that authorization and make future changes or new construction using permits by rule, as appropriate.

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 does not meet the definition of a "major environmental rule" as defined in that statute. "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendments to Chapter 106 are administrative in nature, do not add regulatory requirements, and are intended to clarify that certain facilities, while being exempt from case-by case permitting, are not exempt from environmental regulation. The proposed amendments do not impose any additional regulatory requirements beyond those that currently exist. The proposed amendments do not meet the definition of "major environmental rule" because there is no adverse material effect on the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. In addition, §2001.0225(a) only applies to a major environmental rule, the result of which is to: 1. exceed a standard set by federal law, unless the rule is specifically required by state law; 2. exceed an express requirement of state law, unless the rule is specifically required by federal law; 3. exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or, 4. adopt a rule solely under the general powers of the agency instead of under a specific state law.

This rulemaking does not meet any of these four applicability requirements of §2001.0225(a). Specifically, these new sections amendments do not exceed a standard set by state or federal law, but are proposed to clarify the exemption from permitting process under the Texas Health and Safety Code. The proposed amendments do not exceed a requirement of a delegation agreement and were not developed solely under the general powers of the agency, but were specifically developed to implement the provisions of SB 766. The commission invites public comment on the draft regulatory impact analysis.

TAKINGS IMPACT ANALYSIS

The commission has prepared a takings impact assessment for these proposed rules under Texas Government Code, §2007.043. The following is a summary of that assessment. The commission has determined that this action does not restrict or limit an owner's right to their property that would otherwise exist in the absence of governmental action and therefore does not constitute a takings. The majority of the proposed amendments are administrative and do not impose any new regulatory requirements. The bulk of the proposal merely changes the name of exemptions from permitting to permits by rule. The changes to §§106.201 - 106.203 are intended to provide notice that upon issuance of the standard permit for concrete batch plants, registrations under those exemptions will no longer be accepted by the commission. This change does not impact existing authorization under these exemptions. The proposed rules are reasonably taken to fulfill requirements of state law.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has determined that this rulemaking relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 et seq.), and the commission's rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with 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, commission 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 with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council. The proposed rules are administrative changes, and the commission has determined that the rules are consistent with the applicable CMP goal expressed in 31 TAC §501.12(1) of protecting and preserving the quality and values of coastal natural resource areas, and the policy in 31 TAC §501.14(q), which requires that the commission protect air quality in coastal areas. This action does not authorize any new emissions. This action is consistent with Title 40 Code of Federal Regulations because it does not authorize an emission rate in excess of that specified by federal requirements. Interested persons may submit comments during the public comment period on the consistency of the proposed rule with the CMP goals and policies.

PUBLIC HEARING

The commission will hold a public hearing on this proposal in Austin on May 4, 2000 in Room 201A of Texas Natural Resource Conservation Commission Building B, located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearings and will answer questions before and after the hearing.

SUBMITTAL OF COMMENTS

Comments may be submitted to Lisa Martin, MC 205, Office of Environmental Policy, Analysis, and Assessment, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Log Number 1999- 029B-116-AI. Comments must be received by May 8, 2000. For further information, please contact Beecher Cameron, Policy and Regulations Division, (512) 239-1495.

Subchapter A. GENERAL REQUIREMENTS

30 TAC §§106.1, 106.2, 106.4, 106.6, 106.13

STATUTORY AUTHORITY

The amendments are proposed under TCAA, §382.011, which authorizes the commission to administer the requirements of the TCAA; §382.012, which provides the commission with the authority to develop a comprehensive plan for the state's air; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; §382.057, which authorizes the commission to exempt from permitting, changes within any facility which will not make a significant contribution of air contaminants to the atmosphere; §382.051, which authorizes the commission to issue permits for construction of facilities which emit air contaminants; and §382.05196, which authorizes the commission to adopt permits by rule for types of facilities which will not make a significant contribution of air contaminants to the atmosphere.

The proposed amendments implement §382.011, concerning General Powers and Duties; §382.012, concerning State Air Control Plan; §382.017, concerning Rules; §382.057, concerning Exemption; §382.051, concerning Permitting Authority of the Commission; and §382.05196, concerning Permits by Rule.

§106.1. Purpose.

This chapter identifies changes within facilities or certain types of facilities which the commission has determined will not make a significant contribution of air contaminants to the atmosphere [~~and~~] pursuant to the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §382.057 and §382.05196 [~~are exempt from the permit requirements of the TCAA, §382.0518~~].

§106.2. Applicability.

This chapter applies to changes within facilities or types of facilities listed in this chapter where construction is commenced on or after the effective date of the relevant permit by rule [~~exemption~~].

§106.4. Requirements for Permitting by Rule [~~Exemptions from Permitting~~].

(a) To qualify for a permit by rule [~~an exemption~~], the following general requirements must be met.

(1) Total actual emissions authorized under permit by rule [~~exemption~~] from the [~~proposed~~] facility shall not exceed 250 tons per year (tpy) of carbon monoxide (CO) or nitrogen oxides (NO_x); or 25 tpy of volatile organic compounds (VOC) or sulfur dioxide (SO_2) or inhalable particulate matter (PM_{10}); or 25 tpy of any other air contaminant except carbon dioxide, water, nitrogen, methane, ethane, hydrogen, and oxygen.

(2) Any facility or group of facilities, which constitutes a new major stationary source, as defined in §116.12 of this title (relating to Nonattainment Review Definitions), or any modification which constitutes a major modification, as defined in §116.12 of this title, under the new source review requirements of the Federal Clean Air Act (FCAA), Part D (Nonattainment) as amended by the FCAA Amendments of 1990, and regulations promulgated thereunder, must meet the permitting requirements of Chapter 116, Subchapter B of this title (relating to New Source Review Permits) and cannot qualify for a permit by rule [~~an exemption~~] under this chapter. Persons claiming a permit by rule [~~an exemption~~] under this chapter should see the requirements of §116.150 of this title (relating to New Major Source or Major Modification in Ozone Nonattainment Areas) to ensure that any applicable netting requirements have been satisfied.

(3) Any facility or group of facilities, which constitutes a new major stationary source, as defined in 40 Code of Federal Regulations (CFR) §52.21, or any change which constitutes a major modification, as defined in 40 CFR §52.21, under the new source review requirements of the FCAA, Part C (Prevention of Significant Deterioration) as amended by the FCAA Amendments of 1990, and regulations promulgated thereunder, must meet the permitting requirements of Chapter 116, Subchapter B of this title and cannot qualify for a permit by rule [~~an exemption~~] under this chapter.

(4) Unless at least one facility at an account has been subject to public notification and comment as required in Chapter 116, Subchapter B or Subchapter D of this title (relating to New Source Review Permits or Permit Renewals), total actual emissions from all facilities permitted by rule [~~exempted facilities~~] at an account shall not exceed 250 tpy of CO or NO_x; or 25 tpy of VOC or SO_2 or PM_{10}; or 25 tpy of any other air contaminant except carbon dioxide, water, nitrogen, methane, ethane, hydrogen, and oxygen.

(5) Construction or modification of a facility commenced on or after the effective date of a revision of this section or the effective date of a revision to a specific permit by rule [~~exemption~~] in this chapter must meet the revised requirements to qualify for a permit by rule [~~an exemption~~].

(6) A [~~proposed~~] facility shall comply with all applicable provisions of the FCAA, §111 (Federal New Source Performance Standards) and §112 (Hazardous Air Pollutants), and the new source review requirements of the FCAA, Part C and Part D and regulations promulgated thereunder.

(7) There are no permits under the same commission [~~Texas Natural Resource Conservation Commission~~] account number that contain a condition or conditions precluding the use of permit by rule [~~standard exemption or an exemption~~] under this chapter.

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

(d) Facilities permitted by rule under [~~exempted by~~] this chapter are not exempted from any permits or registrations required by local air pollution control agencies. Any such requirements must be in accordance with TCAA, §382.113 and any other applicable law.

§106.6. Registration of Emissions.

(a) An owner or operator may certify and register the maximum emission rates from facilities permitted by rule [~~exempted~~] under this chapter in order to establish enforceable allowable emission rates which are below the emission limitations in §106.4 of this title (relating to Requirements for Permitting by Rule [~~Exemption from Permitting~~]).

(b) All representations with regard to construction plans, operating procedures, and maximum emission rates in any certified registration under this section become conditions upon which the facility permitted by rule [~~exempt facility~~] shall be constructed and operated.

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

(e) The certified registration shall be maintained on-site and be provided immediately upon request by representatives of the commission [~~Texas Natural Resource Conservation Commission~~] or any air pollution control agency having jurisdiction. If the plant site is unmanned, the regional manager may authorize an alternative site to maintain this documentation. Copies of the certified registration shall be included in applications for permits subject to review under the divisions [~~undesignated heads~~] in Chapter 116, Subchapter B of this title (relating to New Source Review Permits).

§106.13. References to Standard Exemptions and Exemptions from Permitting [~~Permits by Rule~~].

The authorizations formerly known as standard exemptions and exemptions from permitting are referred to as permits by rule in this title. Types of facilities and changes within facilities authorized by those standard exemptions and exemptions from permitting continue to be authorized unless modifications or changes to those facilities has caused them to no longer meet the conditions of the former standard exemption or exemption from permitting and the general requirements of this subchapter [~~Exemptions from permitting in this chapter are also permits by rule~~].

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

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Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
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For further information, please call: (512) 239-1966

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Subchapter C. DOMESTIC AND COMFORT HEATING AND COOLING

30 TAC §§106.101 - 106.103

STATUTORY AUTHORITY

The amendments are proposed under TCAA, §382.011, which authorizes the commission to administer the requirements of the TCAA; §382.012, which provides the commission with the authority to develop a comprehensive plan for the state's air; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; §382.057, which authorizes the commission to exempt from permitting, changes within any facility which will not make a significant contribution of air contaminants to the atmosphere; §382.051, which authorizes the commission to issue permits for construction of facilities which emit air contaminants; and §382.05196, which authorizes the commission to adopt permits by rule for types of facilities which will not make a significant contribution of air contaminants to the atmosphere.

The proposed amendments implement §382.011, concerning General Powers and Duties; §382.012, concerning State Air Control Plan; §382.017, concerning Rules; §382.057, concern-

ing Exemption; §382.051, concerning Permitting Authority of the Commission; and §382.05196, concerning Permits by Rule.

§106.101. Domestic Use Facilities [~~(Previously SE 1)~~].

Any facility constructed and operated at a domestic residence for domestic use is permitted by rule [~~exempt~~].

§106.102. Comfort Heating [~~(Previously SE 3)~~].

This section permits by rule [~~exempts~~] combustion units designed and used exclusively for comfort heating purposes employing liquid petroleum gas, natural gas, solid wood, or distillate fuel oil. Distillate fuel oil includes diesel fuel, kerosene, and heating oil Grades 4 and lighter. Distillate fuel oil does not include heavier residual oils such as Grades 5 and 6 fuel oil. Combustion of bark chips, sawdust, wood chips, treated wood, or wood contaminated with chemicals is not included. Used oil that has not been mixed with hazardous waste may be used as fuel in space heaters provided that:

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

§106.103. Air Conditioning and Ventilation Systems [~~(Previously SE 4)~~].

Comfort air conditioning systems or comfort ventilating systems which are not used to remove air contaminants generated by or released from specific units of equipment are permitted by rule [~~exempt~~].

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

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Director, Environmental Law Division
Texas Natural Resource Conservation Commission
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Subchapter D. ANALYSIS AND TESTING

30 TAC §§106.121 - 106.124

STATUTORY AUTHORITY

The amendments are proposed under TCAA, §382.011, which authorizes the commission to administer the requirements of the TCAA; §382.012, which provides the commission with the authority to develop a comprehensive plan for the state's air; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; §382.057, which authorizes the commission to exempt from permitting, changes within any facility which will not make a significant contribution of air contaminants to the atmosphere; §382.051, which authorizes the commission to issue permits for construction of facilities which emit air contaminants; and §382.05196, which authorizes the commission to adopt permits by rule for types of facilities which will not make a significant contribution of air contaminants to the atmosphere.

The proposed amendments implement §382.011, concerning General Powers and Duties; §382.012, concerning State Air Control Plan; §382.017, concerning Rules; §382.057, concerning Exemption; §382.051, concerning Permitting Authority of the Commission; and §382.05196, concerning Permits by Rule.

§106.121. Hydraulic and Hydrostatic Testing Equipment [~~(Previously SE 12)~~].

Equipment used for hydraulic or hydrostatic testing is permitted by rule [~~exempt~~].

§106.122. Bench Scale Laboratory Equipment [~~(Previously SE 34)~~].

Bench scale laboratory equipment and laboratory equipment used exclusively for chemical and physical analyses are permitted by rule [~~exempt~~].

§106.123. Vacuum-producing Devices for Laboratory Use [~~(Previously SE 49)~~].

Vacuum-producing devices used in laboratory operations are permitted by rule [~~exempt~~].

§106.124. Pilot Plants [~~(Previously SE 76)~~].

Any new or modified pilot plant is permitted by rule [~~exempt~~], provided the following conditions of this section are met.

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

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

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Subchapter E. AGGREGATE AND PAVEMENT

30 TAC §§106.141 - 106.150

STATUTORY AUTHORITY

The amendments are proposed under TCAA, §382.011, which authorizes the commission to administer the requirements of the TCAA; §382.012, which provides the commission with the authority to develop a comprehensive plan for the state's air; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; §382.057, which authorizes the commission to exempt from permitting, changes within any facility which will not make a significant contribution of air contaminants to the atmosphere; §382.051, which authorizes the commission to issue permits for construction of facilities which emit air contaminants; and §382.05196, which authorizes the commission to adopt permits by rule for types of facilities which will not make a significant contribution of air contaminants to the atmosphere.

The proposed amendments implement §382.011, concerning General Powers and Duties; §382.012, concerning State Air Control Plan; §382.017, concerning Rules; §382.057, concerning Exemption; §382.051, concerning Permitting Authority of the Commission; and §382.05196, concerning Permits by Rule.

§106.141. Batch Mixers [~~(Previously SE 25)~~].

Batch mixers with rated capacity of five cubic feet or less for mixing cement, sand, aggregate, additives, and/or water or similar materials are permitted by rule [~~exempt~~].

§106.142. Rock Crushers [(Previously SE 73)].

Any rock crusher with a maximum rated capacity of 200 tons per hour or less that operates according to the following conditions of this section is permitted by rule [exempt]:

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

§106.143. Wet Sand and Gravel Production [(Previously SE 77)].

Any wet sand and gravel production facility that obtains its material from subterranean and subaqueous beds where the deposits of sand and gravel are consolidated granular materials resulting from natural disintegration of rock and stone and whose production rate is 500 tons per hour or less is permitted by rule [exempt]. All permanent in-plant roads shall be paved and cleaned as necessary or watered as necessary to achieve maximum control of dust emissions.

§106.144. Bulk Mineral Handling [(Previously SE 91)].

All bulk mineral product (except asbestos) handling facilities that operate in compliance with the following conditions of this section are permitted by rule [exempt].

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

(4) Before construction begins, written site approval must be received from the executive director and the facility shall be registered with the commission's Office of Permitting, Remediation, and Registration [Air Quality] in Austin using Form PI-7.

§106.145. Bulk Sand Handling [(Previously SE 92)].

All oil well servicing bulk sand handling facilities that operate according to the following conditions of this section are permitted by rule [exempt].

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

(5) Before construction begins, the owner or operator shall file with the commission's Office of Permitting, Remediation, and Registration [Air Quality] in Austin a completed Form PI-7 and supporting documentation demonstrating that all of the requirements of the permit by rule [exemption] will be met.

§106.146. Soil Stabilization Plants [(Previously SE 94)].

Any soil stabilization facility that operates according to the following conditions of this section is permitted by rule [exempt].

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

(8) Before construction of the facility begins, written site approval shall be received from the executive director and the facility shall be registered with the commission's Office of Permitting, Remediating, and Registration [Air Quality] in Austin using Form PI-7.

(9) (No change.)

§106.147. Asphalt Concrete Plants [(Previously SE 99)].

Any asphalt concrete facility that complies with 40 Code of Federal Regulations Part 60, Subparts A and I and operates according to the following conditions of this section is permitted by rule [exempt].

(1) (No change.)

(2) Fuel for dryers shall be sweet natural gases as defined in Chapter 101 of this title (relating to General Air Quality Rules) or liquid petroleum gas, diesel, or fuel oil with a maximum sulfur content of 1.5%.

(3)-(5) (No change.)

(6) Before construction of the facility begins, written site approval shall be received from the executive director and the facility shall be registered with the commission's Office of Permitting, Remediation, and Registration [Air Quality] in Austin using Form PI-7, including a current Table 22.

(7) (No change.)

§106.148. Material Unloading [(Previously SE 112)].

Railcar or truck unloading of wet sand, gravel, aggregate, coal, lignite, and scrap iron or scrap steel (but not including metal ores, metal oxides, battery parts, or fine dry materials) into trucks or other railcars for transportation to other locations is permitted by rule [exempt], provided the following conditions of this section are met.

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

§106.149. Sand and Gravel Processing [(Previously SE 114)].

Any sand and gravel production facility that obtains its material from deposits of sand and gravel consisting of natural disintegration of rock and stone is permitted by rule [exempt], provided that the following conditions of this section are satisfied:

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

§106.150. Asphalt Silos [(Previously SE 122)].

Any silo used to store hot mix asphalt or asphalt emulsion concrete mixtures which meets the following conditions of this section is permitted by rule [exempt]:

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

(3) fuel used for heating the silo is sweet natural gas as defined in Chapter 101 of this title (relating to General Air Quality Rules) or liquid petroleum gas or first run refinery grade diesel or Number 2 fuel oil that is not a blend containing waste oils or solvents and that contains less that 0.5% by weight sulfur;

(4) (No change.)

(5) before construction begins, written site approval is received from the executive director and the facility is registered with the commission's Office of Permitting, Remediation, and Registration [Air Quality] in Austin using Form PI-7.

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

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Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: August 2, 2000
For further information, please call: (512) 239-1966

♦ ♦ ♦

Subchapter F. ANIMAL CONFINEMENT

30 TAC §§106.161 - 106.163

STATUTORY AUTHORITY

The amendments are proposed under TCAA, §382.011, which authorizes the commission to administer the requirements of the TCAA; §382.012, which provides the commission with the authority to develop a comprehensive plan for the state's air; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; §382.057, which authorizes the commission to exempt from

permitting, changes within any facility which will not make a significant contribution of air contaminants to the atmosphere; §382.051, which authorizes the commission to issue permits for construction of facilities which emit air contaminants; and §382.05196, which authorizes the commission to adopt permits by rule for types of facilities which will not make a significant contribution of air contaminants to the atmosphere.

The proposed amendments implement §382.011, concerning General Powers and Duties; §382.012, concerning State Air Control Plan; §382.017, concerning Rules; §382.057, concerning Exemption; §382.051, concerning Permitting Authority of the Commission; and §382.05196, concerning Permits by Rule.

§106.161. Animal Feeding Operations [~~(Previously SE 62)~~].

Animal feeding operations which confine animals in numbers specified in paragraph (1) of this section and any associated on-site feed handling and/or feed milling operations which satisfy the following conditions of this section are permitted by rule [~~exempt~~].

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

(8) All caged poultry operations designed to feed more than 30,000 birds when a dry manure storage and handling system is used and when located at least 1/4 mile from any recreational area or residence or other structure not occupied or used solely by the owner of the egg laying or caged pullet operation. Before construction of the caged laying and caged pullet operations begins, written site approval shall be received from the executive director and the facility shall be registered with the commission's Office of Permitting, Remediation, and Registration [~~Air Quality~~] using Form PI-7.

(9) (No change.)

§106.162. Livestock Auction Facilities [~~(Previously SE 63)~~].

Livestock auction sales facilities are permitted by rule [~~exempt~~], provided the following conditions of this section are satisfied.

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

(6) Before construction of the facility begins, written site approval shall be received from the executive director and the facility shall be registered with the commission's Office of Permitting, Remediation, and Registration [~~Air Quality~~] in Austin using Form PI-7.

§106.163. Race Tracks, Zoos, and Animal Shelters [~~(Previously SE 72)~~].

All animal racing facilities, domestic animal shelters, zoos, and their associated confinement areas, stables, feeding areas, and waste collection and treatment facilities are permitted by rule [~~exempt~~]. Incineration units are not authorized under this section.

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

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Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
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For further information, please call: (512) 239-1966

♦ ♦ ♦

Subchapter G. COMBUSTION

30 TAC §§106.181 - 106.183

STATUTORY AUTHORITY

The amendments are proposed under TCAA, §382.011, which authorizes the commission to administer the requirements of the TCAA; §382.012, which provides the commission with the authority to develop a comprehensive plan for the state's air; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; §382.057, which authorizes the commission to exempt from permitting, changes within any facility which will not make a significant contribution of air contaminants to the atmosphere; §382.051, which authorizes the commission to issue permits for construction of facilities which emit air contaminants; and §382.05196, which authorizes the commission to adopt permits by rule for types of facilities which will not make a significant contribution of air contaminants to the atmosphere.

The proposed amendments implement §382.011, concerning General Powers and Duties; §382.012, concerning State Air Control Plan; §382.017, concerning Rules; §382.057, concerning Exemption; §382.051, concerning Permitting Authority of the Commission; and §382.05196, concerning Permits by Rule.

§106.181. Small Boilers, Heaters, and Other Combustion Devices.

(a) Small boilers, heaters, drying or curing ovens, furnaces, or other combustion units, but not including stationary internal combustion engines or turbines, are permitted by rule [~~exempt~~] provided that all the conditions of this section are met.

(b) (No change.)

§106.182. Ceramic Kilns [~~(Previously SE 33)~~].

Kilns used for firing ceramic ware, heated exclusively by natural gas, liquid petroleum gas, electricity, or any combination thereof are permitted by rule [~~exempt~~] where the conditions of this section are met:

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

§106.183. Boilers, Heaters, and Other Combustion Devices [~~(Previously SE 7)~~].

Boilers, heaters, drying or curing ovens, furnaces, or other combustion units, but not including stationary internal combustion engines or turbines are permitted by rule [~~exempt~~], provided that the following conditions are met.

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

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

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Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
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For further information, please call: (512) 239-1966

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Subchapter H. CONCRETE BATCH PLANTS

30 TAC §§106.201 - 106.203

STATUTORY AUTHORITY

The amendments are proposed under TCAA, §382.011, which authorizes the commission to administer the requirements of the TCAA; §382.012, which provides the commission with the authority to develop a comprehensive plan for the state's air; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; §382.057, which authorizes the commission to exempt from permitting, changes within any facility which will not make a significant contribution of air contaminants to the atmosphere; §382.051, which authorizes the commission to issue permits for construction of facilities which emit air contaminants; and §382.05196, which authorizes the commission to adopt permits by rule for types of facilities which will not make a significant contribution of air contaminants to the atmosphere.

The proposed amendments implement §382.011, concerning General Powers and Duties; §382.012, concerning State Air Control Plan; §382.017, concerning Rules; §382.057, concerning Exemption; §382.051, concerning Permitting Authority of the Commission; and §382.05196, concerning Permits by Rule.

§106.201. Permanent and Temporary Concrete Batch Plants [~~(Previously SE 71)~~].

Any permanently or temporarily located concrete plant that accomplishes wet batching, dry batching, or central mixing, and operates in compliance with the following conditions of this section is permitted by rule [~~exempt~~]. For purposes of this section, a temporarily located concrete facility is one that occupies a designated site for not more than 180 consecutive days or supplies concrete for a single public works project or for the same contractor for related project segments, but not other unrelated projects.

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

(10) Before construction of the facility begins, written site approval shall be received from the executive director and the facility shall be registered with the commission's Office of Permitting, Remediation, and Registration [~~Air Quality~~] in Austin using Form PI-7, including a current Table 20.

(11) Upon issuance of a standard permit for concrete batch plants, registrations under this section will no longer be accepted.

§106.202. Temporary Concrete Batch Plants [~~(Previously SE 93)~~].

Any temporarily located concrete facility that accomplishes wet batching, dry batching, or central mixing and operates according to the following conditions of this section is permitted by rule [~~exempt~~]. For purposes of this section, a temporarily located concrete facility is one that occupies a designated site for not more than 180 consecutive days or supplies concrete for a single public works project or for the same contractor for related project segments, but not other unrelated projects.

(1)-(11) (No change.)

(12) Before construction of the facility begins, written site approval shall be received from the executive director and the facility shall be registered with the commission's Office of Permitting, Remediation, and Registration [~~Air Quality~~] in Austin using Form PI-7, including a current Table 20. The current Table 20 shall be on file at each plant site.

(13) (No change.)

(14) Upon issuance of a standard permit for concrete batch plants, registrations under this section will no longer be accepted.

§106.203. Specialty Batch Plants [~~(Previously SE 117)~~].

Any specialty wet batch, concrete, mortar, grout mixing, or precast concrete products plant that operates according to the following conditions of this section is permitted by rule [~~exempt~~].

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

(10) Before construction of the facility begins, written site approval is received from the executive director and the facility shall be registered with the commission's Office of Permitting, Remediation, and Registration [~~Air Quality~~] in Austin using Form PI-7, including a current Table 20.

(11) (No change.)

(12) Upon issuance of a concrete batch plant standard permit, registrations under this section will no longer be accepted.

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

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Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: August 2, 2000
For further information, please call: (512) 239-1966

♦ ♦ ♦

Subchapter I. MANUFACTURING

30 TAC §§106.221, 106.223 - 106.229, 106.231

STATUTORY AUTHORITY

The amendments are proposed under TCAA, §382.011, which authorizes the commission to administer the requirements of the TCAA; §382.012, which provides the commission with the authority to develop a comprehensive plan for the state's air; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; §382.057, which authorizes the commission to exempt from permitting, changes within any facility which will not make a significant contribution of air contaminants to the atmosphere; §382.051, which authorizes the commission to issue permits for construction of facilities which emit air contaminants; and §382.05196, which authorizes the commission to adopt permits by rule for types of facilities which will not make a significant contribution of air contaminants to the atmosphere.

The proposed amendments implement §382.011, concerning General Powers and Duties; §382.012, concerning State Air Control Plan; §382.017, concerning Rules; §382.057, concerning Exemption; §382.051, concerning Permitting Authority of the Commission; and §382.05196, concerning Permits by Rule.

§106.221. Extrusion Presses [~~(Previously SE 10)~~].

Presses used exclusively for extruding metals, minerals, plastics, rubber, or wood are permitted by rule [~~exempt~~] except where halogenated carbon compounds or hydrocarbon solvents are used as foaming agents. Presses used for extruding scrap materials or reclaiming scrap materials are not permitted by rule [~~exempt~~].

§106.223. Saw Mills [~~(Previously SE 120)~~].

Sawmills processing no more than 25 million board feet, green lumber tally of wood per year, in which no mechanical drying of lumber is

performed and which meet all of the following provisions of this section are permitted by rule [~~exempt~~].

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

(8) Before construction of the facility begins, written site approval must be received from the director of the commission's Office of Permitting, Remediation, and Registration [~~Air Quality~~] in Austin and the facility shall be registered with that office using Form PI-7.

§106.224. Aerospace Equipment and Parts Manufacturing [~~(Previously SE 123)~~].

Any new aerospace equipment and parts manufacturing plant, or physical and operational change to an existing aerospace equipment and parts manufacturing plant are permitted by rule [~~exempt~~], provided that the following conditions of this section are satisfied.

(1) For purposes of this section, aerospace equipment and parts manufacturing plant means the entire operation on the property which engages in the fabrication or assembly of parts, tools, or completed components of any aircraft, helicopter, dirigible, balloon, missile, drone, rocket, or space vehicle. This permit by rule [~~exemption~~] will not include composite aerospace equipment and parts manufacturing plants. Composite plants are defined to be plants whose products are less than 50% metal, by weight, based on annual production figures. This definition excludes those operations specifically authorized by other permits by rule [~~exemptions~~]. For example, a boiler would not be considered a part of the aerospace manufacturing plant, but could be authorized under §106.181 of this title (relating to Boilers, Heaters, and Other Combustion Devices), if all pertinent requirements were met.

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

(5) Before construction or change in operation begins, registration shall be submitted to the commission's Office of Permitting, Remediation, and Registration [~~Air Quality~~] in Austin using a completed Form PI-7. The emission data provided in the PI-7 shall include all process emission sources at the plant, both existing and proposed, and shall be the maximum allowed emissions for permitted units, the actual emissions for existing grandfathered [~~or exempted~~] units or units permitted by rule , and the projected maximum allowable emissions for proposed units. Emissions shall be speciated by chemical compound and the stack parameters, as appropriate, for each emission source shall be provided. Registration shall include a description of the project, calculations, and data identifying specific chemical names, "L" values, "D" values, and a description of pollution control equipment, if any.

(6)-(8) (No change.)

§106.225. Semiconductor Manufacturing [~~(Previously SE 115)~~].

Modifications, additions, or relocations of equipment (excluding add-on controls) used for semiconductor manufacturing operations that result in the addition, increase, or substitution of an air contaminant are permitted by rule [~~exempt~~] provided the following conditions of this section are satisfied.

(1)-(12) (No change.)

§106.226. Paints, Varnishes, Ink, and Other Coating Manufacturing [~~(Previously SE 125)~~].

Coating manufacturing operations including raw material storage, weighing, mixing, milling, grinding, thinning, and packaging are permitted by rule [~~exempt~~], provided the conditions of this section are met. Coating manufacturing is defined as combining ingredients that are manufactured off- site to make paints, varnishes, sealants, stains, adhesives, inks, pigments, maskants, and paint strippers, etc. Resin manufacturing is not permitted by rule [~~exempt~~] under this section.

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

§106.227. Soldering, Brazing, Welding [~~(Previously SE 39)~~].

Brazing, soldering, or welding equipment, except those which emit 0.6 ton per year or more of lead, are permitted by rule [~~exempt~~].

§106.228. Platen Presses for Laminating [~~(Previously SE 30)~~].

Platen presses used for laminating are permitted by rule [~~exempt~~].

§106.229. Textile Dyeing and Stripping Equipment [~~(Previously SE 15)~~].

Equipment used exclusively for the dyeing or stripping of textiles is permitted by rule [~~exempt~~].

§106.231. Manufacturing, Refinishing, and Restoring Wood Products.

Facilities, including drying or curing ovens, and hand-held or manually operated equipment, used for manufacturing, refinishing, and/or restoring wood products that meet the following requirements are permitted by rule [~~exempt from obtaining an air quality permit~~].

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

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

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Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: August 2, 2000
For further information, please call: (512) 239-1966

♦ ♦ ♦

Subchapter J. FOOD PREPARATION AND PROCESSING

30 TAC §§106.241 - 106.245

STATUTORY AUTHORITY

The amendments are proposed under TCAA, §382.011, which authorizes the commission to administer the requirements of the TCAA; §382.012, which provides the commission with the authority to develop a comprehensive plan for the state's air; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; §382.057, which authorizes the commission to exempt from permitting, changes within any facility which will not make a significant contribution of air contaminants to the atmosphere; §382.051, which authorizes the commission to issue permits for construction of facilities which emit air contaminants; and §382.05196, which authorizes the commission to adopt permits by rule for types of facilities which will not make a significant contribution of air contaminants to the atmosphere.

The proposed amendments implement §382.011, concerning General Powers and Duties; §382.012, concerning State Air Control Plan; §382.017, concerning Rules; §382.057, concerning Exemption; §382.051, concerning Permitting Authority of the Commission; and §382.05196, concerning Permits by Rule.

§106.241. Slaughterhouses [~~(Previously SE 109)~~].

Any facility where animals or poultry are slaughtered and prepared for human consumption provided that waste products such as blood, offal, and feathers are stored in such a manner as to prevent the creation of a nuisance condition and these waste products are removed from the premises daily or stored under refrigeration until removed are permitted by rule [~~exempt~~]. In addition, areas used to hold animals or poultry for slaughter shall be kept dry and clean to control odors.

§106.242. Food Preparation [~~(Previously SE 20)~~].

Equipment used in eating establishments for the purpose of preparing food for human consumption is permitted by rule [~~exempt~~].

§106.243. Smokehouses [~~(Previously SE 29)~~].

Smokehouses in which the maximum horizontal inside cross-sectional area does not exceed 100 square feet are permitted by rule [~~exempt~~].

§106.244. Ovens, Barbecue Pits, and Cookers [~~(Previously SE 32)~~].

Ovens, mixers, blenders, barbecue pits, and cookers if the products are edible and intended for human consumption are permitted by rule [~~exempt~~].

§106.245. Ethyl Alcohol Facilities [~~(Previously SE 98)~~].

Ethyl alcohol (ethanol) production facilities having a capacity of less than 200 gallons of ethanol per day when natural gas, liquid petroleum gas, or Number 2 fuel oil is used to supply heat for cooking and distillation are permitted by rule [~~exempt~~]. Drying of spent (distillers) grain and water stillage is not authorized under this section.

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

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Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
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♦ ♦ ♦

Subchapter K. GENERAL

30 TAC §§106.261 - 106.266

STATUTORY AUTHORITY

The amendments are proposed under TCAA, §382.011, which authorizes the commission to administer the requirements of the TCAA; §382.012, which provides the commission with the authority to develop a comprehensive plan for the state's air; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; §382.057, which authorizes the commission to exempt from permitting, changes within any facility which will not make a significant contribution of air contaminants to the atmosphere; §382.051, which authorizes the commission to issue permits for construction of facilities which emit air contaminants; and §382.05196, which authorizes the commission to adopt permits by rule for types of facilities which will not make a significant contribution of air contaminants to the atmosphere.

The proposed amendments implement §382.011, concerning General Powers and Duties; §382.012, concerning State Air Control Plan; §382.017, concerning Rules; §382.057, concerning Exemption; §382.051, concerning Permitting Authority of the Commission; and §382.05196, concerning Permits by Rule.

§106.261. Facilities (Emission Limitations) [~~(Previously SE 106)~~].

Facilities, or physical or operational changes to a facility, are permitted by rule [~~exempt~~] provided that all of the following conditions of this section are satisfied.

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

(8) For emission increases of less than five tons per year, notification must be provided using either:

(A) (No change.)

(B) Form PI-7-261(a) by March 31 of the following year summarizing all uses of this permit by rule [~~exemption~~] in the previous calendar year. This annual notification shall include a description of the project, calculations, data identifying specific chemical names, limit values, and a description of pollution control equipment, if any.

[~~(9) This exemption is effective January 1, 1999. The registration requirements in paragraphs (7) and (8) of this section begin January 1, 1999. Registration under paragraph (8)(B) of this section is due beginning March 31, 2000, for exemptions claimed in calendar year 1999.~~]

§106.262. Facilities (Emission and Distance Limitations) [~~(Previously SE 118)~~].

Facilities, or physical or operational changes to a facility, are permitted by rule [~~exempt~~] provided that all of the following conditions of this section are satisfied.

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

§106.263. Repairs and Maintenance [~~(Previously SE 70)~~].

Repairs or maintenance not involving structural changes where no new or permanent facilities are installed are permitted by rule [~~exempt~~].

§106.264. Replacements of Facilities [~~(Previously SE 111)~~].

A facility which replaces an existing facility is permitted by rule [~~exempt~~] provided that the following conditions of this section are satisfied:

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

§106.265. Hand-held and Manually Operated Machines [~~(Previously SE 40)~~].

Hand-held or manually operated equipment used for buffing, polishing, carving, cutting, drilling, machining, routing, sanding, sawing, surface grinding, or turning of ceramic art work, ceramic precision parts, leather, metals, plastics, fiber board, masonry, carbon, glass, graphite, or wood is permitted by rule [~~exempt~~].

§106.266. Vacuum Cleaning Systems [~~(Previously SE 59)~~].

Vacuum cleaning systems used exclusively for industrial, commercial, or residential housekeeping purposes are permitted by rule [~~exempt~~].

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

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Margaret Hoffman

Director, Environmental Law Division
Texas Natural Resource Conservation Commission
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For further information, please call: (512) 239-1966

♦ ♦ ♦

Subchapter L. FEED, FIBER, AND FERTILIZER

Division 1. FEED

30 TAC §§106.281 - 106.283

STATUTORY AUTHORITY

The amendments are proposed under TCAA, §382.011, which authorizes the commission to administer the requirements of the TCAA; §382.012, which provides the commission with the authority to develop a comprehensive plan for the state's air; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; §382.057, which authorizes the commission to exempt from permitting, changes within any facility which will not make a significant contribution of air contaminants to the atmosphere; §382.051, which authorizes the commission to issue permits for construction of facilities which emit air contaminants; and §382.05196, which authorizes the commission to adopt permits by rule for types of facilities which will not make a significant contribution of air contaminants to the atmosphere.

The proposed amendments implement §382.011, concerning General Powers and Duties; §382.012, concerning State Air Control Plan; §382.017, concerning Rules; §382.057, concerning Exemption; §382.051, concerning Permitting Authority of the Commission; and §382.05196, concerning Permits by Rule.

§106.281. Feed Milling [~~(Previously SE 64)~~].

Modifications to feed milling operations which satisfy the following conditions of this section are permitted by rule [~~exempt~~].

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

§106.282. Feed Grinding Facilities [~~(Previously SE 119)~~].

Any feed grinding operation which is used only for noncommercial purposes is permitted by rule [~~exempt~~].

§106.283. Grain Handling, Storage, and Drying [~~(Previously SE 74)~~].

Any grain handling, storage, and drying facility which meets paragraphs (1)-(3) of this section is permitted by rule [~~exempt~~].

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

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

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Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
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For further information, please call: (512) 239-1966

♦ ♦ ♦

Division 2. FIBER

30 TAC §106.291

STATUTORY AUTHORITY

The amendment is proposed under TCAA, §382.011, which authorizes the commission to administer the requirements of the TCAA; §382.012, which provides the commission with the authority to develop a comprehensive plan for the state's air; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; §382.057, which authorizes the commission to exempt from permitting, changes within any facility which will not make a significant contribution of air contaminants to the atmosphere; §382.051, which authorizes the commission to issue permits for construction of facilities which emit air contaminants; and §382.05196, which authorizes the commission to adopt permits by rule for types of facilities which will not make a significant contribution of air contaminants to the atmosphere.

The proposed amendment implements §382.011, concerning General Powers and Duties; §382.012, concerning State Air Control Plan; §382.017, concerning Rules; §382.057, concerning Exemption; §382.051, concerning Permitting Authority of the Commission; and §382.05196, concerning Permits by Rule.

§106.291. Cotton Gin Stands [~~(Previously SE 69)~~].

Replacement or addition of cotton gin stands where no other equipment change or additions are involved are permitted by rule [~~exempt~~].

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

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Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: August 2, 2000
For further information, please call: (512) 239-1966

♦ ♦ ♦

Division 3. FERTILIZER

30 TAC §106.301, §106.302

STATUTORY AUTHORITY

The amendments are proposed under TCAA, §382.011, which authorizes the commission to administer the requirements of the TCAA; §382.012, which provides the commission with the authority to develop a comprehensive plan for the state's air; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; §382.057, which authorizes the commission to exempt from permitting, changes within any facility which will not make a significant contribution of air contaminants to the atmosphere; §382.051, which authorizes the commission to issue permits for construction of facilities which emit air contaminants; and §382.05196, which authorizes the commission to adopt permits by rule for types of facilities which will not make a significant contribution of air contaminants to the atmosphere.

The proposed amendments implement §382.011, concerning General Powers and Duties; §382.012, concerning State Air Control Plan; §382.017, concerning Rules; §382.057, concerning Exemption; §382.051, concerning Permitting Authority of the Commission; and §382.05196, concerning Permits by Rule.

§106.301. Aqueous Fertilizer Storage [(Previously ~~SE 85~~)].

All aqueous fertilizer storage tanks are permitted by rule [~~exempt~~].

§106.302. Portable Pipe Reactor [(Previously ~~SE 108~~)].

Portable pipe reactor facilities used to process liquid fertilizer that operate according to the following conditions of this section are permitted by rule [~~exempt~~].

(1) Before construction begins, the facility shall be registered with the commission's Office of Permitting, Remediation, and Registration [~~Air Quality~~] in Austin using Form PI-7.

(2)-(5) (No change.)

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

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Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
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Subchapter M. METALLURGY

30 TAC §§106.311 - 106.322

STATUTORY AUTHORITY

The amendments are proposed under TCAA, §382.011, which authorizes the commission to administer the requirements of the TCAA; §382.012, which provides the commission with the authority to develop a comprehensive plan for the state's air; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; §382.057, which authorizes the commission to exempt from permitting, changes within any facility which will not make a significant contribution of air contaminants to the atmosphere; §382.051, which authorizes the commission to issue permits for construction of facilities which emit air contaminants; and §382.05196, which authorizes the commission to adopt permits by rule for types of facilities which will not make a significant contribution of air contaminants to the atmosphere.

The proposed amendments implement §382.011, concerning General Powers and Duties; §382.012, concerning State Air Control Plan; §382.017, concerning Rules; §382.057, concerning Exemption; §382.051, concerning Permitting Authority of the Commission; and §382.05196, concerning Permits by Rule.

§106.311. Crucible or Pot Furnace [(Previously ~~SE 17~~)].

Crucible or pot furnaces with a brim full capacity of less than 450 cubic inches of any molten metal are permitted by rule [~~exempt~~].

§106.312. Wax Melting and Application [(Previously ~~SE 18~~)].

Equipment used exclusively for the melting or application of wax is permitted by rule [~~exempt~~].

§106.313. Tumblers for Cleaning or Deburring Metal [(Previously ~~SE 22~~)].

All closed tumblers used for the cleaning or deburring of metal products without abrasive blasting, and all open tumblers with a batch capacity of 1,000 pounds or less are permitted by rule [~~exempt~~].

§106.314. Shell Core and Mold Machines [(Previously ~~SE 23~~)].

Shell core and shell mold manufacturing machines are permitted by rule [~~exempt~~].

§106.315. Sand or Investment Molds [(Previously ~~SE 24~~)].

Sand or investment molds with a capacity of 100 pounds or less used for the casting of metals are permitted by rule [~~exempt~~].

§106.316. Metal Inspection [(Previously ~~SE 35~~)].

Equipment used for inspection of metal products is permitted by rule [~~exempt~~].

§106.317. Miscellaneous Metal Equipment [(Previously ~~SE 36~~)].

Equipment used exclusively for rolling, forging, pressing, drawing, spinning, or extruding either hot or cold metals by some mechanical means is permitted by rule [~~exempt~~].

§106.318. Die Casting Machines [(Previously ~~SE 37~~)].

Die casting machines are permitted by rule [~~exempt~~].

§106.319. Foundry Sand Mold Forming Equipment [(Previously ~~SE 44~~)].

Foundry sand mold forming equipment to which no heat is applied is permitted by rule [~~exempt~~].

§106.320. Miscellaneous Metallic Treatment [(Previously ~~SE 57~~)].

Electrically heated or sweet natural gas or liquid petroleum gas fueled equipment used exclusively for heat treating, soaking, case hardening, or surface conditioning of metal objects, such as carbonizing, cyaniding, nitriding, carbon nitriding, siliconizing, or diffusion treating is permitted by rule [~~exempt~~].

§106.321. Metal Melting and Holding Furnaces [(Previously ~~SE 58~~)].

Metal melting and holding furnaces as specified in this section are permitted by rule [~~exempt~~].

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

§106.322. Furnaces to Reclaim Aluminum or Copper [(Previously ~~SE 96~~)].

Dry hearth reverberatory type holding chamber aluminum or copper metal reclamation/sweat furnaces in which no fluxing, degassing, or refining is conducted, which operate according to the following conditions and limitations of this section are permitted by rule [~~exempt~~].

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

(7) Fuel for the furnace shall be sweet natural gas as defined in Chapter 101 of this title (relating to General Air Quality Rules) or liquid petroleum gas, diesel, or Number 2 fuel oil.

(8) Before construction begins, the facility shall be registered with the commission's Office of Permitting, Remediation, and Registration [~~Air Quality~~] in Austin using Form PI-7.

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

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Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
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For further information, please call: (512) 239 -1966

♦ ♦ ♦

Subchapter N. MIXERS, BLENDERS, AND PACKAGING

30 TAC §§106.331 - 106.333

STATUTORY AUTHORITY

The amendments are proposed under TCAA, §382.011, which authorizes the commission to administer the requirements of the TCAA; §382.012, which provides the commission with the authority to develop a comprehensive plan for the state's air; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; §382.057, which authorizes the commission to exempt from permitting, changes within any facility which will not make a significant contribution of air contaminants to the atmosphere; §382.051, which authorizes the commission to issue permits for construction of facilities which emit air contaminants; and §382.05196, which authorizes the commission to adopt permits by rule for types of facilities which will not make a significant contribution of air contaminants to the atmosphere.

The proposed amendments implement §382.011, concerning General Powers and Duties; §382.012, concerning State Air Control Plan; §382.017, concerning Rules; §382.057, concerning Exemption; §382.051, concerning Permitting Authority of the Commission; and §382.05196, concerning Permits by Rule.

§106.331. Cosmetics Packaging and Pharmaceutical Packaging and Coating [(~~Previously SE 47~~)].

Equipment used exclusively to package pharmaceuticals and cosmetics or to coat pharmaceutical tablets is permitted by rule [~~exempt~~].

§106.332. Chlorine Repackaging [~~Coating (Previously SE 81)~~].

Facilities that repackage chlorine are permitted by rule [~~exempt~~], provided all the following conditions of this section are satisfied:

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

§106.333. Water-based Adhesive Mixers [(~~Previously SE 28~~)].

Equipment used exclusively for the mixing and blending of materials at ambient temperature to make water-based adhesives is permitted by rule [~~exempt~~].

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

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Margaret Hoffman
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♦ ♦ ♦

Subchapter O. OIL AND GAS

30 TAC §§106.351 - 106.355

STATUTORY AUTHORITY

The amendments are proposed under TCAA, §382.011, which authorizes the commission to administer the requirements of the TCAA; §382.012, which provides the commission with the authority to develop a comprehensive plan for the state's air; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; §382.057, which authorizes the commission to exempt from permitting, changes within any facility which will not make a significant contribution of air contaminants to the atmosphere; §382.051, which authorizes the commission to issue permits for construction of facilities which emit air contaminants; and §382.05196, which authorizes the commission to adopt permits by rule for types of facilities which will not make a significant contribution of air contaminants to the atmosphere.

These proposed amendments implement §382.011, concerning General Powers and Duties; §382.012, concerning State Air Control Plan; §382.017, concerning Rules; §382.057, concerning Exemption; §382.051, concerning Permitting Authority of the Commission; and §382.05196, concerning Permits by Rule.

§106.351. Salt Water Disposal (Petroleum) [(~~Previously SE 65~~)].

Salt water disposal facilities used to handle aqueous liquid wastes from petroleum production operations and water injection facilities are permitted by rule [~~exempt~~], provided that the following conditions of this section are met.

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

(4) Before construction of the facility begins under this section, registration of the permit by rule [~~exemption~~] shall be submitted to the commission's Office of Permitting, Remediation, and Registration [~~Air Quality~~] in Austin using Form PI-7, unless one of the following exceptions applies:

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

§106.352. Oil and Gas Production Facilities [(~~Previously SE 66~~)].

Any oil or gas production facility, carbon dioxide separation facility, or oil or gas pipeline facility consisting of one or more tanks, separators, dehydration units, free water knockouts, gunbarrels, heater treaters, natural gas liquids recovery units, or gas sweetening and other gas conditioning facilities, including sulfur recovery units at facilities conditioning produced gas containing less than two long tons per day of sulfur compounds as sulfur are permitted by rule [~~exempt~~], provided that the following conditions of this section are met. This section applies only to those facilities named which handle gases and liquids associated with the production, conditioning, processing, and pipeline transfer of fluids found in geologic formations beneath the earth's surface.

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

(5) Before operation begins, facilities handling sour gas shall be registered with the commission's Office of Permitting, Remediation, and Registration [~~Air Quality~~] in Austin using Form PI-7 along with supporting documentation that all requirements of this section will be met. For facilities constructed under §106.353 of this title (relating to Temporary Oil and Gas Facilities (Previously SE 67)), the registration is required before operation under this section

can begin. If the facilities cannot meet this section, a permit under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) is required prior to continuing operation of the facilities.

§106.353. Temporary Oil and Gas Facilities [(~~Previously SE 67~~)].

Temporary separators, tanks, meters, and fluid-handling equipment used for a period not to exceed 90 operating days are permitted by rule [~~exempt~~], provided that all the following conditions of this section are satisfied.

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

§106.354. Iron Sponge Gas Treating Unit [(~~Previously SE 79~~)].

Iron sponge gas treating units processing streams containing less than 60 pounds per hour of hydrogen sulfide are permitted by rule [~~exempt~~] provided that the following conditions of this section are satisfied:

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

§106.355. Metering, Purging, and Maintenance of Pipelines [(~~Previously SE 100~~)].

Metering, purging, and maintenance operations for gaseous and liquid petroleum pipelines (including ethylene, propylene, butylene, and butadiene pipelines) are permitted by rule [~~exempt~~] provided that operations are conducted according to the following conditions of this section:

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

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

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Margaret Hoffman
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Texas Natural Resource Conservation Commission
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Subchapter P. PLANT OPERATIONS

30 TAC §§106.371 - 106.376

STATUTORY AUTHORITY

The amendments are proposed under TCAA, §382.011, which authorizes the commission to administer the requirements of the TCAA; §382.012, which provides the commission with the authority to develop a comprehensive plan for the state's air; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; §382.057, which authorizes the commission to exempt from permitting, changes within any facility which will not make a significant contribution of air contaminants to the atmosphere; §382.051, which authorizes the commission to issue permits for construction of facilities which emit air contaminants; and §382.05196, which authorizes the commission to adopt permits by rule for types of facilities which will not make a significant contribution of air contaminants to the atmosphere.

The proposed amendments implement §382.011, concerning General Powers and Duties; §382.012, concerning State Air Control Plan; §382.017, concerning Rules; §382.057, concerning Exemption; §382.051, concerning Permitting Authority of the Commission; and §382.05196, concerning Permits by Rule.

§106.371. Cooling Water Units [(~~Previously SE 8~~)].

Water cooling towers, water treating systems for process cooling water or boiler feedwater, and water tanks, reservoirs, or other water containers designed to cool, store, or otherwise handle water (including rainwater) that have not been used in direct contact with gaseous or liquid process streams containing carbon compounds, sulfur compounds, halogens or halogen compounds, cyanide compounds, inorganic acids, or acid gases are permitted by rule [~~exempt~~].

§106.372. Industrial Gases [(~~Previously SE 101~~)].

Any air separation, or other industrial gas production, storage, or packaging facility is permitted by rule [~~exempt~~]. Industrial gases, for purposes of this section, include only oxygen, nitrogen, helium, neon, argon, krypton, and xenon.

§106.373. Refrigeration Systems [(~~Previously SE 103~~)].

Refrigeration systems, including storage tanks used in refrigeration systems, that use one of the following categories of refrigerant are permitted by rule [~~exempt~~]:

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

(3) anhydrous ammonia (ammonia) provided:

(A) the facility is registered with the commission's Office of Permitting, Remediation, and Registration [~~Air Quality~~] in Austin using Form PI-7; and

(B) (No change.)

§106.374. Lime Slaking Facilities [(~~Previously SE 121~~)].

Any lime slaking facility used to mix quicklime with water is permitted by rule [~~exempt~~], provided the following conditions of this section are met:

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

§106.375. Aqueous Solutions for Electrolytic and Electroless Processes [(~~Previously SE 41~~)].

Equipment using aqueous solutions is permitted by rule [~~exempt~~], providing the conditions of this section are met.

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

§106.376. Decorative Chrome Plating.

Decorative chromium electroplating operations that have a maximum combined rated capacity for all decorative chrome plating rectifiers of not more than 5,000 amperes and which use a fume suppressant or other equivalent control as sufficient to meet §113.190 of this title (relating to Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks (40 CFR 63, Subpart N)) are permitted by rule [~~exempt~~]. This permit by rule [~~exemption~~] may not be used at any site where other chrome plating or chromic acid anodizing operations are conducted.

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

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Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission

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Subchapter Q. PLASTICS AND RUBBER

30 TAC §§106.391 - 106.396

STATUTORY AUTHORITY

The amendments are proposed under TCAA, §382.011, which authorizes the commission to administer the requirements of the TCAA; §382.012, which provides the commission with the authority to develop a comprehensive plan for the state's air; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; §382.057, which authorizes the commission to exempt from permitting, changes within any facility which will not make a significant contribution of air contaminants to the atmosphere; §382.051, which authorizes the commission to issue permits for construction of facilities which emit air contaminants; and §382.05196, which authorizes the commission to adopt permits by rule for types of facilities which will not make a significant contribution of air contaminants to the atmosphere.

The proposed amendments implement §382.011, concerning General Powers and Duties; §382.012, concerning State Air Control Plan; §382.017, concerning Rules; §382.057, concerning Exemption; §382.051, concerning Permitting Authority of the Commission; and §382.05196, concerning Permits by Rule.

§106.391. Rubber and Plastic Curing Presses [~~(Previously SE 11)~~].

Presses used for the curing of rubber products and plastic products are permitted by rule [~~exempt~~].

§106.392. Thermoset Resin Facilities [~~(Previously SE 113)~~].

Facilities using thermoset resins (excluding resins that do not emit air contaminants) to manufacture or repair products are permitted by rule [~~exempt~~], provided that the following conditions of this section are satisfied for paragraph (1) and either paragraph (2) or (3) of this section.

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

§106.393. Conveyance and Storage of Plastic and Rubber Material [~~(Previously SE 27)~~].

Equipment used exclusively for conveying and storing plastic and/or rubber solid materials is permitted by rule [~~exempt~~], provided that no visible emissions occur and all the conditions of this section are met:

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

§106.394. Plastic Compression and Injection Molding [~~(Previously SE 45)~~].

Equipment used for compression molding and injection molding of plastics is permitted by rule [~~exempt~~].

§106.395. Equipment for Mixing Plastic and Rubber (No Solvent) [~~(Previously SE 46)~~].

Mixers, blenders, roll mills, or calenders for rubber or plastics are permitted by rule [~~exempt~~], provided the following conditions of this section are satisfied. Mixers, blenders, roll mills, or calenders handling or adding asbestos shall not be eligible to be permitted by rule [~~for exemption~~] under this section.

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

§106.396. Equipment for Mixing Plastic and Rubber (With Solvent) [~~(Previously SE 48)~~].

Roll mills or calenders for rubber or plastics in which organic solvents, diluents, or thinners are used are permitted by rule [~~exempt~~], provided that before construction begins, the facility is registered with Form PI-7 and information regarding process rate and type of material emitted is submitted.

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

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Margaret Hoffman
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Subchapter R. SERVICE INDUSTRIES

30 TAC §§106.411 - 106.419

STATUTORY AUTHORITY

The amendments are proposed under TCAA, §382.011, which authorizes the commission to administer the requirements of the TCAA; §382.012, which provides the commission with the authority to develop a comprehensive plan for the state's air; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; §382.057, which authorizes the commission to exempt from permitting, changes within any facility which will not make a significant contribution of air contaminants to the atmosphere; §382.051, which authorizes the commission to issue permits for construction of facilities which emit air contaminants; and §382.05196, which authorizes the commission to adopt permits by rule for types of facilities which will not make a significant contribution of air contaminants to the atmosphere.

The proposed amendments implement §382.011, concerning General Powers and Duties; §382.012, concerning State Air Control Plan; §382.017, concerning Rules; §382.057, concerning Exemption; §382.051, concerning Permitting Authority of the Commission; and §382.05196, concerning Permits by Rule.

§106.411. Steam or Dry Cleaning Equipment [~~(Previously SE 9)~~].

Equipment used exclusively for steam or dry cleaning of fabrics, plastics, rubber, wood, or vehicle engines or drive trains is permitted by rule [~~exempt~~].

§106.412. Fuel Dispensing [~~(Previously SE 14)~~].

Equipment used exclusively to store and dispense motor fuels into heavy and light-duty motor vehicles and marine vessels or other watercraft, aircraft, and railroad locomotive engines is permitted by rule [~~exempt~~].

§106.413. Bond Lining to Brake Shoes [~~(Previously SE 19)~~].

Equipment used exclusively for bonding lining to brake shoes is permitted by rule [~~exempt~~].

§106.414. Packaging Lubes and Greases [~~(Previously SE 26)~~].

Equipment used exclusively for the packaging of lubricants or greases is permitted by rule [~~exempt~~].

§106.415. Laundry Dryers [~~(Previously SE 43)~~].

Laundry dryers, extractors, or tumblers used for fabrics cleaned with water solutions of bleach or detergents are permitted by rule [~~exempt~~].

§106.416. Uranium Recovery Facilities [~~(Previously SE 95)~~].

A uranium in-situ solution recovery facility producing yellowcake is permitted by rule [~~exempt~~], provided that the facility operates according to the following conditions of this section.

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

(4) Before construction begins, the facility shall be registered with the commission's Office of Permitting, Remediation, and Registration [~~Air Quality~~] in Austin using Form PI-7.

§106.417. Ethylene Oxide Sterilizers [~~(Previously SE 89)~~].

Ethylene oxide (EO) sterilizing chambers/operations located on the same or contiguous property and under common ownership that use 1,000 pounds or less of EO per year are permitted by rule [~~exempt~~] provided that the following conditions of this section are satisfied.

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

§106.418. Printing Presses [~~(Previously SE 13)~~].

Printing operations (including, but not limited to, screen printers, ink-jet printers, presses using electron beam or ultraviolet light curing, and labeling operations) and supporting equipment (including, but not limited to, corona treaters, curing lamps, preparation, and cleaning equipment) which directly supports the printing operation are permitted by rule [~~exempt~~], provided that all the following conditions of this section are satisfied.

(1) The uncontrolled emission of volatile organic compounds (VOC) and solvents (including, but not limited to, those used for printing, cleanup, or makeup) shall not exceed the following rates:

(A) (No change.)

(B) 25 tpy for all printing operations on the property covered by permits by rule [~~exemptions from permitting~~].

(2) Facilities which release ten tpy or more of VOC emissions from all [~~exempted~~] printing operations permitted by rule at the site must register with the commission using Form PI-7.

(3)-(7) (No change.)

§106.419. Photographic Process Equipment [~~(Previously SE 38)~~].

Photographic process equipment by which an image is reproduced upon material sensitized to radiant energy is permitted by rule [~~exempt~~].

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

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Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

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Subchapter S. SURFACE COATING

30 TAC §§106.431 - 106.436

STATUTORY AUTHORITY

The amendments are proposed under TCAA, §382.011, which authorizes the commission to administer the requirements of the TCAA; §382.012, which provides the commission with the authority to develop a comprehensive plan for the state's air; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; §382.057, which authorizes the commission to exempt from permitting, changes within any facility which will not make a significant contribution of air contaminants to the atmosphere; §382.051, which authorizes the commission to issue permits for construction of facilities which emit air contaminants; and §382.05196, which authorizes the commission to adopt permits by rule for types of facilities which will not make a significant contribution of air contaminants to the atmosphere.

These proposed amendments implement §382.011, concerning General Powers and Duties; §382.012, concerning State Air Control Plan; §382.017, concerning Rules; §382.057, concerning Exemption; §382.051, concerning Permitting Authority of the Commission; and §382.05196, concerning Permits by Rule.

§106.431. Milling and Grinding of Coatings and Molding Compounds [~~(Previously SE 16)~~].

Equipment used exclusively to mill or grind coatings and molding compounds where all materials charged are in a paste form is permitted by rule [~~exempt~~].

§106.432. Dipping Tanks and Containers [~~(Previously SE 50)~~].

Containers, reservoirs, or tanks used exclusively for dipping operations for coating objects with oils, waxes, or greases where no organic solvents, diluents, or thinners are used; or dipping operations for applying coatings of natural or synthetic resins which contain no organic solvents are permitted by rule [~~exempt~~].

§106.433. Surface Coat Facility [~~(Previously SE 75)~~].

Surface coating or stripping facilities, excluding vehicle repair and refinishing shops, shall meet the following conditions of this section to be permitted by rule [~~exempt~~].

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

§106.434. Powder Coating Facility [~~(Previously SE 104)~~].

Surface coating operations utilizing powder coating materials with the powder applied by an electrostatic powder spray gun or an electrostatic fluidized bed are permitted by rule [~~exempt~~].

§106.435. Classic or Antique Automobile Restoration Facility [~~(Previously SE 116)~~].

"Classic" or "Antique" vehicle restoration facilities (the terms "classic" and "antique" vehicle as determined by the Texas Department of Public Safety Vehicle Inspection and Registration Section under Texas Transportation Code, Chapter 502, §502.274 (concerning Classic Motor Vehicles) or §502.275 (concerning Certain Antique Vehicles; Offense)) qualify for this permit by rule [~~exemption from permitting~~] if all of the following conditions of this section are met.

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

§106.436. Auto Body Refinishing Facility [~~(Previously SE 124)~~].

Body repair and refinishing of motorcycle, passenger car, van, light truck and heavy truck and other vehicle body parts, bodies, and cabs is permitted by rule [~~exempt~~], provided that all the following conditions of this section are met.

(1) Before construction begins, the facility shall be registered with the commission's Office of Permitting, Remediation, and Registration [~~Air Quality~~] in Austin using Form PI-7-124.

(2)-(15) (No change.)

(16) The following records and reports shall be maintained at the shop site for a consecutive 24-month period and be made immediately available upon request of personnel from the commission or any other air pollution control agency with jurisdiction:

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

(E) records of the United States Environmental Protection Agency and the commission's Office of Permitting, Remediation, and Registration [~~Waste Management~~] registration or identification numbers for each waste generator.

(17) (No change.)

(18) After December 31, 1994, the conditions of this permit by rule [~~exemption~~] are effective as to facilities in existence prior to the adoption of this section.

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

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Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
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♦ ♦ ♦

Subchapter T. SURFACE PREPARATION

30 TAC §§106.451 - 106.454

STATUTORY AUTHORITY

The amendments are proposed under TCAA, §382.011, which authorizes the commission to administer the requirements of the TCAA; §382.012, which provides the commission with the authority to develop a comprehensive plan for the state's air; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; §382.057, which authorizes the commission to exempt from permitting, changes within any facility which will not make a significant contribution of air contaminants to the atmosphere; §382.051, which authorizes the commission to issue permits for construction of facilities which emit air contaminants; and §382.05196, which authorizes the commission to adopt permits by rule for types of facilities which will not make a significant contribution of air contaminants to the atmosphere.

The proposed amendments implement §382.011, concerning General Powers and Duties; §382.012, concerning State Air Control Plan; §382.017, concerning Rules; §382.057, concerning Exemption; §382.051, concerning Permitting Authority of the Commission; and §382.05196, concerning Permits by Rule.

§106.451. Wet Blast Cleaning [~~(Previously SE 31)~~].
Blast cleaning equipment using a suspension of abrasives in water is permitted by rule [~~exempt~~].

§106.452. Dry Abrasive Cleaning [~~(Previously SE 102)~~].
Any abrasive cleaning operation that will satisfy paragraph (1) or (2) of this section is permitted by rule [~~exempt~~]:

(1) (No change.)

(2) outside blast cleaning:

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

(D) before construction begins, the facility is registered with the commission's Office of Permitting, Remediation, and Registration [~~Air Quality~~] in Austin using Form PI-7; and

(E) (No change.)

§106.453. Washing and Drying of Glass and Metal [~~(Previously SE 42)~~].
Equipment used for washing or drying products fabricated from metal or glass is permitted by rule [~~exempt~~], provided no volatile organic materials are used in the process and no oil or solid fuel is burned.

§106.454. Degreasing Units [~~(Previously SE 107)~~].
Any degreasing unit that satisfies the following conditions of this section is permitted by rule [~~exempt~~].

(1) The following general requirements are applicable to all degreasers unless specifically noted [~~exempted~~] by the conditions of this section.

(A) Units subject to paragraphs (3)-(5) of this section shall meet the following:

(i) register with the commission's Office of Permitting, Remediation, and Registration [~~Air Quality~~] in Austin using Form PI-7 and a Degreasing Unit Checklist;

(ii) (No change.)

(B)-(F) (No change.)

(2)-(5) (No change.)

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

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Subchapter U. TANKS, STORAGE, AND LOADING

30 TAC §§106.471 - 106.478

STATUTORY AUTHORITY

The amendments are proposed under TCAA, §382.011, which authorizes the commission to administer the requirements of the TCAA; §382.012, which provides the commission with the authority to develop a comprehensive plan for the state's air; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; §382.057, which authorizes the commission to exempt from permitting, changes within any facility which will not make a significant contribution of air contaminants to the atmosphere; §382.051, which authorizes the commission to issue permits for construction of facilities which emit air contaminants; and §382.05196, which authorizes the commission to adopt permits

by rule for types of facilities which will not make a significant contribution of air contaminants to the atmosphere.

The proposed amendments implement §382.011, concerning General Powers and Duties; §382.012, concerning State Air Control Plan; §382.017, concerning Rules; §382.057, concerning Exemption; §382.051, concerning Permitting Authority of the Commission; and §382.05196, concerning Permits by Rule.

§106.471. Storage or Holding of Dry Natural Gas [~~(Previously SE 21)~~].

Equipment used exclusively to store or hold dry natural gas is permitted by rule [~~exempt~~].

§106.472. Organic and Inorganic Liquid Loading and Unloading [~~(Previously SE 51)~~].

Liquid loading or unloading equipment for railcars, tank trucks, or drums; storage containers, reservoirs, tanks; and change of service of material loaded, unloaded, or stored is permitted by rule [~~exempt~~], provided that no visible emissions result and the chemicals loaded, unloaded, or stored are limited to:

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

§106.473. Organic Liquid Loading and Unloading [~~(Previously SE 53)~~].

Organic liquids loading or unloading equipment for railcars, tank trucks, or drums; and storage containers, tanks, or change of service of the material loaded, unloaded, or stored is permitted by rule [~~exempt~~], provided that all of the following conditions of this section are met.

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

(6) Facilities used for the loading, unloading, or storage of any compound listed in 40 Code of Federal Regulations 261, Appendix VIII are not permitted by rule [~~exempt~~] under this section.

§106.474. Hydrochloric Acid Storage [~~(Previously SE 78)~~].

Hydrochloric acid storage tanks used exclusively for the storage of hydrochloric acid with an acid strength of 38% by weight or less are permitted by rule [~~exempt~~]. If an acid more concentrated than 20% by weight is stored, the tank vent must be controlled to reduce emissions by at least 99%.

§106.475. Pressurized Tanks or Tanks Vented to a Firebox [~~(Previously SE 82)~~].

Any vessel storing carbon compounds composed only of carbon, hydrogen, or oxygen is permitted by rule [~~exempt~~], provided that the vessel vent is directed to an incinerator, boiler, or other firebox having a stationary flue or a waste gas flare system that will operate with no visible emissions except as provided by Chapter 101 of this title (relating to General Air Quality Rules) for periods of maintenance or operational upset. However, vessels not exceeding 100 barrels capacity and storing only liquid petroleum gas may have the safety relief valve vent directly to the atmosphere. Also, any tank having a capacity not to exceed 1,000 gallons and storing only commercial odorants used to odorize petroleum gases may have the safety relief valve vent directly to the atmosphere.

§106.476. Pressurized Tanks or Tanks Vented to Control [~~(Previously SE 83)~~].

Any tank or other container storing carbon compounds is permitted by rule [~~exempt~~], provided that the tank or container pressure is sufficient at all times to prevent vapor or gas loss to the atmosphere or the tank or container is equipped with a relief valve which directs all vapors or gases to an incinerator, boiler, or other firebox having a stationary flue or a waste gas smokeless flare system. The vapors or gases and any necessary fuel gas shall be mixed thoroughly upstream of the heater burner(s) or the flare tip such that the mixed gases have a minimum net or lower heating value of 200 British thermal units per cubic foot. The flare also shall meet the other requirements of §106.492 of this title (relating to Flares (Previously SE 80)).

§106.477. Anhydrous Ammonia Storage [~~(Previously SE 84)~~].

Anhydrous ammonia storage tanks and distribution facilities that meet the following conditions are permitted by rule [~~exempt~~].

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

(6) Before construction begins, written site approval must be received from the regional director and the owner or operator shall file with the commission's Office of Permitting, Remediation, and Registration [~~Air Quality~~] in Austin a completed Form PI-7 and supporting documentation demonstrating that all of the requirements of this section will be met.

(7) (No change.)

§106.478. Storage Tank and Change of Service [~~(Previously SE 86)~~].

Any fixed or floating roof storage tank, or change of service in any tank, used to store chemicals or mixtures of chemicals shown in Table 478 in paragraph (8) of this section is permitted by rule [~~exempt~~], provided that all of the following conditions of this section are met:

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

(7) Before construction begins, storage tanks of 25,000 gallons or greater capacity and located in a designated nonattainment area for ozone shall be registered with the commission's Office of Permitting, Remediation, and Registration [~~Air Quality~~] in Austin using Form PI-7. The registration shall include a list of all tanks, calculated emissions for each carbon compound in tons per year for each tank, and a Table 7 of Form PI-2 for each different tank design.

(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.

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Margaret Hoffman
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Texas Natural Resource Conservation Commission
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Subchapter V. THERMAL CONTROL DEVICES

30 TAC §§106.491 - 106.496

STATUTORY AUTHORITY

The amendments are proposed under TCAA, §382.011, which authorizes the commission to administer the requirements of the TCAA; §382.012, which provides the commission with the authority to develop a comprehensive plan for the state's air; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; §382.057, which authorizes the commission to exempt from permitting, changes within any facility which will not make a significant contribution of air contaminants to the atmosphere;

§382.051, which authorizes the commission to issue permits for construction of facilities which emit air contaminants; and §382.05196, which authorizes the commission to adopt permits by rule for types of facilities which will not make a significant contribution of air contaminants to the atmosphere.

The proposed amendments implement §382.011, concerning General Powers and Duties; §382.012, concerning State Air Control Plan; §382.017, concerning Rules; §382.057, concerning Exemption; §382.051, concerning Permitting Authority of the Commission; and §382.05196, concerning Permits by Rule.

§106.491. Dual Chamber Incinerators [~~(Previously SE 2)~~].
Dual-chambered incinerators which burn only waste generated on-site and which meet the conditions of this section are permitted by rule [~~exempt~~]. Incinerators used in the processing or recovery of materials or to dispose of pathological waste as defined in §106.494 of this title (relating to Pathological Waste Incinerators (Previously SE 90)), hospital waste, and/or infectious waste are not authorized by this section.

(1) (No change.)

(2) The incinerator shall meet the following operational conditions.

(A) Before construction begins, the facility shall be registered with the commission's Office of Permitting, Remediation, and Registration [~~Air Quality~~] in Austin using Form PI-7.

(B)-(E) (No change.)

§106.492. Flares [~~(Previously SE 80)~~].
Smokeless gas flares which meet the following conditions of this section are permitted by rule [~~exempt~~]:

(1) (No change.)

(2) operational conditions.

(A) (No change.)

(B) A flare which burns gases containing more than 24 ppmv of sulfur, chlorine, or compounds containing either element shall be registered with the commission's Office of Permitting, Remediation, and Registration [~~Air Quality~~] in Austin using Form PI-7 prior to construction of a new flare or prior to the use of an existing flare for the new service.

(C) (No change.)

§106.493. Direct Flame Incinerators [~~(Previously SE 88)~~].
Direct flame incinerators installed for the purpose of reducing or eliminating non-halogenated volatile organic compound vapors and/or aerosols (but not liquids or solids) are permitted by rule [~~exempt~~], provided the following conditions of this section are satisfied.

(1) Before construction begins, the facility shall be registered with the commission's Office of Permitting, Remediation, and Registration [~~Air Quality~~] in Austin using Form PI-7.

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

§106.494. Pathological Waste Incinerators [~~(Previously SE 90)~~].
(a) (No change.)

(b) Conditions of permit by rule [~~exemption~~]. Crematories and non-commercial incinerators used to dispose of pathological waste and carcasses which meet the following conditions of this section are permitted by rule [~~exempt~~]. Incinerators used in the recovery of materials are not covered by this section.

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

§106.495. Heat Cleaning Devices [~~(Previously SE 87)~~].
Heat cleaning devices (such as ovens, furnaces, and/or direct flame incinerators) used to thermally remove residual combustible or semi-combustible materials from noncombustible electrical or mechanical parts are permitted by rule [~~exempt~~], provided the following conditions of this section are satisfied.

(1) Before construction begins, the facility shall be registered with the commission's Office of Permitting, Remediation, and Registration [~~Air Quality~~] in Austin using Form PI-7.

(2)-(8) (No change.)

§106.496. Trench Burners [~~(Previously SE 97)~~].
Any trench burner that operates according to the following conditions of this section is permitted by rule [~~exempt~~].

(1)-(17) (No change.)

(18) Before operation of the facility begins at any site, written site approval shall be received from the executive director and any local air pollution control program having jurisdiction in the area and the facility shall be registered with the commission's Office of Permitting, Remediation, and Registration [~~Air Quality~~] in Austin using Form PI-7.

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

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Texas Natural Resource Conservation Commission
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Subchapter W. TURBINES AND ENGINES

30 TAC §106.511, §106.512

STATUTORY AUTHORITY

The amendments are proposed under TCAA, §382.011, which authorizes the commission to administer the requirements of the TCAA; §382.012, which provides the commission with the authority to develop a comprehensive plan for the state's air; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; §382.057, which authorizes the commission to exempt from permitting, changes within any facility which will not make a significant contribution of air contaminants to the atmosphere; §382.051, which authorizes the commission to issue permits for construction of facilities which emit air contaminants; and §382.05196, which authorizes the commission to adopt permits by rule for types of facilities which will not make a significant contribution of air contaminants to the atmosphere.

The proposed amendments implement §382.011, concerning General Powers and Duties; §382.012, concerning State Air Control Plan; §382.017, concerning Rules; §382.057, concerning Exemption; §382.051, concerning Permitting Authority of the Commission; and §382.05196, concerning Permits by Rule.

§106.511. Portable and Emergency Engines and Turbines [~~(Previously SE 5)~~].

Internal combustion engine and gas turbine driven compressors, electric generator sets, and water pumps, used only for portable, emergency, and/or standby services are permitted by rule [~~exempt~~], provided that the maximum annual operating hours shall not exceed 10% of the normal annual operating schedule of the primary equipment; and all electric motors. For purposes of this section, "standby" means to be used as a "substitute for" and not "in addition to" other equipment.

§106.512. Stationary Engines and Turbines [~~(Previously SE 6)~~].

Gas or liquid fuel-fired stationary internal combustion reciprocating engines or gas turbines that operate in compliance with the following conditions of this section are permitted by rule [~~exempt~~].

(1) The facility shall be registered by submitting the commission's Form PI-7, Table 29 for each proposed reciprocating engine, and Table 31 for each proposed gas turbine to the commission's Office of Permitting, Remediation, and Registration [~~Air Quality~~] in Austin within ten days after construction begins. Engines and turbines rated less than 240 horsepower (hp) need not be registered, but must meet paragraphs (5) and (6) of this section, relating to fuel and protection of air quality. Engine hp rating shall be based on the engine manufacturer's maximum continuous load rating at the lesser of the engine or driven equipment's maximum published continuous speed. A rich-burn engine is a gas-fired spark-ignited engine that is operated with an exhaust oxygen content less than 4.0% by volume. A lean-burn engine is a gas-fired spark-ignited engine that is operated with an exhaust oxygen content of 4.0% by volume, or greater.

(2)-(6) (No change.)

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

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Subchapter X. WASTE PROCESSES AND REMEDIATION

30 TAC §§106.531 - 106.534

STATUTORY AUTHORITY

The amendments are proposed under TCAA, §382.011, which authorizes the commission to administer the requirements of the TCAA; §382.012, which provides the commission with the authority to develop a comprehensive plan for the state's air; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; §382.057, which authorizes the commission to exempt from permitting, changes within any facility which will not make a significant contribution of air contaminants to the atmosphere; §382.051, which authorizes the commission to issue permits for construction of facilities which emit air contaminants; and §382.05196, which authorizes the commission to adopt permits by rule for types of facilities which will not make a significant contribution of air contaminants to the atmosphere.

The proposed amendments implement §382.011, concerning General Powers and Duties; §382.012, concerning State Air Control Plan; §382.017, concerning Rules; §382.057, concerning Exemption; §382.051, concerning Permitting Authority of the Commission; and §382.05196, concerning Permits by Rule.

§106.531. Sewage Treatment Facility [~~(Previously SE 60)~~].

Sewage treatment facilities, excluding combustion or incineration equipment, land farms, or grease trap waste handling or treatment facilities are permitted by rule [~~exempt~~].

§106.532. Water and Wastewater Treatment [~~(Previously SE 61)~~].

Water and wastewater treatment units are permitted by rule [~~exempt~~], provided the following conditions of this section are met.

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

(3) The following shall not be permitted by rule under [~~exempted by~~] this section:

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

§106.533. Water and Soil Remediation [~~(Previously SE 68)~~].

Equipment used to reclaim or destroy chemicals removed from contaminated ground water, contaminated water condensate in tank and pipeline systems, or contaminated soil for the purpose of remedial action is permitted by rule [~~exempt~~], provided all the following conditions of this section are satisfied.

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

(6) Before construction of the facility begins, the facility shall be registered with the commission's Office of Permitting, Remediation, and Registration [~~Air Quality~~] in Austin using Form PI-7. The registration shall contain specific information concerning the basis (measured or calculated) for the expected emissions from the facility. The registration shall also explain details as to why the emission control system can be expected to perform as represented.

(7) (No change.)

§106.534. Municipal Solid Waste Landfills and Transfer Stations [~~(Previously SE 110)~~].

Municipal solid waste landfills and waste transfer stations operating in compliance with the Texas Solid Waste Disposal Act are permitted by rule [~~exempt~~].

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

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Chapter 115. CONTROL OF AIR POLLUTION FROM VOLATILE ORGANIC COMPOUNDS

Subchapter E. SOLVENT-USING PROCESSES

Division 2. SURFACE COATING PROCESSES

30 TAC §§115.420-115.427, 115.429

The Texas Natural Resource Conservation Commission (commission) proposes amendments to §115.420, Surface Coating Definitions; §115.421, Emission Specifications; §115.422, Control Requirements; §115.423, Alternate Control Requirements; §115.424, Inspection Requirements; §115.425, Testing Requirements; §115.426, Monitoring and Recordkeeping Requirements; §115.427, Exemptions; and §115.429, Counties and Compliance Schedules. The commission proposes these revisions to Chapter 115, Control of Air Pollution from Volatile Organic Compounds, and to the state implementation plan (SIP) to incorporate the requirement of Aerospace Manufacturing and Rework Operations Control Techniques Guideline (CTG) guidance document into the chapter. This incorporation will provide consistent control requirements to aerospace companies and prevent the necessity to review individual control plans every two years. In an effort to improve implementation of the existing Chapter 115 surface coating rules which apply in the Beaumont/Port Arthur (BPA), Dallas/Fort Worth (DFW), El Paso (EP), and Houston/Galveston (HGA) ozone nonattainment areas and in Gregg, Nueces, and Victoria Counties, the commission proposes amendments to §§115.420-115.427 and 115.429 which delete unnecessary requirements and clarify a variety of requirements and rule references; and associated revisions to the SIP. At the request of these affected companies, the commission also proposes that the alternate reasonably available control technology (ARACT) determinations issued under the existing §115.423(a)(4) to Lockheed-Martin, Raytheon Company and Bell Helicopter Textron be withdrawn from the SIP. The companies will then be required to comply directly with the new Chapter 115 aerospace requirements.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

AEROSPACE COATINGS

Under the 1990 Amendments to the Federal Clean Air Act (FCAA), §183, the United States Environmental Protection Agency (EPA) is required to issue various CTG guidance documents for the purpose of assisting states in developing reasonably achievable control technology (RACT) controls for sources of volatile organic compound (VOC) emissions. The EPA was required under FCAA, §183(b)(3), to issue an aerospace CTG by November 15, 1993. The EPA published the final aerospace CTG in the March 27, 1998 issue of the Federal Register (63 FR 15005). The aerospace CTG was developed concurrently with the maximum achievable control technology (MACT) air toxics standards which the EPA promulgated on September 1, 1995 for Aerospace Manufacturing and Rework Facilities (60 FR 45948).

Each state is required to submit a revision to its SIP which implements RACT regulations for VOC sources in moderate or above ozone nonattainment areas. Specifically, FCAA, §182(b)(2)(A), requires states to submit RACT regulations for VOC sources that are covered by a CTG issued after November 15, 1990 (the enactment date of the 1990 FCAA), but prior to the time of attainment. Limits in state rules must be at least as stringent as the CTG limits or otherwise must be determined to meet RACT.

Each CTG contains a "presumptive norm" for RACT for a specific source category, based on the EPA's evaluation of the capabilities and problems general to that category. Where applicable, the EPA recommends that states adopt requirements consistent with the presumptive norm. However, the presumptive norm is only a recommendation. States may choose to develop their own RACT requirements on a case-by-case basis, considering the emission reductions needed to obtain achievement of the national ambient air quality standards and the economic and technical circumstances of the individual source.

ARCHITECTURAL COATINGS

Chapter 115 currently include rules which regulate nine categories of architectural coatings in the BPA, DFW, EP, and HGA ozone nonattainment areas. These rules were initially adopted on December 18, 1987 for Dallas and Tarrant Counties. The rules were amended on May 8, 1992 to include the remaining 14 counties in the four ozone nonattainment areas.

The FCAA, §183(e), established a new regulatory program for controlling VOC emissions from consumer and commercial products. Section 183(e) requires the EPA to list, and schedule for regulation, categories of consumer and commercial products after completion of a study and report to Congress concerning the products and their potential to contribute to levels of ozone which violate the ozone National Ambient Air Quality Standards. In 1992, the EPA initiated a regulatory negotiation ("reg-neg") to address architectural & industrial maintenance (AIM) coatings as an alternative to the traditional approach to rulemaking. The AIM coatings reg-neg committee members represented the affected industries, consumers, federal agencies, state and local air pollution control agencies, environmental groups, and labor organizations. Reg-neg meetings were held from October 1992 to February 1994, but the committee was unable to reach consensus. On September 23, 1994, the reg-neg concluded without consensus, and the EPA initiated development of the AIM coatings rule using the information it had gathered during the reg-neg process.

In the September 11, 1998 issue of the *Federal Register* (63 FR 48848), EPA adopted a national AIM coatings rule with a final compliance date of September 11, 1999. The EPA's AIM coatings rule addresses 55 coating categories and is expected to achieve a 20% VOC emission reduction. The commission's "15% Rate-of-Progress" SIP for the nonattainment areas relies on this projected 20% emission reduction. Because the national AIM coatings rules are much more comprehensive than the Chapter 115 architectural coatings rules, the commission is proposing to delete these Chapter 115 rules.

SECTION BY SECTION DISCUSSION

The rule amendments propose to incorporate the requirements for Aerospace Manufacturing and Rework Operations which the EPA outlined in the CTG for this industry. This includes emissions limitations for VOC used for coating and clean up. The commission is also proposing amendments which reorganize and clarify the surface coating rules. These clarifying/reorganizing revisions include, where possible, consolidation or elimination of redundant language or requirements, the use of the active (rather than passive) voice, incorporation of a variety of interpretations made by the agency's Air Rule Interpretation Team (RIT) 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.

The proposed amendments to §115.420, Surface Coating Definitions, add new definitions for aerosol coating (spray paint), daily weighted average, and spray gun which are intended to

clarify the existing Chapter 115 surface coating requirements. The definition of daily weighted average incorporates the concepts of Air RIT's Rule Interpretation Code Number R5-421.006, concerning daily weighted average in order to address questions raised to the commission's staff. The commission proposes that the daily weighted average is VOC content for all coatings subject to the same content standard applied in a single day instead of the average for one coating only. The commission believes that this procedure would most accurately reflect daily VOC emissions from a coating operation.

The proposed amendments to §115.420 also revise the definitions of miscellaneous metal parts and products coating and vehicle refinishing (body shops). The proposed amendment to the definition of "miscellaneous metal parts and products coating" incorporates the Air RIT's Rule Interpretation Code Number R5-421.005, concerning the applicability of the miscellaneous metal parts and products (MMPP) surface coating rules. In order to address questions from regulated operators, and to clearly state to what operations the MMPP surface coating rules would apply, the commission proposes that the rules would apply to: 1) original equipment manufacturing operations; 2) designed on-site maintenance shops which recoat used parts and products; and 3) off-site job shops which coat new parts and products or which recoat used parts and products. The proposed amendments to the definition of vehicle refinishing (body shops) replace the phrase "repair and recoating" with "coating" because in some cases the vehicle is not repaired but is simply painted (e.g., a vehicle with no body damage which is being painted the same or a different color) and delete the word "commercial" from the phrase "commercial operation" because an exemption for in-house (fleet) vehicle refinishing operations was added as §115.427(a)(6) on April 30, 1997. (See the May 13, 1997 issue of the *Texas Register* (22 TexReg 2213)). The definition of vehicle refinishing (body shops) is also being relocated because it was inadvertently not in alphabetical order.

In addition, the proposed amendments to §115.420 delete the definitions of architectural coating and non-flat architectural coating. These definitions will no longer be needed after the deletion of the Chapter 115 architectural coating rules.

Finally, the proposed amendments to §115.420 add 84 new definitions for aerospace coating, including: ablative coating, adhesion promoter, adhesive bonding primer, aerospace vehicle or component, aircraft fluid systems, aircraft transparency, antichafe coating, antique aerospace vehicle or component, aqueous cleaning solvent, bearing coating, bonding maskant, caulking and smoothing compounds, chemical agent-resistant coating (CARC), chemical milling maskant, cleaning operation, cleaning solvent, clear coating, closed-cycle depainting system, coating operation, coating unit, commercial exterior aerodynamic structure primer, commercial interior adhesive, compatible substrate primer, confined space, corrosion prevention coating, critical use and line sealer maskant, cryogenic flexible primer, cryoprotective coating, cyanoacrylate adhesive, dry lubricative material, electric or radiation-effect coating, electrostatic discharge and electromagnetic interference (EMI) coating, elevated-temperature Skydrol-resistant commercial primer, epoxy polyamide topcoat, fire-resistant (interior) coating, flexible primer, flight test coating, flush cleaning, fuel tank adhesive, fuel tank coating, grams of VOC per liter of coating (less water and less exempt solvent), hand-wipe cleaning operation, high temperature coating, insulation covering, intermediate release coating, lacquer, limited access space, metalized epoxy coating, mold release, monthly weighted average, nonstructural adhesive, operating parameter value, optical antireflection coating, part marking coating, pretreatment coating, primer, radome, rain erosion-resistant coating, research and development, rocket motor bonding adhesive, rocket motor nozzle coating, rubber-based adhesive, scale inhibitor, screen print ink, sealant, seal coat maskant, self-priming topcoat, semiaqueous cleaning solvent, silicone insulation material, solid film lubricant, space vehicle, specialty coating, specialized function coating, structural autoclavable adhesive, structural nonautoclavable adhesive, surface preparation, temporary protective coating, thermal control coating, topcoat, touch-up and repair coating, touch-up and repair operation, VOC composite vapor pressure, waterborne (water-reducible) coating, wet fastener installation coating, and wing coating. The proposed amendments to §115.420 renumber the existing surface coating definitions as necessary to accomodate inclusion of the new definitions and deletion of the existing architectural coating definitions. Finally, the definition of high-volume/low-pressure (HVLP) spray guns would be modified to clarify that the operating pressure of this equipment is to be measured at the air cap.

The proposed amendments to §115.421, Emission Specifications, add emission limitations in the form of a table for aerospace coatings. These limits are for all coating materials that contain VOCs and for any VOC-containing materials added to the original coating supplied by the manufacturer.

The proposed amendments to §115.421 also delete the emissions limitations for architectural coatings as described earlier in this preamble. In addition, the proposed amendments to the lead-in paragraphs of §115.421(a) and (b) delete language concerning the calculation of daily weighted average which is being addressed through the addition of a definition of daily weighted average to §115.420(a). The commission is also proposing the addition of an option to use a monthly weighted average for application to operations not conducted on a daily basis. A definition of monthly weighted average is included in §115.420.

In separate rulemaking published in the July 16, 1999 issue of the *Texas Register* (24 TexReg 5490) the commission added a definition of vapor control system to §115.10 which is identical to the existing definition of vapor recovery system. This 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. Consequently, the proposed amendments to §115.421 change a reference from "vapor recovery system" to "vapor control system" for clarification.

Finally, the proposed amendments to §115.421 update rule references that have changed because of the additions, deletions and reordering in the chapter, and delete references to compliance dates which have passed.

The proposed amendments to §115.422, Control Requirements, add control requirements for aerospace vehicle or component coating processes subject to §115.421(a)(11) or (b)(10), as well as related clean-up operations. In addition, the proposed amendments to §115.422 revise the "once- in, always-in" (OIAI) rule (currently found in §115.422(5)) update the term "standard exemption" to "exemption from permitting to reflect pending changes in terms in Chapter 106 of this title." OIAI is an EPA concept which means that once emissions from a source exceed the applicability cutoff for a particular VOC regulation in

the SIP, that source is always subject to the control requirements of the regulation.

The proposed amendments to §115.423, Alternate Control Requirements, incorporate Gregg, Nueces, and Victoria Counties into subsection (a) and delete all of subsection (b) which currently contains the alternate control requirements for these three counties. The proposed amendments also specify that the existing capture efficiency testing requirements apply only in the BPA, DFW, EP, and HGA areas, update rule references, and change a reference from "vapor recovery system" to "vapor control system" for clarification.

The proposed amendments to §115.423 change the review schedule for ARACT determinations under the existing §115.421(a)(4) and (b)(4) from every two years to every five years. Because of the time required to process and review an ARACT, the current two-year review schedule means that at any given time, companies with ARACTs are either preparing ARACT review applications or are in the actual review process. The proposed amendments also modify a cross reference in the equation in §115.423(1).

The proposed amendments to §115.424, Inspection Requirements, incorporate Gregg, Nueces, and Victoria Counties into subsection (a) and delete all of subsection (b) which currently contains the inspection requirements for these three counties.

The proposed amendments to §115.425, concerning Testing Requirements, incorporate Gregg, Nueces, and Victoria Counties into subsection (a) and delete all of subsection (b) which currently contains the testing requirements for these three counties. The proposed amendments to §115.425 also clarify that if a test method inadvertently measures compounds that are exempt solvent (i.e., non- VOC), these exempt solvents may be excluded when determining compliance with an emission standard.

The proposed amendments to §115.425 also specify that the existing capture efficiency testing requirements apply only in the BPA, DFW, EP, and HGA areas; update rule references; and change references from "TACB," "vapor recovery system," and "carbon adsorber" to "executive director," "vapor control system," and "carbon adsorption system," respectively, for clarification. In addition, the proposed amendments to the exemption from capture efficiency testing found in the existing §115.425(a)(4)(A)(ii) to clarify that "daily" refers to each 24-hour period of the 30-day period. Also, a new paragraph (5) is proposed for §115.425 that includes testing requirements for aerospace vehicle or component coating facilities subject to §115.421(a)(11) or (b)(10).

Finally, the proposed amendments to §115.425 also add a new paragraph (6), which authorizes the use of test methods other than those specifically listed in §115.425, provided that any new test method is validated using the procedures in 40 Code of Federal Regulations (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 (6) 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 amendments to §115.426, Monitoring and Recordkeeping Requirements, incorporate Gregg, Nueces, and Victoria Counties into subsection (a) and delete all of subsection (b) which currently contains the monitoring and recordkeeping requirements for these three counties. Additionally, the proposed amendments update rule references; change references from "TACB" and "vapor recovery system" to "executive director" and "vapor control system," respectively, for clarification; add a requirement for monitoring and recording of appropriate operating parameters for types of vapor control systems not specifically listed in §115.426(3); and propose deletion of the existing §115.426(a)(2)(A)(iv), which concerns records associated with control device maintenance activities, because maintenance activities are already addressed in §101.7, Maintenance, Start-up and Shutdown Reporting, Recordkeeping, and Operational Requirements. In addition, the proposed new paragraph (5) specifies the recordkeeping requirements for aerospace manufacturing and rework operations. Also, the proposed new paragraph (6) specifies that with the exception of specialty coatings, compliance with the recordkeeping requirements of 40 CFR §63.752 (National Emission Standards for Aerospace Manufacturing and Rework Facilities) is considered to represent compliance with the requirements of §115.426. Finally, the proposed amendments to §115.426 add alternative recordkeeping requirements for surface coating operations that qualify for the proposed new exemption in §115.427 for surface coating operations on a property in the BPA, DFW, EP, and HGA areas for which total coating and solvent use does not exceed 150 gallons in any consecutive 12-month period.

The proposed amendments to §115.427, Exemptions, exempt all aerospace vehicles and components from the MMPP requirements after the December 31, 2001 compliance date for the proposed new aerospace requirements; revise the exemption for aerosol coatings (spray paint) for consistency with the proposed new definition of this term in §115.420(a). The proposed amendments also delete the exemptions for architectural coatings due to the proposed deletion of the architectural coating requirements in the existing §115.421(a)(11), and change a reference from "facility" to "property" for clarification.

The proposed amendments to §115.427 also add an exemption from §115.421(a) and §115.423 for surface coating operations on a property in the BPA, DFW, EP, and HGA areas for which total coating and solvent use does not exceed 150 gallons in any consecutive 12-month period. This exemption is being proposed to ease the recordkeeping burden on very small surface coating operations. The proposed exemption level would represent a maximum VOC emission rate of at most 1200 pounds per year (lb/yr), or 0.6 tons per year (tpy), assuming a worst-case scenario of eight pounds of VOC per gallon. By comparison, the existing 15 pounds per day (lb/day) and three pounds per hour (lb/hr) exemption of §115.427(a)(3)(A) could allow up to 5475 lbs/yr, or 2.7 tpy, of VOC emissions.

On page 1-1 of the EPA document *Issues Relating to VOC Regulation Cutpoints, Deficiencies, And Deviations – Clarification to Appendix D of November 24, 1987 Federal Register* (May 25, 1988), the EPA states:

"Where EPA has previously specified 3 lb VOC/hr or 15 lb VOC/day cutoff, State may use it on actual emissions basis or use 10 tpy theoretical potential emissions (design capacity [~~or maximum production~~] and 8760 hr/yr) before add-on control. Care should be taken to make enforceable any regulations specified on an 'actual' emissions basis."

The commission believes that the proposed exemption is at least as stringent as the ten tpy theoretical maximum emissions cutoff specified in the federal guidance. Specifically, the ten tpy cutoff represents an average VOC emission rate of 55 lb/day. An owner or operator could apply coatings for ten hours at five lb/hr and still be below this cutoff. With a VOC emission limit of at most 1200 lb/yr, the owner or operator would be unable to apply coatings for ten hours at five lb/hr very often; at most, 24 days per year at the 50 lb/day maximum.

The proposed amendments to §115.429, Counties and Compliance Schedules, specify a December 31, 2001 compliance date for the new aerospace vehicle and component coating requirements and delete unnecessary language. The proposed amendments to §115.429 also specify that aerospace vehicle and component coating processes which are subject to the new aerospace coating requirements must continue to comply with the existing miscellaneous metal parts and products coating requirements until these processes are in compliance with the new aerospace requirements.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

Since 30 TAC Chapter 115 is an applicable requirement under 30 TAC Chapter 122, owners or operators subject to the Federal Operating Permit Program must, consistent with the revision process in Chapter 122, revise their operating permits to include the revised Chapter 115 requirements for each emission unit affected by the revisions to Chapter 115 at their sites.

FISCAL NOTE

Jeff Grymkoski, Director, Strategic Planning and Appropriations, has determined that for the first five years the proposed rules are in effect, there will be no significant fiscal implications for units of state or local government as a result of the administration and enforcement of the proposed rules. The proposed rules apply to businesses that manufacture, rework and repair aerospace vehicles and their components in the following nonattainment areas: BPA, DFW, EP, HGA, Gregg, Nueces, and Victoria Counties.

The commission proposes amendments to Chapter 115 and the SIP to conform to the Aerospace Manufacturing and Rework Operations CTG promulgated by EPA in December 1997.

These rules are intended to provide consistent control methods and VOC content standards for users of aerospace coatings and to eliminate the requirement that these facilities update their individually tailored ARACT methods every two years. It is anticipated that adopting this CTG will provide a consistent method of VOC control that may be less costly for certain facilities to comply with state and federal air quality standards.

The proposed amendments also delete the architectural coating requirements contained in Chapter 115 because of recent promulgation of a more comprehensive federal requirement.

PUBLIC BENEFIT

Mr. Grymkoski has also determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated from the enforcement of and compliance with these sections will be application of a consistent method of VOC control for facilities that manufacture, rework and repair aerospace vehicles and their components in the following nonattainment areas: BPA, DFW, EP, HGA, Gregg, Nueces, and Victoria Counties.

The EPA estimates that approximately 230 facilities are currently engaged in aerospace coating and solvent cleaning operations at aerospace manufacturing and rework facilities in Texas. Most of these facilities are located in the state's nonattainment areas.

Currently, these facilities must now conform with individually tailored plans for the control of VOC from aerospace coating operations which must be renewed every two years. Adoption of the proposed rules would produce some savings to certain facilities by eliminating the renewal process for those facilities which already conform to Aerospace Manufacturing and Rework Facilities CTGs.

The adoption of these rules will require the use of HVLP spray guns for controling VOC at aerospace manufacturing and rework facilities. The commission believes that many facilities already use this equipment. Facilities not using this type of spray guns will be required to purchase them at a cost of approximately $450 each. The commission has been unable to determined the total number of spray guns to be purchased at each facility. However, due to relative low cost of individual spray units, the cost of complying with this requirement is not anticipated to be significant.

The proposed amendments also delete the architectural coating requirements contained in Chapter 115 because of recent promulgation of a more comprehensive federal requirement.

SMALL AND MICRO-BUSINESS IMPACT ANALYSES

The proposed rules are not anticipated to impose a significant adverse affect on any small businesses and micro-businesses. In addition, no mitigation of the cost to small business is required under Texas Government Code, §2006.002(a) because the requirements of this proposal are specified under federal law.

The proposed rules require the use of HVLP spray guns. Small and micro-businesses engaged in aerospace manufacturing and rework operations which do not currently use them in their operations will be required to purchase them at a cost of $450 per spray gun. Although the number spray guns will vary from facility to facility, the total number of spray guns purchased by any one facility should not impose a significant adverse affect on that facility.

Deletion of the architectural coating requirement should have no affect on small businesses as they are currently required to comply with the more comprehensive federal standards.

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 does not meet the definition of a "major environmental rule" as defined in that statute. "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed CTG does not add more stringent standards than those currently existing under the aerospace MACT.

Section 2001.0225(a) only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless

the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program, or; 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

This rulemaking does not meet any of these four applicability requirements of §2001.0225(a). This rulemaking is not proposed under the general powers of the agency under Chapter 5 of the Texas Water Code. Instead, the rules are specifically proposed under the Texas Clean Air Act (TCAA), §382.011, General Powers and Duties, 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, Rules, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA; and §382.012, State Air Control Plan, which requires the commission to develop plans for protection of the state's air. Specifically, the proposed amendments do not exceed a standard set by state or federal law, but comply with federal law requiring adoption, for moderate or above ozone nonattainment areas, of RACT standards covered by a CTG issued after November 15, 1990. The proposed amendments do not exceed a requirement of a delegation agreement. 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, §2007.043. The following is a summary of that assessment. The specific purpose of this rulemaking is to add aerospace coating rules which are based upon a CTG guidance document issued by the EPA, as required by the FCAA, §182(b)(2)(A). Promulgation and enforcement of the rule amendments will not affect private real property which is the subject of the rules because this action does not restrict or limit an owner's right to their property that would otherwise exist in the absence of governmental action.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has determined that this rulemaking relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 et seq.), and the commission's rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the CMP. 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, commission 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 with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council. For this rulemaking, the commission has determined that the rules are consistent with the applicable CMP goal expressed in 31 TAC §501.12(1), of protecting and preserving the quality and values of coastal natural resource areas and the policy in 31 TAC §501.14(q), which requires that the commission protect air quality in coastal areas. No new sources of air contaminants will be authorized by the rule revisions concerning aerospace control technique guidelines or by the deletion of the current architectural coating requirements. Therefore, in compliance with 31 TAC §505.22(e), the commission affirms that the 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 HEARING

A public hearing on this proposal will be held in Austin on May 2, 2000, at 2:00 p.m. in Building F, Room 2210 at the Texas Natural Resource Conservation Commission complex, located at 12100 Park 35 Circle. Individuals may present oral statements when called upon in order of registration. Open discussion will not occur during the hearing; however, agency staff members will be available to discuss the proposal 30 minutes before the hearing and will answer questions before and after the hearing.

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

SUBMITTAL OF COMMENTS

Comments may be submitted to Angela Slupe, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 1999-023-115-AI. Comments must be received by 5:00 p.m., May 8, 2000. For further information, please contact Beecher Cameron, Policy and Regulations Division, at (512) 239-1495.

STATUTORY AUTHORITY

The amendments are proposed under the Texas Health and Safety Code, TCAA, §382.011, General Powers and Duties, 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, Rules, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA; and §382.012, State Air Control Plan, which requires the commission to develop plans for protection of the state's air.

The proposed amendments implement the Texas Health and Safety Code, TCAA, §382.011, General Powers and Duties; §382.012, State Air Control Plan; and §382.017, Rules.

§115.420. Surface Coating Definitions.

(a) General surface coating definitions. The following terms, when used in this division (relating to Surface Coating Processes), shall have the following meanings, unless the context clearly indicates otherwise. Additional definitions for terms used in this division are found in §115.10 of this title (relating to Definitions), §101.1 of this title (relating to Definitions), and §3.2 of this title (relating to Definitions).

(1) Aerosol coating (spray paint)–A hand-held, pressurized, nonrefillable container that expels an adhesive or a coating in a finely divided spray when a valve on the container is depressed.

(2) [~~(1)~~] Coating–A material applied onto or impregnated into a substrate for protective, decorative, or functional purposes. Such materials include, but are not limited to, paints, varnishes, sealants, adhesives, thinners, diluents, inks, maskants, and temporary protective coatings.

(3) [~~(2)~~] Coating application system–Devices or equipment designed for the purpose of applying a coating material to a surface. The devices may include, but are not be limited to, brushes, sprayers, flow coaters, dip tanks, rollers, knife coaters, and extrusion coaters.

(4) [~~(3)~~] Coating line–An operation consisting of a series of one or more coating application systems and including associated flashoff area(s), drying area(s), and oven(s) wherein a surface coating is applied, dried, or cured.

(5) [~~(4)~~] Coating solids (or solids)–The part of a coating that remains after the coating is dried or cured.

(6) Daily weighted average–The total weight of volatile organic compound (VOC) emissions from all coatings subject to the same emission standard in §115.421 of this title (relating to Emission Specifications), divided by the total volume of those coatings (minus water and exempt solvent) delivered to the application system each day. Coatings subject to different emission standards in §115.421 of this title shall not be combined for purposes of calculating the daily weighted average. In addition, determination of compliance is based on each individual coating line.

(7) [~~(5)~~] High-volume low-pressure [~~(HVLP)~~] spray guns–Equipment used to apply coatings by means of a spray gun which operates between 0.1 and 10.0 pounds per square inch gauge air pressure at the air cap.

(8) [~~(6)~~] Normally closed container–A container that is closed unless an operator is actively engaged in activities such as adding or removing material.

(9) [~~(7)~~] Pounds of VOC [~~volatile organic compounds (VOC)~~] per gallon of coating (minus water and exempt solvents)–Basis for emission limits for surface coating processes. Can be calculated by the following equation:
Figure: 30 TAC §115.420(a)(9)[~~(7)~~]

(10) [~~(8)~~] Pounds of VOC per gallon of solids–Basis for emission limits for surface coating process. Can be calculated by the following equation:
Figure: 30 TAC §115.420(a)(10)[~~(8)~~]

(11) Spray gun–A device that atomizes a coating or other material and projects the particulates or other material onto a substrate.

(12) [~~(9)~~] Surface coating processes–Operations which utilize a coating application system.

(13) [~~(10)~~] Transfer efficiency–The amount of coating solids deposited onto the surface of a part or product divided by the total amount of coating solids delivered to the coating application system.

(b) Specific surface coating definitions. The following terms, when used in this division (relating to Surface Coating Processes), shall have the following meanings, unless the context clearly indicates otherwise.

(1) Aerospace coating.

(A) Ablative coating–A coating that chars when exposed to open flame or extreme temperatures, as would occur during the failure of an engine casing or during aerodynamic heating. The ablative char surface serves as an insulative barrier, protecting adjacent components from the heat or open flame.

(B) Adhesion promoter–A very thin coating applied to a substrate to promote wetting and form a chemical bond with the subsequently applied material.

(C) Adhesive bonding primer–A primer applied in a thin film to aerospace components for the purpose of corrosion inhibition and increased adhesive bond strength by attachment. There are two categories of adhesive bonding primers: primers with a design cure at 250 degrees Fahrenheit or below and primers with a design cure above 250 degrees Fahrenheit.

(D) Aerospace vehicle or component–Any fabricated part, processed part, assembly of parts, or completed unit, with the exception of electronic components, of any aircraft including but not limited to airplanes, helicopters, missiles, rockets, and space vehicles.

(E) Aircraft fluid systems–Those systems that handle hydraulic fluids, fuel, cooling fluids, or oils.

(F) Aircraft transparency–The aircraft windshield, canopy, passenger windows, lenses, and other components which are constructed of transparent materials.

(G) Antichafe coating–A coating applied to areas of moving aerospace components that may rub during normal operations or installation.

(H) Antique aerospace vehicle or component–An aerospace vehicle or component thereof that was built at least 30 years ago. An antique aerospace vehicle would not routinely be in commercial or military service in the capacity for which it was designed.

(I) Aqueous cleaning solvent–A solvent in which water is at least 80% by volume of the solvent as applied.

(J) Bearing coating–A coating applied to an antifriction bearing, a bearing housing, or the area adjacent to such a bearing in order to facilitate bearing function or to protect base material from excessive wear. A material shall not be classified as a bearing coating if it can also be classified as a dry lubricative material or a solid film lubricant.

(K) Bonding maskant–A temporary coating used to protect selected areas of aerospace parts from strong acid or alkaline solutions during processing for bonding.

(L) Caulking and smoothing compounds–Semi-solid materials which are applied by hand application methods and are used to aerodynamically smooth exterior vehicle surfaces or fill cavities such as bolt hole accesses. A material shall not be classified as a caulking and smoothing compound if it can also be classified as a sealant.

(M) Chemical agent-resistant coating–An exterior topcoat designed to withstand exposure to chemical warfare agents or the decontaminants used on these agents.

(N) Chemical milling maskant–A coating that is applied directly to aluminum components to protect surface areas when chemically milling the component with a Type I or II etchant. Type I chemical milling maskants are used with a Type I etchant and Type II chemical milling maskants are used with a Type II etchant. This definition does not include bonding maskants, critical use and line sealer maskants, and seal coat maskants. Additionally, maskants that must be used with a combination of Type I or II etchants and any of the above types of maskants (i.e., bonding, critical use and line sealer, and seal coat) are not included. Maskants that are defined as specialty coatings are not included under this definition.

(O) Cleaning operation–Spray-gun, hand-wipe, and flush cleaning operations.

(P) Cleaning solvent–A liquid material used for hand-wipe, spray gun, or flush cleaning. This definition does not include solutions that contain no VOC.

(Q) Clear coating–A transparent coating usually applied over a colored opaque coating, metallic substrate, or placard to give improved gloss and protection to the color coat.

(R) Closed-cycle depainting system–A dust free, automated process that removes permanent coating in small sections at a time, and maintains a continuous vacuum around the area(s) being depainted to capture emissions.

(S) Coating operation–Using a spray booth, tank, or other enclosure or any area (such as a hangar) for applying a single type of coating (e.g., primer); using the same spray booth for applying another type of coating (e.g., topcoat) constitutes a separate coating operation for which compliance determinations are performed separately.

(T) Coating unit–A series of one or more coating applicators and any associated drying area and/or oven wherein a coating is applied, dried, and/or cured. A coating unit ends at the point where the coating is dried or cured, or prior to any subsequent application of a different coating.

(U) Commercial exterior aerodynamic structure primer–A primer used on aerodynamic components and structures that protrude from the fuselage, such as wings and attached components, control surfaces, horizontal stabilizers, vertical fins, wing-to-body fairings, antennae, and landing gear and doors, for the purpose of extended corrosion protection and enhanced adhesion.

(V) Commercial interior adhesive–Materials used in the bonding of passenger cabin interior components. These components must meet the Federal Aviation Administration (FAA) fireworthiness requirements.

(W) Compatible substrate primer–Either compatible epoxy primer or adhesive primer. Compatible epoxy primer is primer that is compatible with the filled elastomeric coating and is epoxy based. The compatible substrate primer is an epoxy-polyamide primer used to promote adhesion of elastomeric coatings such as impact-resistant coatings. Adhesive primer is a coating that:

(i) inhibits corrosion and serves as a primer applied to bare metal surfaces or prior to adhesive application; or

(ii) is applied to surfaces that can be expected to contain fuel. Fuel tank coatings are excluded from this category.

(X) Confined space–A space that:

(i) is large enough and so configured that a person can bodily enter and perform assigned work;

(ii) has limited or restricted means for entry or exit (for example, fuel tanks, fuel vessels, and other spaces that have limited means of entry); and

(iii) is not suitable for continuous occupancy.

(Y) Corrosion prevention compound–A coating system or compound that provides corrosion protection by displacing water and penetrating mating surfaces, forming a protective barrier between the metal surface and moisture. Coatings containing oils or waxes are excluded from this category.

(Z) Critical use and line sealer maskant–A temporary coating, not covered under other maskant categories, used to protect selected areas of aerospace parts from strong acid or alkaline solutions such as those used in anodizing, plating, chemical milling and processing of magnesium, titanium, or high-strength steel, high-precision aluminum chemical milling of deep cuts, and aluminum chemical milling of complex shapes. Materials used for repairs or to bridge gaps left by scribing operations (i.e., line sealer) are also included in this category.

(AA) Cryogenic flexible primer–A primer designed to provide corrosion resistance, flexibility, and adhesion of subsequent coating systems when exposed to loads up to and surpassing the yield point of the substrate at cryogenic temperatures (-275 degrees Fahrenheit and below).

(BB) Cryoprotective coating–A coating that insulates cryogenic or subcooled surfaces to limit propellant boil-off, maintain structural integrity of metallic structures during ascent or re-entry, and prevent ice formation.

(CC) Cyanoacrylate adhesive–A fast-setting, single component adhesive that cures at room temperature. Also known as "super glue."

(DD) Dry lubricative material–A coating consisting of lauric acid, cetyl alcohol, waxes, or other noncross linked or resin-bound materials that act as a dry lubricant.

(EE) Electric or radiation-effect coating–A coating or coating system engineered to interact, through absorption or reflection, with specific regions of the electromagnetic energy spectrum, such as the ultraviolet, visible, infrared, or microwave regions. Uses include, but are not limited to, lightning strike protection, electromagnetic pulse (EMP) protection, and radar avoidance. Coatings that have been designated as "classified" by the Department of Defense are excluded.

(FF) Electrostatic discharge and electromagnetic interference coating–A coating applied to space vehicles, missiles, aircraft radomes, and helicopter blades to disperse static energy or reduce electromagnetic interference.

(GG) Elevated-temperature Skydrol-resistant commercial primer–A primer applied primarily to commercial aircraft (or commercial aircraft adapted for military use) that must withstand immersion in phosphate-ester hydraulic fluid (Skydrol 500b or equivalent) at the elevated temperature of 150 degrees Fahrenheit for 1,000 hours.

(HH) Epoxy polyamide topcoat–A coating used where harder films are required or in some areas where engraving is accomplished in camouflage colors.

(II) Fire-resistant (interior) coating–For civilian aircraft, fire-resistant interior coatings are used on passenger cabin interior parts that are subject to the FAA fireworthiness requirements. For military aircraft, fire-resistant interior coatings are used on parts that are subject to the flammability requirements of MIL-STD-1630A and MIL-A-87721. For space applications, these coatings are used on parts that are subject to the flammability requirements of SE-R-0006 and SSP 30233.

(JJ) Flexible primer–A primer that meets flexibility requirements such as those needed for adhesive bond primed fastener heads or on surfaces expected to contain fuel. The flexible coating is required because it provides a compatible, flexible substrate over bonded sheet rubber and rubber-type coatings as well as a flexible bridge between the fasteners, skin, and skin-to-skin joints on outer

aircraft skins. This flexible bridge allows more topcoat flexibility around fasteners and decreases the chance of the topcoat cracking around the fasteners. The result is better corrosion resistance.

(KK) Flight test coating–A coating applied to aircraft other than missiles or single-use aircraft prior to flight testing to protect the aircraft from corrosion and to provide required marking during flight test evaluation.

(LL) Flush cleaning–Removal of contaminants such as dirt, grease, oil, and coatings from an aerospace vehicle or component or coating equipment by passing solvent over, into, or through the item being cleaned. The solvent may simply be poured into the item being cleaned and then drained, or assisted by air or hydraulic pressure, or by pumping. Hand-wipe cleaning operations where wiping, scrubbing, mopping, or other hand action are used are not included.

(MM) Fuel tank adhesive–An adhesive used to bond components exposed to fuel and must be compatible with fuel tank coatings.

(NN) Fuel tank coating–A coating applied to fuel tank components for the purpose of corrosion and/or bacterial growth inhibition and to assure sealant adhesion in extreme environmental conditions.

(OO) Grams of VOC per liter of coating (less water and less exempt solvent)–The weight of VOC per combined volume of total volatiles and coating solids, less water and exempt compounds. Can be calculated by the following equation:
Figure: 30 TAC §115.420(b)(1)(OO)

(PP) Hand-wipe cleaning operation–Removing contaminants such as dirt, grease, oil, and coatings from an aerospace vehicle or component by physically rubbing it with a material such as a rag, paper, or cotton swab that has been moistened with a cleaning solvent.

(QQ) High temperature coating–A coating designed to withstand temperatures of more than 350 degrees Fahrenheit.

(RR) Insulation covering–Material that is applied to foam insulation to protect the insulation from mechanical or environmental damage.

(SS) Intermediate release coating–A thin coating applied beneath topcoats to assist in removing the topcoat in depainting operations and generally to allow the use of less hazardous depainting methods.

(TT) Lacquer–A clear or pigmented coating formulated with a nitrocellulose or synthetic resin to dry by evaporation without a chemical reaction. Lacquers are resoluble in their original solvent.

(UU) Limited access space–Internal surfaces or passages of an aerospace vehicle or component that cannot be reached without the aid of an airbrush or a spray gun extension for the application of coatings.

(VV) Metalized epoxy coating–A coating that contains relatively large quantities of metallic pigmentation for appearance and/or added protection.

(WW) Mold release–A coating applied to a mold surface to prevent the molded piece from sticking to the mold as it is removed.

(XX) Monthly weighted average–the total weight of VOC emission from all coatings divided by the total volume of those coatings (minus water and exempt solvents) delivered to the application system each calender month. Coatings shall not be combined for purposes of calculating the monthly weighted average. In addition, determination of compliance is based on each individual coating operation.

(YY) Nonstructural adhesive–An adhesive that bonds nonload bearing aerospace components in noncritical applications and is not covered in any other specialty adhesive categories.

(ZZ) Operating parameter value–A minimum or maximum value established for a control equipment or process parameter that, if achieved by itself or in combination with one or more other operating parameter values, determines that an owner or operator has continued to comply with an applicable emission limitation.

(AAA) Optical antireflection coating–A coating with a low reflectance in the infrared and visible wavelength ranges that is used for antireflection on or near optical and laser hardware.

(BBB) Part marking coating–Coatings or inks used to make identifying markings on materials, components, and/or assemblies of aerospace vehicles. These markings may be either permanent or temporary.

(CCC) Pretreatment coating–An organic coating that contains at least 0.5% acids by weight and is applied directly to metal or composite surfaces to provide surface etching, corrosion resistance, adhesion, and ease of stripping.

(DDD) Primer–The first layer and any subsequent layers of identically formulated coating applied to the surface of an aerospace vehicle or component. Primers are typically used for corrosion prevention, protection from the environment, functional fluid resistance, and adhesion of subsequent coatings. Primers that are defined as specialty coatings are not included under this definition.

(EEE) Radome–The nonmetallic protective housing for electromagnetic transmitters and receivers (e.g., radar, electronic countermeasures, etc.).

(FFF) Rain erosion-resistant coating–A coating or coating system used to protect the leading edges of parts such as flaps, stabilizers, radomes, engine inlet nacelles, etc. against erosion caused by rain impact during flight.

(GGG) Research and development–An operation whose primary purpose is for research and development of new processes and products and that is conducted under the close supervision of technically trained personnel and is not involved in the manufacture of final or intermediate products for commercial purposes, except in a de minimis manner.

(HHH) Rocket motor bonding adhesive–An adhesive used in rocket motor bonding applications.

(III) Rocket motor nozzle coating–A catalyzed epoxy coating system used in elevated temperature applications on rocket motor nozzles.

(JJJ) Rubber-based adhesive–A quick setting contact cement that provides a strong, yet flexible bond between two mating surfaces that may be of dissimilar materials.

(KKK) Scale inhibitor–A coating that is applied to the surface of a part prior to thermal processing to inhibit the formation of scale.

(LLL) Screen print ink–An ink used in screen printing processes during fabrication of decorative laminates and decals.

(MMM) Sealant–A material used to prevent the intrusion of water, fuel, air, or other liquids or solids from certain areas of aerospace vehicles or components. There are two categories of sealants: extrudable/rollable/brushable sealants and sprayable sealants.

(NNN) Seal coat maskant–An overcoat applied over a maskant to improve abrasion and chemical resistance during production operations.

(OOO) Self-priming topcoat–A topcoat that is applied directly to an uncoated aerospace vehicle or component for purposes of corrosion prevention, environmental protection, and functional fluid resistance. More than one layer of identical coating formulation may be applied to the vehicle or component.

(PPP) Semiaqueous cleaning solvent–A solution in which water is a primary ingredient. More than 60% by volume of the solvent solution as applied must be water.

(QQQ) Silicone insulation material–An insulating material applied to exterior metal surfaces for protection from high temperatures caused by atmospheric friction or engine exhaust. These materials differ from ablative coatings in that they are not "sacrificial."

(RRR) Solid film lubricant–A very thin coating consisting of a binder system containing as its chief pigment material one or more of the following: molybdenum, graphite, polytetrafluoroethylene, or other solids that act as a dry lubricant between faying (i.e., closely or tightly fitting) surfaces.

(SSS) Space vehicle–A man-made device, either manned or unmanned, designed for operation beyond earth's atmosphere. This definition includes integral equipment such as models, mock-ups, prototypes, molds, jigs, tooling, hardware jackets, and test coupons. Also included is auxiliary equipment associated with test, transport, and storage, that through contamination can compromise the space vehicle performance.

(TTT) Specialty coating–A coating that, even though it meets the definition of a primer, topcoat, or self-priming topcoat, has additional performance criteria beyond those of primers, topcoats, and self-priming topcoats for specific applications. These performance criteria may include, but are not limited to, temperature or fire resistance, substrate compatibility, antireflection, temporary protection or marking, sealing, adhesively joining substrates, or enhanced corrosion protection.

(UUU) Specialized function coating–A coating that fulfills extremely specific engineering requirements that are limited in application and are characterized by low volume usage. This category excludes coatings covered in other specialty coating categories.

(VVV) Structural autoclavable adhesive–An adhesive used to bond load-carrying aerospace components that is cured by heat and pressure in an autoclave.

(WWW) Structural nonautoclavable adhesive–An adhesive cured under ambient conditions that is used to bond load-carrying aerospace components or other critical functions, such as nonstructural bonding in the proximity of engines.

(XXX) Surface preparation–The removal of contaminants from the surface of an aerospace vehicle or component or the activation or reactivation of the surface in preparation for the application of a coating.

(YYY) Temporary protective coating–A coating applied to provide scratch or corrosion protection during manufacturing, storage, or transportation. Two types include peelable protective coatings and alkaline removable coatings. These materials are not intended to protect against strong acid or alkaline solutions. Coatings that provide this type of protection from chemical processing are not included in this category.

(ZZZ) Thermal control coating–A coating formulated with specific thermal conductive or radiative properties to permit temperature control of the substrate.

(AAAA) Topcoat–A coating that is applied over a primer on an aerospace vehicle or component for appearance, identification, camouflage, or protection. Topcoats that are defined as specialty coatings are not included under this definition.

(BBBB) Touch-up and repair coating–A coating used to cover minor coating imperfections appearing after the main coating operation.

(CCCC) Touch-up and repair operation–That portion of the coating operation that is the incidental application of coating used to cover minor imperfections in the coating finish or to achieve complete coverage. This definition includes out-of-sequence or out-of-cycle coating.

(DDDD) VOC composite vapor pressure–The sum of the partial pressures of the compounds defined as VOCs and is determined by the following calculation:
Figure: 30 TAC §115.420(b)(1)(DDDD)

(EEEE) Waterborne (water-reducible) coating–A coating which contains more than 5.0% water by weight as applied in its volatile fraction.

(FFFF) Wet fastener installation coating–A primer or sealant applied by dipping, brushing, or daubing to fasteners that are installed before the coating is cured.

(GGGG) Wing coating–A corrosion-resistant topcoat that is resilient enough to withstand the flexing of the wings.

~~[(1) Aerospace vehicle or component–Any fabricated part, processed part, assembly of parts, or completed unit, with the exception of electronic components, of any aircraft including but not limited to airplanes, helicopters, missiles, rockets, and space vehicles.]~~

~~[(2) Architectural coating.]~~

~~[(A) Architectural coating–Any protective or decorative coating applied to the interior or exterior of a building or structure, including latex paint, alkyd paints, stains, lacquers, varnishes, and urethanes.]~~

~~[(B) Non-flat architectural coating–Any coating which registers a gloss of 15 or greater on an 85 degree gloss meter or 5 or greater on a 60 degree gloss meter, and which is identified on the label as gloss, semigloss, or eggshell enamel coating.]~~

(2) [~~(3)~~] Can coating–The coating of cans for beverages (including beer), edible products (including meats, fruit, vegetables, and others), tennis balls, motor oil, paints, and other mass- produced cans.

(3) [~~(4)~~] Coil coating–The coating of any flat metal sheet or strip supplied in rolls or coils.

(4) [~~(5)~~] Fabric coating–The application of coatings to fabric, which includes rubber application (rainwear, tents, and industrial products such as gaskets and diaphragms).

(5) [~~(6)~~] Factory surface coating of flat wood paneling–Coating of flat wood paneling products, including hardboard, hardwood plywood, particle board, printed interior paneling, and tile board.

(6) [~~(7)~~] Large appliance coating–The coating of doors, cases, lids, panels, and interior support parts of residential and commercial washers, dryers, ranges, refrigerators, freezers, water heaters, dishwashers, trash compactors, air conditioners, and other large appliances.

(7) [~~(8)~~] Metal furniture coating–The coating of metal furniture (tables, chairs, wastebaskets, beds, desks, lockers, benches, shelves, file cabinets, lamps, and other metal furniture products) or the coating of any metal part which will be a part of a nonmetal furniture product.

(8) [~~(9)~~] Mirror backing coating–The application of coatings to the silvered surface of a mirror.

(9) [~~(10)~~] Miscellaneous metal parts and products coating (MMPP).

(A) Clear coat–A coating which lacks opacity or which is transparent and which may or may not have an undercoat that is used as a reflectant base or undertone color.

(B) Drum (metal)–Any cylindrical metal shipping container with a nominal capacity equal to or greater than 12 gallons (45.4 liters) but equal to or less than 110 gallons (416 liters).

(C) Extreme performance coating–A coating intended for exposure to extreme environmental conditions, such as continuous outdoor exposure; temperatures frequently above 95 degrees Celsius (203 degrees Fahrenheit); detergents; abrasive and scouring agents; solvents; and corrosive solutions, chemicals, or atmospheres.

(D) High-bake coatings–Coatings designed to cure at temperatures above 194 degrees Fahrenheit.

(E) Low-bake coatings–Coatings designed to cure at temperatures of 194 degrees Fahrenheit or less.

(F) MMPP [~~Miscellaneous metal parts and products~~] coating–The coating of MMPP [~~miscellaneous metal parts and products~~] in the following categories at original equipment manufacturing operations; designated on-site maintenance shops which recoat used parts and products; and off-site job shops which coat new parts and products or which recoat used parts and products:

(i) large farm machinery (harvesting, fertilizing, and planting machines, tractors, combines, etc.);

(ii) small farm machinery (lawn and garden tractors, lawn mowers, rototillers, etc.);

(iii) small appliances (fans, mixers, blenders, crock pots, dehumidifiers, vacuum cleaners, etc.);

(iv) commercial machinery (computers and auxiliary equipment, typewriters, calculators, vending machines, etc.);

(v) industrial machinery (pumps, compressors, conveyor components, fans, blowers, transformers, etc.);

(vi) fabricated metal products (metal-covered doors, frames, etc.); and

(vii) any other category of coated metal products, [~~except those surface coating processes specified in paragraphs (2)-(9) and (11)-(15) of this subsection,~~] including, but not limited to, those which are included in the Standard Industrial Classification Code major group 33 (primary metal industries), major group 34 (fabricated metal products), major group 35 (nonelectrical machinery), major group 36 (electrical machinery), major group 37 (transportation equipment), major group 38 (miscellaneous instruments), and major group 39 (miscellaneous manufacturing industries). Excluded are those surface coating processes specified in paragraphs (1)-(8) and (10)-(14) of this subsection.

(G) Pail (metal)–Any cylindrical metal shipping container with a nominal capacity equal to or greater than 1 gallon (3.8 liters) but less than 12 gallons (45.4 liters) and constructed of 29 gauge or heavier material.

(10) [~~(11)~~] Paper coating–The coating of paper and pressure-sensitive tapes (regardless of substrate and including paper, fabric, and plastic film) and related web coating processes on plastic film (including typewriter ribbons, photographic film, and magnetic tape) and metal foil (including decorative, gift wrap, and packaging).

(11) [~~(12)~~] Marine coatings.

(A) Air flask specialty coating–Any special composition coating applied to interior surfaces of high pressure breathing air flasks to provide corrosion resistance and that is certified safe for use with breathing air supplies.

(B) Antenna specialty coating–Any coating applied to equipment through which electromagnetic signals must pass for reception or transmission.

(C) Antifoulant specialty coating–Any coating that is applied to the underwater portion of a vessel to prevent or reduce the attachment of biological organisms and that is registered with the EPA [~~United States Environmental Protection Agency~~] as a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act.

(D) Batch–The product of an individual production run of a coating manufacturer's process. (A batch may vary in composition from other batches of the same product.)

(E) Bitumens–Black or brown materials that are soluble in carbon disulfide, which consist mainly of hydrocarbons.

(F) Bituminous resin coating–Any coating that incorporates bitumens as a principal component and is formulated primarily to be applied to a substrate or surface to resist ultraviolet radiation and/or water.

(G) Epoxy–Any thermoset coating formed by reaction of an epoxy resin (i.e., a resin containing a reactive epoxide with a curing agent).

(H) General use coating–Any coating that is not a specialty coating.

(I) Heat resistant specialty coating–Any coating that during normal use must withstand a temperature of at least 204 degrees Celsius (400 degrees Fahrenheit).

(J) High-gloss specialty coating–Any coating that achieves at least 85% reflectance on a 60 degree meter when tested by the American Society for Testing and Materials (ASTM) Method D-523.

(K) High-temperature specialty coating–Any coating that during normal use must withstand a temperature of at least 426 degrees Celsius (800 degrees Fahrenheit).

(L) Inorganic zinc (high-build) specialty coating–A coating that contains 960 grams per liter (eight pounds per gallon) or more elemental zinc incorporated into an inorganic silicate binder that

is applied to steel to provide galvanic corrosion resistance. (These coatings are typically applied at more than two mil dry film thickness.)

(M) Maximum allowable thinning ratio–The maximum volume of thinner that can be added per volume of coating without exceeding the applicable VOC limit of §115.421(a)(15)(A) of this title [~~(relating to Emission Specifications)~~].

(N) Military exterior specialty coating–Any exterior topcoat applied to military or United States [~~U.S.~~] Coast Guard vessels that are subject to specific chemical, biological, and radiological washdown requirements.

(O) Mist specialty coating–Any low viscosity, thin film, epoxy coating applied to an inorganic zinc primer that penetrates the porous zinc primer and allows the occluded air to escape through the paint film prior to curing.

(P) Navigational aids specialty coating–Any coating applied to Coast Guard buoys or other Coast Guard waterway markers when they are recoated aboard ship at their usage site and immediately returned to the water.

(Q) Nonskid specialty coating–Any coating applied to the horizontal surfaces of a marine vessel for the specific purpose of providing slip resistance for personnel, vehicles, or aircraft.

(R) Nonvolatiles (or volume solids)–Substances that do not evaporate readily. This term refers to the film-forming material of a coating.

(S) Nuclear specialty coating–Any protective coating used to seal porous surfaces such as steel (or concrete) that otherwise would be subject to intrusion by radioactive materials. These coatings must be resistant to long-term (service life) cumulative radiation exposure (ASTM D4082-83), relatively easy to decontaminate (ASTM D4256-83), and resistant to various chemicals to which the coatings are likely to be exposed (ASTM 3912-80). (For nuclear coatings, see the general protective requirements outlined by the U.S. Atomic Energy Commission in a report entitled "U.S. Atomic Energy Commission Regulatory Guide 1.54" dated June 1973, available through the Government Printing Office at (202) 512-2249 as document number A74062-00001.)

(T) Organic zinc specialty coating–Any coating derived from zinc dust incorporated into an organic binder that contains more than 960 grams of elemental zinc per liter (eight pounds per gallon) of coating, as applied, and that is used for the expressed purpose of corrosion protection.

(U) Pleasure craft–Any marine or fresh-water vessel used by individuals for noncommercial, nonmilitary, and recreational purposes that is less than 20 meters (65.6 feet) in length. A vessel rented exclusively to, or chartered for, individuals for such purposes shall be considered a pleasure craft.

(V) Pretreatment wash primer specialty coating–Any coating that contains a minimum of 0.5% acid by weight that is applied only to bare metal surfaces to etch the metal surface for corrosion resistance and adhesion of subsequent coatings.

(W) Repair and maintenance of thermoplastic coating of commercial vessels (specialty coating)–Any vinyl, chlorinated rubber, or bituminous resin coating that is applied over the same type of existing coating to perform the partial recoating of any in-use commercial vessel. (This definition does not include coal tar epoxy coatings, which are considered "general use" coatings.)

(X) Rubber camouflage specialty coating–Any specially formulated epoxy coating used as a camouflage topcoat for exterior submarine hulls and sonar domes.

(Y) Sealant for thermal spray aluminum–Any epoxy coating applied to thermal spray aluminum surfaces at a maximum thickness of one dry mil.

(Z) Ship–Any marine or fresh-water vessel, including self-propelled vessels, those propelled by other craft (barges), and navigational aids (buoys). This definition includes, but is not limited to, all military and Coast Guard vessels, commercial cargo and passenger (cruise) ships, ferries, barges, tankers, container ships, patrol and pilot boats, and dredges. Pleasure craft and offshore oil or gas drilling platforms are not considered ships.

(AA) Shipbuilding and ship repair operations–Any building, repair, repainting, converting, or alteration of ships or offshore oil or gas drilling platforms.

(BB) Special marking specialty coating–Any coating that is used for safety or identification applications, such as ship numbers and markings on flight decks.

(CC) Specialty interior coating–Any coating used on interior surfaces aboard United States [~~U.S.~~] military vessels pursuant to a coating specification that requires the coating to meet specified fire retardant and low toxicity requirements, in addition to the other applicable military physical and performance requirements.

(DD) Tack coat specialty coating–Any thin film epoxy coating applied at a maximum thickness of two dry mils to prepare an epoxy coating that has dried beyond the time limit specified by the manufacturer for the application of the next coat.

(EE) Undersea weapons systems specialty coating–Any coating applied to any component of a weapons system intended to be launched or fired from under the sea.

(FF) Weld-through preconstruction primer (specialty coating)–A coating that provides corrosion protection for steel during inventory, is typically applied at less than one mil dry film thickness, does not require removal prior to welding, is temperature resistant (burn back from a weld is less than 1.25 centimeters (0.5 inches)), and does not normally require removal before applying film-building coatings, including inorganic zinc high-build coatings. When constructing new vessels, there may be a need to remove areas of weld-through preconstruction primer due to surface damage or contamination prior to application of film-building coatings.

(12) [~~(13)~~] Vehicle coating.

(A) Automobile and light-duty truck manufacturing.

(i) Automobile coating–The assembly-line coating of passenger cars, or passenger car derivatives, capable of seating 12 or fewer passengers.

(ii) Light-duty truck coating–The assembly-line coating of motor vehicles rated at 8,500 pounds (3,855.5 kg) gross vehicle weight or less and designed primarily for the transportation of property, or derivatives such as pickups, vans, and window vans.

(B) Vehicle refinishing (body shops).

(i) Basecoat/clearcoat system–A topcoat system composed of a pigmented basecoat portion and a transparent clearcoat portion. The VOC content of a basecoat (bc)/clearcoat (cc) system shall be calculated according to the following formula:
Figure: 30 TAC §115.420(b)(12)[~~(13)~~](B)(i)

(ii) Precoat–Any coating that is applied to bare metal to deactivate the metal surface for corrosion resistance to a subsequent water-based primer. This coating is applied to bare metal solely for the prevention of flash rusting.

(iii) Pretreatment–Any coating which contains a minimum of 0.5% acid by weight that is applied directly to bare metal surfaces to etch the metal surface for corrosion resistance and adhesion of subsequent coatings.

(iv) Primer or primer surfacers–Any base coat, sealer, or intermediate coat which is applied prior to colorant or aesthetic coats.

(v) Sealers–Coatings that are formulated with resins which, when dried, are not readily soluble in typical solvents. These coatings act as a shield for surfaces over which they are sprayed by resisting the penetration of solvents which are in the final topcoat.

(vi) Specialty coatings–Coatings or additives which are necessary due to unusual job performance requirements. These coatings or additives prevent the occurrence of surface defects and impart or improve desirable coating properties. These products include, but are not limited to, uniform finish blenders, elastomeric materials for coating of flexible plastic parts, coatings for non-metallic parts, jambing clear coatings, gloss flatteners, and anti-glare/safety coatings.

(vii) Three-stage system–A topcoat system composed of a pigmented basecoat portion, a semitransparent midcoat portion, and a transparent clearcoat portion. The VOC content of a three-stage system shall be calculated according to the following formula:
Figure: 30 TAC §115.420(b)(12)[~~(13)~~](B)(vii)

(viii) Vehicle refinishing (body shops)–The coating of vehicles, including, but not limited to, motorcycles, passenger cars, vans, light-duty trucks, medium-duty trucks, heavy-duty trucks, buses, and other vehicle body parts, bodies, and cabs by an operation other than the original manufacturer. The coating of trailers and construction equipment is not included.

(ix) [~~(viii)~~] Wipe-down solutions–Any solution used for cleaning and surface preparation.

~~*[(ix)* Vehicle refinishing (body shops) The repair and recoating of vehicles, including, but not limited to, motorcycles, passenger cars, vans, light-duty trucks, medium-duty trucks, heavy-duty trucks, buses, and other vehicle body parts, bodies, and cabs by a commercial operation other than the original manufacturer. The repair and recoating of trailers and construction equipment are not included.]~~

(13) [~~(14)~~] Vinyl coating–The use of printing or any decorative or protective topcoat applied over vinyl sheets or vinyl-coated fabric.

(14) [~~(15)~~] Wood parts and products coating.

(A) The following terms apply to wood parts and products coating facilities subject to §115.421(a)(13) of this title.

(i) Clear coat–A coating which lacks opacity or which is transparent and uses the undercoat as a reflectant base or undertone color.

(ii) Clear sealers–Liquids applied over stains, toners, and other coatings to protect these coatings from marring during handling and to limit absorption of succeeding coatings.

(iii) Final repair coat–Liquids applied to correct imperfections or damage to the topcoat.

(iv) Opaque ground coats and enamels–Colored, opaque liquids applied to wood or wood composition substrates which completely hide the color of the substrate in a single coat.

(v) Semitransparent spray stains and toners–Colored liquids applied to wood to change or enhance the surface without concealing the surface, including but not limited to, toners and nongrain-raising stains.

(vi) Semitransparent wiping and glazing stains–Colored liquids applied to wood that require multiple wiping steps to enhance the grain character and to partially fill the porous surface of the wood.

(vii) Shellacs–Coatings formulated solely with the resinous secretions of the lac beetle (laccifer lacca), thinned with alcohol, and formulated to dry by evaporation without a chemical reaction.

(viii) Topcoat–A coating which provides the final protective and aesthetic properties to wood finishes.

(ix) Varnishes–Clear wood finishes formulated with various resins to dry by chemical reaction on exposure to air.

(x) Wash coat–A low-solids clear liquid applied over semitransparent stains and toners to protect the color coats and to set the fibers for subsequent sanding or to separate spray stains from wiping stains to enhance color depth.

(xi) Wood parts and products coating–The coating of wood parts and products, excluding factory surface coating of flat wood paneling.

(B) The following terms apply to wood furniture manufacturing facilities subject to §115.421(a)(14) of this title.

(i) Adhesive–Any chemical substance that is applied for the purpose of bonding two surfaces together other than by mechanical means. Adhesives are not considered to be coatings or finishing materials for wood furniture manufacturing facilities subject to §115.421(a)(14) of this title.

(ii) Basecoat–A coat of colored material, usually opaque, that is applied before graining inks, glazing coats, or other opaque finishing materials and is usually topcoated for protection.

(iii) Cleaning operations–Operations in which organic solvent is used to remove coating materials from equipment used in wood furniture manufacturing operations.

(iv) Continuous coater–A finishing system that continuously applies finishing materials onto furniture parts moving along a conveyor system. Finishing materials that are not transferred to the part are recycled to the finishing material reservoir. Several types of application methods can be used with a continuous coater, including spraying, curtain coating, roll coating, dip coating, and flow coating.

(v) Conventional air spray–A spray coating method in which the coating is atomized by mixing it with compressed air at an air pressure greater than 10 pounds per square inch gauge (psig) at the point of atomization. Airless and air-assisted airless spray technologies are not conventional air spray because the coating is not atomized by mixing it with compressed air. Electrostatic spray technology is also not conventional air spray because an electrostatic charge is employed to attract the coating to the workpiece. In addition, high-volume low-pressure (HVLP) spray technology is not conventional air spray because its pressure is less than 10 psig.

(vi) Finishing application station–The part of a finishing operation where the finishing material is applied (for example, a spray booth).

(vii) Finishing material–A coating used in the wood furniture industry. For the wood furniture manufacturing industry, such materials include, but are not limited to, basecoats, stains, washcoats, sealers, and topcoats.

(viii) Finishing operation–Those activities in which a finishing material is applied to a substrate and is subsequently air-dried, cured in an oven, or cured by radiation.

(ix) Organic solvent–A liquid containing VOCs that is used for dissolving or dispersing constituents in a coating; adjusting the viscosity of a coating; cleaning; or washoff. When used in a coating, the organic solvent evaporates during drying and does not become a part of the dried film.

(x) Sealer–A finishing material used to seal the pores of a wood substrate before additional coats of finishing material are applied. Washcoats, which are used in some finishing systems to optimize aesthetics, are not sealers.

(xi) Stain–Any color coat having a solids content of no more than 8.0% by weight that is applied in single or multiple coats directly to the substrate. Includes, but is not limited to, nongrain-raising stains, equalizer stains, sap stains, body stains, no-wipe stains, penetrating stains, and toners.

(xii) Strippable booth coating–A coating that is applied to a booth wall to provide a protective film to receive overspray during finishing operations; is subsequently peeled off and disposed; and reduces or eliminates the need to use organic solvents to clean booth walls.

(xiii) Topcoat–The last film-building finishing material applied in a finishing system. A material such as a wax, polish, nonoxidizing oil, or similar substance that must be periodically reapplied to a surface over its lifetime to maintain or restore the reapplied material's intended effect is not considered to be a topcoat.

(xiv) Touch-up and repair–The application of finishing materials to cover minor finishing imperfections.

(xv) Washcoat–A transparent special purpose coating having a solids content of 12% by weight or less. Washcoats are applied over initial stains to protect and control color and to stiffen the wood fibers in order to aid sanding.

(xvi) Washoff operations–Those operations in which organic solvent is used to remove coating from a substrate.

(xvii) Wood furniture–Any product made of wood, a wood product such as rattan or wicker, or an engineered wood product such as particleboard that is manufactured under any of the following standard industrial classification codes: 2434 (wood kitchen cabinets), 2511 (wood household furniture, except upholstered), 2512 (wood household furniture, upholstered), 2517 (wood television, radios, phonograph and sewing machine cabinets), 2519 (household furniture not elsewhere classified), 2521 (wood office furniture), 2531 (public building and related furniture), 2541 (wood office and store fixtures, partitions, shelving and lockers), 2599 (furniture and fixtures not elsewhere classified), or 5712 (custom kitchen cabinets).

(xviii) Wood furniture component–Any part that is used in the manufacture of wood furniture. Examples include, but are not limited to, drawer sides, cabinet doors, seat cushions, and laminated tops. However, foam seat cushions manufactured and fabricated at a facility that does not engage in any other wood furniture or wood furniture component manufacturing operation are excluded from this definition.

(xix) Wood furniture manufacturing operations–The finishing, cleaning, and washoff operations associated with the production of wood furniture or wood furniture components.

§115.421. Emission Specifications.

(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) may cause, suffer, allow, or permit volatile organic compound (VOC) emissions from the surface coating processes affected by paragraphs (1)-(15) of this subsection to exceed the specified emission limits. These limitations are based on the daily weighted average of all coatings delivered to each coating line, except for those in paragraph (10) of this subsection which are based on paneling surface area, [~~those in paragraph (11) of this subsection which are based on the VOC content of architectural coatings sold or offered for sale,~~] and those in paragraph (14) of this subsection which, if using an averaging approach, must use one of the daily averaging equations within that paragraph. The owner or operator of a surface coating operation subject to paragraph (11) of the subsection may choose to comply by using the monthly weighted average option as defined in §115.420 (b)(1)(XX) of this title (relating to Surface Coating Definitions. [~~For the purposes of this division (relating to Surface Coating Processes), daily weighted average means the total weight of VOC emissions from all coatings, divided by the total volume of all coatings (minus water and exempt solvent) delivered to the application system each day.~~]

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

(8) Vehicle coating.

(A) The following VOC emission limits shall be achieved for all automobile and light-duty truck manufacturing, on the basis of solvent content per gallon of coating (minus water and exempt solvents) delivered to the application system or for primer surfacer and top coat application, compliance may be demonstrated on the basis of VOC emissions per gallon of solids deposited as determined by §115.425(3) [~~§115.425(a)(3)~~] of this title (relating to Testing Requirements).
Figure: 30 TAC §115.421(a)(8)(A)

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

(9) Miscellaneous metal parts and products (MMPP) coating.

(A) VOC emissions from the coating of MMPP [~~miscellaneous metal parts and products~~] shall not exceed the following limits for each surface coating type:

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

(iv) 3.0 pounds per gallon (0.36 kg/liter) of coating (minus water and exempt solvent) delivered to the application system for all other coating applications, including high-bake coatings, that pertain to MMPP [~~miscellaneous metal parts and products~~]; and

(v) until December 31, 2001, 3.5 pounds per gallon (0.42 kg/liter) of coating (minus water and exempt solvent) delivered to the application system as a prime coat for the exterior of aircraft.

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

(10) (No change.)

(11) Aerospace coatings. The VOC content of coatings, including any VOC-containing materials added to the original coating supplied by the manufacturer, which are applied to aerospace vehicles

or components shall not exceed the following limits (in grams of VOC per liter of coating, less water and exempt solvent). The following applications are exempt from the VOC content limits of this paragraph: manufacturing or re-work of space vehicles or antique aerospace or components of each; touchup, and United States Department of Defense classified coatings; separate formulations in volumes less than 50 gallons per year to a maximum of 200 gallons per year for all such formulations.

(A) For the broad categories of primers, topcoats, and chemical milling maskants (Type I/II) which are not specialty coatings as listed in subparagraph (B) of this paragraph:

(i) primer, 350;

(ii) topcoats (including self-priming topcoats), 420; and

(iii) chemical milling maskants:

(I) Type I, 622; and

(II) Type II, 160.

(B) For specialty coatings:
Figure: 30 TAC §115.421(a)(11)(B)

[(11) Architectural coatings. Any coating sold or offered for sale as an architectural coating shall have the date of manufacture clearly marked on each container, and the VOC content shall not exceed the following limits:]

[(A) 2.2 pounds per gallon (0.26 kg/liter) of coating (minus water and exempt solvent) for non-flat and flat latex paints;]

[(B) 3.5 pounds per gallon (0.42 kg/liter) of coating (minus water and exempt solvent) for interior alkyd paints;]

[(C) 4.0 pounds per gallon (0.48 kg/liter) of coating (minus water and exempt solvent) for exterior alkyd paints;]

[(D) 4.5 pounds per gallon (0.54 kg/liter) of coating (minus water and exempt solvent) for epoxy paints;]

[(E) 6.0 pounds per gallon (0.72 kg/liter) of coating (minus water and exempt solvent) for exterior stains;]

[(F) 7.0 pounds per gallon (0.84 kg/liter) of coating (minus water and exempt solvent) for interior stains;]

[(G) 4.5 pounds per gallon (0.54 kg/liter) of coating (minus water and exempt solvent) for urethane coatings;]

[(H) 4.5 pounds per gallon (0.54 kg/liter) of coating (minus water and exempt solvent) for alkyd varnishes; and]

[(I) 5.6 pounds per gallon (0.67 kg/liter) of coating (minus water and exempt solvent) for nitrocellulose- based lacquers.]

(12) Surface coating of mirror backing.

(13) Surface coating of wood parts and products.

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

(C) The requirements of §115.423(3) [§115.423(a)(3)] of this title (relating to Alternate Control Requirements) do not apply at wood parts and products coating facilities if:

(i) a vapor control [recovery] system is used to control emissions from wood parts and products coating operations; and

(ii) (No change.)

(14) Surface coating at wood furniture manufacturing facilities. The [After December 31, 1999, the] following requirements apply to wood furniture manufacturing facilities in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas. For facilities which are subject to this paragraph, adhesives are not considered to be coatings or finishing materials.

(A) VOC emissions from finishing operations shall be limited by:

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

(v) Using a vapor control [recovery] system that will achieve an equivalent reduction in emissions as the requirements of clauses (i) or (ii) of this subparagraph. If this option is used, the requirements of §115.423(3) [§115.423(a)(3)] of this title [(relating to Alternate Control Requirements)] do not apply; or

(vi) (No change.)

(B) (No change.)

(15) Marine coatings. The [After December 31, 1999, the] following requirements apply to shipbuilding and ship repair operations in the Beaumont/Port Arthur and Houston/Galveston areas.

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

(b) No person in Gregg, Nueces, and Victoria Counties may cause, suffer, allow, or permit VOC emissions from the surface coating processes affected by paragraphs (1)-(9) of this subsection to exceed the specified emission limits. These limitations are based on the daily weighted average of all coatings delivered to each coating line, except for those in paragraph (9) of this subsection which are based on paneling surface area. [For the purposes of this division (relating to Surface Coating Processes), daily weighted average means the total weight of VOC emissions from all coatings, divided by the total volume of all coatings (minus water and exempt solvent) delivered to the application system each day.]

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

(8) MMPP [Miscellaneous metal parts and products] coating.

(A) VOC emissions from the coating of MMPP [miscellaneous metal parts and products] shall not exceed the following limits for each surface coating type:

(i) 4.3 pounds per gallon (0.52 kg/liter) of coating (minus water and exempt solvent) delivered to the application system as a clear coat; or as an interior protective coating for pails and drums;

(ii) 3.5 pounds per gallon (0.42 kg/liter) of coating (minus water and exempt solvent) delivered to the application system as a low-bake coating; or that utilizes air or forced air driers;

(iii) 3.5 pounds per gallon (0.42 kg/liter) of coating (minus water and exempt solvent) delivered to the application system as an extreme performance coating, including chemical milling maskants; and

(iv) 3.0 pounds per gallon (0.36 kg/liter) of coating (minus water and exempt solvent) delivered to the application system for all other coating applications, including high-bake coatings, that pertain to MMPP [miscellaneous metal parts and products].

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

(9) (No change.)

(10) Aerospace coatings. Coatings applied to aerospace vehicles or components shall meet the requirements specified in

subsection (a)(11) of this section and §115.422(5) of this title, unless exempted under §115.427(b) of this title (relating to Exemptions).

§115.422. Control Requirements.

For the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, the following control requirements shall apply.

(1) The owner or operator of each vehicle refinishing (body shop) operation shall minimize volatile organic compound (VOC) emissions during equipment cleanup by utilizing the following procedures:

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

(2) (No change.)

(3) The following requirements apply to each wood furniture manufacturing facility subject to §115.421(a)(14) of this title (relating to Emission Specifications).

(A) No compounds containing more than 8.0% by weight of VOC [~~volatile organic compounds (VOC)~~] shall be used for cleaning spray booth components other than conveyors, continuous coaters and their enclosures, and/or metal filters, unless the spray booth is being refurbished. If the spray booth is being refurbished, that is, the spray booth coating or other material used to cover the booth is being replaced, no more than 1.0 gallon of organic solvent shall be used to prepare the booth prior to applying the booth coating.

(B) (No change.)

(C) Conventional air spray guns shall not be used for applying finishing materials except under one or more of the following circumstances:

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

(iv) If emissions from the finishing application station are directed to a vapor control [~~recovery~~] system;

(v)-(vi) (No change.)

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

(4) (No change.)

(5) The following requirements apply to each aerospace vehicle or component coating process subject to §115.421(a)(11) or (b)(10) of this title.

(A) One or more of the following application techniques shall be used to apply any primer or topcoat to aerospace vehicles or components: flow/curtain coating; dip coating; roll coating; brush coating; cotton-tipped swab application; electrodeposition coating; HVLP spraying; electrostatic spraying; or other coating application methods that achieve emission reductions equivalent to HVLP or electrostatic spray application methods, unless one of the following situations apply:

(i) any situation that normally requires the use of an airbrush or an extension on the spray gun to properly reach limited access spaces;

(ii) the application of specialty coatings;

(iii) the application of coatings that contain fillers that adversely affect atomization with HVLP spray guns and that the executive director has determined cannot be applied by any of the specified application methods;

(iv) the application of coatings that normally have a dried film thickness of less than 0.0013 centimeter (0.0005 in.) and that the executive director has determined cannot be applied by any of the specified application methods in this subparagraph;

(v) the use of airbrush application methods for stenciling, lettering, and other identification markings;

(vi) the use of aerosol coating (spray paint) application methods; and

(vii) touch-up and repair operations.

(B) Cleaning solvents used in hand-wipe cleaning operations shall meet the definition of aqueous cleaning solvent in §115.420(b)(1)(I) of this title (relating to Surface Coating Definitions) or have a VOC composite vapor pressure less than or equal to 45 millimeters of mercury at 20 degrees Celsius, unless one of the following situations apply:

(i) cleaning during the manufacture, assembly, installation, maintenance, or testing of components of breathing oxygen systems that are exposed to the breathing oxygen;

(ii) cleaning during the manufacture, assembly, installation, maintenance, or testing of parts, subassemblies, or assemblies that are exposed to strong oxidizers or reducers (e.g., nitrogen tetroxide, liquid oxygen, hydrazine);

(iii) cleaning and surface activation prior to adhesive bonding;

(iv) cleaning of electronics parts and assemblies containing electronics parts;

(v) cleaning of aircraft and ground support equipment fluid systems that are exposed to the fluid, including air-to-air heat exchangers and hydraulic fluid systems;

(vi) cleaning of fuel cells, fuel tanks, and confined spaces;

(vii) surface cleaning of solar cells, coated optics, and thermal control surfaces;

(viii) cleaning during fabrication, assembly, installation, and maintenance of upholstery, curtains, carpet, and other textile materials used on the interior of the aircraft;

(ix) cleaning of metallic and nonmetallic materials used in honeycomb cores during the manufacture or maintenance of these cores, and cleaning of the completed cores used in the manufacture of aerospace vehicles or components;

(x) cleaning of aircraft transparencies, polycarbonate, or glass substrates;

(xi) cleaning and solvent usage associated with research and development, quality control, or laboratory testing;

(xii) cleaning operations, using nonflammable liquids, conducted within 5 feet of energized electrical systems. Energized electrical systems means any alternating current (AC) or direct current (DC) electrical circuit on an assembled aircraft once electrical power is connected, including interior passenger and cargo areas, wheel wells and tail sections; and

(xiii) cleaning operations identified as essential uses under the Montreal Protocol for which EPA has allocated essential use allowances or exemptions in 40 Code of Federal Regulations §82.4, including any future amendments promulgated by EPA.

(C) For cleaning solvents used in the flush cleaning of parts, assemblies, and coating unit components, the used cleaning solvent must be emptied into an enclosed container or collection

system that is kept closed when not in use or captured with wipers provided they comply with the housekeeping requirements of subparagraph (E) of this paragraph. Aqueous and semiaqueous cleaning solvents are exempt from this subparagraph.

(D) All spray guns must be cleaned by one or more of the following methods:

(i) enclosed spray gun cleaning system provided that it is kept closed when not in use and leaks are repaired within 14 days from when the leak is first discovered. If the leak is not repaired by the 15th day after detection, the solvent shall be removed and the enclosed cleaner shall be shut down until the leak is repaired or its use is permanently discontinued;

(ii) unatomized discharge of solvent into a waste container that is kept closed when not in use;

(iii) disassembly of the spray gun and cleaning in a vat that is kept closed when not in use; or

(iv) atomized spray into a waste container that is fitted with a device designed to capture atomized solvent emissions.

(E) All fresh and used cleaning solvents used in solvent cleaning operations shall be stored in containers that are kept closed at all times except when filling or emptying. Cloth and paper, or other absorbent applicators, moistened with cleaning solvents shall be stored in closed containers. Cotton- tipped swabs used for very small cleaning operations are exempt from this subparagraph. In addition, the owner or operator must implement handling and transfer procedures to minimize spills during filling and transferring the cleaning solvent to or from enclosed systems, vats, waste containers, and other cleaning operation equipment that hold or store fresh or used cleaning solvents. The requirements of this subparagraph are known collectively as housekeeping measures. Aqueous and semiaqueous cleaning solvents are exempt from this subparagraph.

(6) [~~(5)~~] Any surface coating operation that becomes subject to the provisions of §115.421(a) of this title by exceeding the provisions of §115.427(a) of this title (relating to Exemptions) shall remain subject to the provisions in §115.421(a) of this title, 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 §115.427(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 from permitting 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 an [~~a standard~~] exemption from permitting 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 from permitting; or

(B) if authorization by permit, permit amendment, standard permit, or [~~standard~~] exemption from permitting is not required for the project, the owner/operator has given the executive director 30 days' notice of the project in writing.

§115.423. Alternate Control Requirements.

~~(a)~~ The alternate control requirements for surface coating processes [~~For all affected persons~~] in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas and in Gregg, Nueces, and Victoria Counties are as follows [~~, the following alternate control requirements may apply~~].

(1) Emission calculations for surface coating operations performed to satisfy the conditions of §101.23 of this title (relating to Alternate Emission Reduction "Bubble" Policy), §115.910 of this title (relating to Availability of Alternate Means of Control), or other demonstrations of equivalency with the specified emission limits in this division (relating to Surface Coating Processes) shall be based on the pounds of volatile organic compounds (VOC) per gallon of solids for all affected coatings. The following equation shall be used to convert emission limits from pounds of VOC per gallon of coating to pounds of VOC per gallon of solids:
Figure: 30 TAC §115.423[~~(a)~~](1)

(2) (No change.)

(3) If a vapor control [~~recovery~~] system is used to control emissions from coating operations, the capture and abatement system shall be capable of achieving and maintaining emission reductions equivalent to the emission limitations of §115.421 [~~§115.421(a)~~] of this title (relating to Emission Specifications) and an overall control efficiency of at least 80% of the VOC [~~volatile organic compound (VOC)~~] emissions from those coatings. The owner or operator of any surface coating facility shall submit design data for each capture system and emission control device which is proposed for use to the executive director for approval. In the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, [~~Any~~] capture efficiency testing shall be performed in accordance with §115.425(4) [~~§115.425(a)(4)~~] of this title (relating to Testing Requirements).

(4) For any surface coating process or processes at a specific property, the executive director may approve requirements different from those in §115.421(a)(9) or (b)(8) of this title [~~(relating to Emission Specifications)~~] based upon his determination that such requirements will result in the lowest emission rate that is technologically and economically reasonable. When he makes such a determination, the executive director shall specify the date or dates by which such different requirements shall be met and shall specify any requirements to be met in the interim. If the emissions resulting from such different requirements equal or exceed 25 tons a year for a property, the determinations for that property shall be reviewed every five [~~two~~] years. Executive director approval does not necessarily constitute satisfaction of all federal requirements nor eliminate the need for approval by the EPA [~~United States Environmental Protection Agency (EPA)~~] in cases where specified criteria for determining equivalency have not been clearly identified in applicable sections of this chapter.

~~[(b) For all affected persons in Gregg, Nueces, and Victoria Counties, the following alternate control requirements may apply:~~

~~[(1) Emission calculations for surface coating operations performed to satisfy the conditions of §101.23 of this title, §115.910 of this title, or other demonstrations of equivalency with the specified emission limits in this division (relating to Surface Coating Processes) shall be based on the pounds of VOC per gallon of solids for all affected coatings. The following equation shall be used to convert emission limits from pounds of VOC per gallon of coating to pounds of VOC per gallon of solids:~~
~~[Figure: 30 TAC §115.423(b)(1)]~~

~~[(2) Any alternate methods of demonstrating and documenting continuous compliance with the applicable control requirements or exemption criteria in this division, such as use of improved transfer efficiency, may be approved by the executive director in accordance with §115.910 of this title if emission reductions are demonstrated to be substantially equivalent.]~~

[(3) If a vapor recovery system is used to control emissions from coating operations, the capture and abatement system shall be capable of achieving and maintaining emission reductions equivalent to the emission limitations of §115.421(b) of this title (relating to Emission Specifications) and an overall control efficiency of at least 80% of the VOC emissions from those coatings. The owner or operator of any surface coating facility shall submit design data for each capture system and emission control device which is proposed for use to the executive director for approval.]

[(4) For any surface coating process or processes at a specific property the Executive Director may approve requirements different from those in §115.421(b)(8) of this title based upon his determination that such requirements will result in the lowest emission rate that is technologically and economically reasonable. When he makes such a determination, the Executive Director shall specify the date or dates by which such different requirements shall be met and shall specify any requirements to be met in the interim. If the emissions resulting from such different requirements equal or exceed 25 tons a year for a property, the determinations for that property shall be reviewed every two years. Executive director approval does not necessarily constitute satisfaction of all federal requirements nor eliminate the need for approval by the EPA in cases where specified criteria for determining equivalency have not been clearly identified in applicable sections of this chapter.]

§115.424. Inspection Requirements.

[(a) For the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, the following inspection requirements shall apply:]

(a) [(1)] The owner or operator of each [All] surface coating process [processes or operations] subject to §115.421 [affected by §115.421(a)] of this title (relating to Emissions Specifications) must provide samples, without charge, upon request by representatives of the executive director, EPA [United States Environmental Protection Agency (EPA)], or local air pollution control agency.

[(2) All wholesalers and retailers affected by §115.421(a) of this title must provide samples, without charge, upon request by representatives of the executive director, EPA, or local air pollution control agency.]

(b) [(3)] The representative or inspector requesting the sample will determine the amount of coating needed to test the sample to determine compliance.

[(b) For Gregg, Nueces, and Victoria Counties, the following inspection requirements shall apply:]

[(1) All surface coating processes or operations affected by §115.421(b) of this title must provide samples, without charge, upon request by representatives of the executive director, EPA, or local air pollution control agency.]

[(2) The representative or inspector requesting the sample will determine the amount of coating needed to test the sample to determine compliance.]

§115.425. Testing Requirements.

(a) The testing requirements for surface coating processes in [For] the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas and in Gregg, Nueces, and Victoria Counties are as follows [, the following testing requirements shall apply].

(1) Compliance with §115.421 [§115.421(a)] of this title (relating to Emission Specifications) shall be determined by applying the following test methods, as appropriate, except as specified in paragraph (5) of this section. Where a test method also inadvertently measures compounds that are exempt solvent, an owner or operator may exclude these exempt solvents when determining compliance with an emission standard:

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

(C) EPA [United States Environmental Protection Agency (EPA)] guidelines series document "Procedures for Certifying Quantity of Volatile Organic Compounds (VOC) Emitted by Paint, Ink, and Other Coatings," EPA-450/3-84-019, as in effect December, 1984;

(D) additional test procedures described in 40 Code of Federal Regulations (CFR) §60.446; or

(E) (No change.)

(2) Compliance with §115.423(3) [§115.423(a)(3)] of this title (relating to Alternate Control Requirements) shall be determined by applying the following test methods, as appropriate:

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

(D) additional performance test procedures described in 40 CFR [Code of Federal Regulations] §60.044; or

(E) (No change.)

(3) Compliance with the alternative emission limits in §115.421(a)(8)(A) of this title [(relating to Emission Specifications)] shall be determined by applying the following test methods, as appropriate:

(A) (No change.)

(B) The procedure contained in this paragraph for determining daily compliance with the alternative emission limitation in §115.421(a)(8)(A) of this title [(relating to Emission Specifications)] for final repair. Calculation of occurrence weighted average for each combination of repair coatings (primer, specific basecoat, clearcoat) shall be determined by the following procedure.

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

(iii) The occurrence weighted average (Q) in pounds of VOC [volatile organic compound (VOC)] per gallon of coating (minus water and exempt solvents) as applied for each potential combination of repair coatings is calculated according to paragraph (4) of this section [as follows].
Figure: 30 TAC §115.425[(a)](3)(B)(iii)

(4) In the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, surface coating processes subject to §115.423(3) of this title shall measure the [The] capture efficiency [shall be measured] using applicable procedures outlined in 40 CFR [Code of Federal Regulations (CFR),] Part 52.741, Subpart O, Appendix B. These procedures are: Procedure T–Criteria for and Verification of a Permanent or Temporary Total Enclosure; Procedure L– VOC [Volatile Organic Compound (VOC)] Input; Procedure G.2–Captured VOC Emissions (Dilution Technique); Procedure F.1–Fugitive VOC Emissions from Temporary Enclosures; and Procedure F.2–Fugitive VOC Emissions from Building Enclosures.

(A) Exemptions [The following are exemptions] to capture efficiency testing requirements:

(i) (No change.)

(ii) If a source uses a control device designed to collect and recover VOC (e.g., carbon adsorption system [absorber]), an explicit measurement of capture efficiency is not necessary if the following conditions are met. The overall control of the system can

be determined by directly comparing the input liquid VOC to the recovered liquid VOC. The general procedure for use in this situation is given in 40 CFR §60.433, with the following additional restrictions.

(I) The source must be able to equate solvent usage with solvent recovery on a 24-hour (daily) basis, rather than a 30-day weighted average. This must be done within 72 hours following each 24-hour period of the 30-day period.

(II) (No change.)

(B) (No change.)

(C) The following conditions must be met in measuring capture efficiency: [.]

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

(iii) During an initial pretest meeting, the executive director [Texas Air Control Board (TACB)] and the source owner or operator shall identify those operating parameters which shall be monitored to ensure that capture efficiency does not change significantly over time. These parameters shall be monitored and recorded initially during the capture efficiency testing and thereafter during facility operation. The executive director [TACB] may require a new capture efficiency test if the operating parameter values change significantly from those recorded during the initial capture efficiency test.

(5) The following additional testing requirements apply to each aerospace vehicle or component coating facility subject to §115.421(a)(11) or (b)(10) of this title.

(A) For coatings which are not waterborne (water-reducible), determine the VOC content of each formulation (less water and less exempt solvents) as applied using manufacturer's supplied data or Method 24 of 40 CFR 60, Appendix A. If there is a discrepancy between the manufacturer's formulation data and the results of the Method 24 analysis, compliance shall be based on the results from the Method 24 analysis. For water-borne (water-reducible) coatings, manufacturer's supplied data alone can be used to determine the VOC content of each formulation.

(B) For aqueous and semiaqueous cleaning solvents, manufacturers' supplied data shall be used to determine the water content.

(C) For hand-wipe cleaning solvents, manufacturers' supplied data or standard engineering reference texts or other equivalent methods shall be used to determine the vapor pressure or VOC composite vapor pressure for blended cleaning solvents.

(D) Except for specialty coatings, compliance with the test method requirements of 40 CFR §63.750, (National Emission Standards for Aerospace Manufacturing and Rework Facilities), is considered to represent compliance with the requirements of this section (relating to Testing Requirements).

(6) Test methods other than those specified in paragraphs (1)-(5) of this section may be used if validated by 40 CFR 63, Appendix A, Test Method 301. For the purposes of this paragraph, substitute "executive director" each place that Test Method 301 references "administrator."

[(b) For Gregg, Nueces, and Victoria Counties, the following testing requirements shall apply.]

[(1) Compliance with §115.421(b) of this title shall be determined by applying the following test methods, as appropriate:]

[(A) Test Method 24 (40 CFR 60, Appendix A) with a one-hour bake;]

[(B) ASTM Test Methods D 1186-06.01, D 1200-06.01, D 3794-06.01, D 2832-69, D 1644-75, and D 3960-81;]

[(C) EPA guidelines series document "Procedures for Certifying Quantity of Volatile Organic Compounds Emitted by Paint, Ink, and Other Coatings," EPA-450/3-84-019, as in effect December, 1984;]

[(D) additional test procedures described in 40 CFR 60.446; or]

[(E) minor modifications to these test methods approved by the executive director.]

[(2) Compliance with §115.423(b)(3) of this title (relating to Alternate Control Requirements) shall be determined by applying the following test methods, as appropriate:]

[(A) Test Methods 1-4 (40 CFR 60, Appendix A) for determining flow rates, as necessary;]

[(B) Test Method 25 (40 CFR 60, Appendix A) for determining total gaseous nonmethane organic emissions as carbon;]

[(C) Test Method 25A or 25B (40 CFR 60, Appendix A) for determining total gaseous organic concentrations using flame ionization or nondispersive infrared analysis;]

[(D) additional performance test procedures described in 40 CFR 60.444; or]

[(E) minor modifications to these test methods approved by the executive director.]

§115.426. Monitoring and Recordkeeping Requirements.

[(a)] The following recordkeeping requirements apply to the owner or operator of each surface coating process in [For] the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas and in Gregg, Nueces, and Victoria Counties [, the following recordkeeping requirements shall apply]:

(1) The owner or operator [Any person affected by §115.421(a) of this title (relating to Emission Specifications)] shall satisfy the following recordkeeping requirements.

(A) (No change.)

(B) Records shall be maintained of the quantity and type of each coating and solvent consumed during the specified averaging period if any of the coatings, as delivered to the coating application system, exceed the applicable control limits. Such records shall be sufficient to calculate the applicable weighted average of VOC for all coatings.

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

(iii) As an alternative to the recordkeeping requirements of this subparagraph, any surface coating operation that qualifies for exemption under §115.427(a)(3)(C) of this title (relating to Exemptions) shall maintain records of total gallons of coating and solvent used in each month, and total gallons of coating and solvent used in the previous 12 months.

(C) Records shall be maintained of any testing conducted at an affected facility in accordance with the provisions specified in §115.425 [§115.425(a)(1)] of this title (relating to Testing Requirements).

(D) Records required by subparagraphs (A)-(C) of this paragraph shall be maintained for at least two years and shall be made

available upon request by representatives of the executive director, EPA [~~United States Environmental Protection Agency (EPA)~~], or any local air pollution control agency.

(2) The owner or operator of any surface coating facility which utilizes a vapor control [~~recovery~~] system approved by the executive director in accordance with §115.423(3) [~~§115.423(a)(3)~~] of this title (relating to Alternate Control Requirements) shall:

(A) install and maintain monitors to accurately measure and record operational parameters of all required control devices, as necessary, to ensure the proper functioning of those devices in accordance with design specifications, including:

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

(iv) appropriate operating parameters for vapor control systems other than those specified in clauses (i)-(iii) of this subparagraph;

~~*[(iv)* the dates and reasons for any maintenance and repair of the required control devices and the estimated quantity and duration of VOC emissions during such activities;]~~

(B) maintain records of any testing conducted [~~at an affected facility~~] in accordance with the provisions specified in §115.425(2) [~~§115.425(a)(2)~~] of this title [~~(relating to Testing Requirements)~~]; and

(C) (No change.)

(3) The owner or operator shall maintain, on file, the capture efficiency protocol submitted under §115.425(4) [~~§115.425(a)(4)~~] of this title [~~(relating to Testing Requirements)~~]. The owner or operator shall submit all results of the test methods and capture efficiency protocols to the executive director [~~TACB~~] within 60 days of the actual test date. The [~~source~~] owner or operator shall maintain records of the capture efficiency operating parameter values on site for a minimum of one year. If any changes are made to capture or control equipment, the owner or operator is required to notify the executive director in writing within 30 days of these changes and a new capture efficiency and/or control device destruction or removal efficiency test may be required.

(4) Records shall be maintained sufficient to document the applicability of the conditions for exemptions referenced in §115.427 [~~§115.427(a)~~] of this title [~~(relating to Exemptions)~~].

(5) The following additional requirements apply to each aerospace vehicle or component coating process subject to §115.421(a)(11) or (b)(10) of this title. The owner or operator shall:

(A) for coatings:

(i) maintain a current list of coatings in use with category and VOC content as applied; and

(ii) record coating usage on an annual basis;

(B) for aqueous and semiaqueous hand-wipe cleaning solvents, maintain a list of materials used with corresponding water contents;

(C) for vapor pressure compliant hand-wipe cleaning solvents:

(i) maintain a current list of cleaning solvents in use with their respective vapor pressures or, for blended solvents, VOC composite vapor pressures; and

(ii) maintain a record cleaning solvent usage on an annual basis;

(D) for cleaning solvents with a vapor pressure greater than 45 millimeters of Mercury used in exempt hand-wipe cleaning operations:

(i) maintain a list of exempt hand-wipe cleaning processes;

(ii) maintain a record cleaning solvent usage on an annual basis.

(6) Except for specialty coatings, compliance with the recordkeeping requirements of 40 CFR §63.752, (National Emission Standards for Aerospace Manufacturing and Rework Facilities), is considered to represent compliance with the requirements of this section (relating to Monitoring and Recordkeeping Requirements).

~~[(b) For Gregg, Nueces, and Victoria Counties, the following recordkeeping requirements shall apply.]~~

~~[(1) Any person affected by §115.421(b) of this title shall satisfy the following recordkeeping requirements.]~~

~~[(A) A material data sheet shall be maintained which documents the VOC content, composition, solids content, solvent density, and other relevant information regarding each coating and solvent available for use in the affected surface coating processes sufficient to determine continuous compliance with applicable control limits.]~~

~~[(B) Records shall be maintained of the quantity and type of each coating and solvent consumed during the specified averaging period if any of the coatings, as delivered to the coating application system, exceed the applicable control limits. Such records shall be sufficient to calculate the applicable weighted average of VOC for all coatings.]~~

~~[(C) Records shall be maintained of any testing conducted at an affected facility in accordance with the provisions specified in §115.425(b)(1) of this title (relating to Testing Requirements).]~~

~~[(D) Records required by subparagraphs (A)-(C) of this paragraph shall be maintained for at least two years and shall be made available upon request by representatives of the executive director, EPA, or local air pollution control agency.]~~

~~[(2) The owner or operator of any surface coating facility which utilizes a vapor recovery system approved by the executive director in accordance with §115.423(b)(3) of this title shall:]~~

~~[(A) install and maintain monitors to accurately measure and record operational parameters of all required control devices as necessary to ensure the proper functioning of those devices in accordance with design specifications; including]~~

~~*[(i)* continuous monitoring of the exhaust gas temperature immediately downstream of direct-flame incinerators and/or the gas temperature immediately upstream and downstream of any catalyst bed;]~~

~~*[(ii)* the total amount of VOC recovered by carbon adsorption or other solvent recovery systems during a calendar month;]~~

~~*[(iii)* continuous monitoring of carbon adsorption bed exhaust; and]~~

~~*[(iv)* the dates and reasons for any maintenance and repair of the required control devices and the estimated quantity and duration of VOC emissions during such activities;]~~

[(B) maintain records of any testing conducted at an affected facility in accordance with the provisions specified in §115.425(b)(2) of this title (relating to Testing Requirements); and]

[(C) maintain all records at the affected facility for at least two years and make such records available to representatives of the executive director, EPA, or local air pollution control agency, upon request.]

[(3) Records shall be maintained sufficient to document the applicability of the conditions for exemptions referenced in §115.427(b) of this title (relating to Exemptions).]

§115.427. Exemptions.

(a) For the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, the following exemptions shall apply:

(1) The following coating operations are exempt from [the application of] §115.421(a)(9) of this title (relating to Emission Specifications):

(A) exterior of fully assembled aircraft, except as required by §115.421(a)(9)(A)(v) of this title, and after December 31, 2001, all aerospace vehicles and components;

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

(2) The following coating operations are exempt from [the application of] §115.421(a)(10) of this title:

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

(3) The following exemptions [shall] apply to surface coating operations, except for aircraft prime coating controlled by §115.421(a)(9)(A)(v) of this title and vehicle refinishing (body shops) controlled by §115.421(a)(8)(B) and (C) of this title.

(A) Surface coating operations on a property which, when uncontrolled, will emit a combined weight of volatile organic compound (VOC) [VOC] of less than 3 pounds per hour and 15 pounds in any consecutive 24-hour period are [shall be] exempt from [the provisions of] §115.421(a) of this title and §115.423 [§115.423(a)] of this title (relating to Alternate Control Requirements).

(B) Surface coating operations on a property which, when uncontrolled, will emit a combined weight of VOC of less than 100 pounds in any consecutive 24-hour period are [shall be] exempt from [the provisions of] §115.421(a) and §115.423 [§115.423(a)] of this title if documentation is provided to and approved by both the executive director and the EPA to demonstrate that necessary coating performance criteria cannot be achieved with coatings which satisfy applicable emission specifications and that control equipment is not technically or economically feasible.

(C) Surface coating operations on a property for which total coating and solvent usage does not exceed 150 gallons in any consecutive 12-month period are exempt from §115.421(a) and §115.423 of this title.

(D) [(C)] Mirror backing coating operations located on a property which, when uncontrolled, emit a combined weight of VOC [volatile organic compond] less than 25 tons in one year (based on historical coating and solvent usage) are exempt from [the provisions of] this division [undesignated head concerning] (relating to Surface Coating Processes).

(E) [(D)] Wood furniture manufacturing facilities which are subject to and are complying with [the requirements of] §115.421(a)(14) of this title and §115.422(3) of this title (relating to Control Requirements) are exempt from [the requirements of] §115.421(a)(13) of this title. These wood furniture manufacturing facilities shall continue to comply with [the requirements of] §115.421(a)(13) of this title until these facilities are in compliance with [the requirements of] §115.421(a)(14) and §115.422(3) of this title.

(F) [(E)] Wood furniture manufacturing facilities which, when uncontrolled, emit a combined weight of VOC from wood furniture manufacturing operations less than 25 tons per year are exempt from [the requirements of] §115.421(a)(14) and §115.422(3) of this title.

(G) [(F)] Wood parts and products coating facilities in Hardin, Jefferson, and Orange Counties are exempt from [the requirements of] §115.421(a)(13) of this title.

(H) [(G)] Shipbuilding and ship repair operations in Hardin, Jefferson, and Orange Counties which, when uncontrolled, emit a combined weight of VOC from ship and offshore oil or gas drilling platform surface coating operations less than 100 tons per year are exempt from [the requirements of] §115.421(a)(15) and §115.422(4) of this title.

(I) [(H)] Shipbuilding and ship repair operations in Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties which, when uncontrolled, emit a combined weight of VOC from ship and offshore oil or gas drilling platform surface coating operations less than 25 tons per year are exempt from [the requirements of] §115.421(a)(15) and §115.422(4) of this title.

(J) [(I)] Aerosol coatings (spray paint) [Coatings applied with hand-held, nonrefillable, aerosol containers ("spray paint")] are exempt from [the requirements of] this division [(relating to Surface Coating Processes)].

(K) The following activities where cleaning and coating of aerospace vehicles or components may take place: research and development, quality control, laboratory testing, and electronic parts and assemblies; except for cleaning and coating of completed assemblies.

[(4) The following architectural coatings are exempt from the provisions of §115.421(a)(11) of this title:]

[(A) paints sold in containers of one quart or less;]

[(B) paints used on roadways, pavement, swimming pools, and similar surfaces;]

[(C) concentrated color additives;]

[(D) architectural coatings sold for shipment outside of the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas or for shipment to other manufacturers for repackaging; and]

[(E) in ozone nonattainment counties other than Dallas and Tarrant, architectural coatings manufactured before July 31, 1992.]

(4) [(5)] Vehicle refinishing (body shops) in Hardin, Jefferson, and Orange Counties are exempt from [the requirements of] §115.421(a)(8)(B) and §115.422(1) and (2) of this title [(relating to Emission Specifications; and Control Requirements)].

(5) [(6)] The coating [repair and recoating] of vehicles at in-house (fleet) vehicle refinishing operations and the coating [repair and recoating] of vehicles by private individuals are exempt from [the requirements of] §115.421(a)(8)(B) and §115.422(1) and (2) of

this title. This exemption is not applicable if the coating [~~repair or recoating~~] of a vehicle by a private individual occurs at a commercial operation.

(b) For Gregg, Nueces, and Victoria Counties, the following exemptions shall apply:

(1) Surface coating operations located at any property [~~facility~~] which, when uncontrolled, will emit a combined weight of VOC less than 550 pounds (249.5 kg) in any continuous 24-hour period are exempt from [~~the provisions of~~] §115.421(b) of this title [~~relating to Emission Specifications~~)].

(2) The following coating operations are exempt from [~~the application of~~] §115.421(b)(8) of this title:

(A) exterior of fully assembled aircraft, and after December 31, 2001, all aerospace vehicles and components;

(B)-(D) (No change.)

(3) The following coating operations are exempt from [~~the application of~~] §115.421(b)(9) of this title:

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

(4) Aerosol coatings (spray paint) [~~Coatings applied with hand-held, nonrefillable, aerosol containers ("spray paint")~~] are exempt from [~~the requirements of~~] this division [(~~relating to Surface Coating Processes~~)].

§115.429. Counties and Compliance Schedules.

(a) All wood furniture manufacturing facilities subject to §115.421(a)(14) of this title (relating to Emission Specifications) 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 §115.421(a)(14) of this title and §115.422(3) of this title (relating to Control Requirements) as soon as practicable, but no later than December 31, 1999. All wood furniture manufacturing facilities subject to §115.421(a)(14) of this title in Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Harris, Liberty, Montgomery, Tarrant, and Waller Counties shall continue to comply with [~~the requirements of~~] §115.421(a)(13) of this title until these coating operations are in compliance with [~~the requirements of~~] §115.421(a)(14) and §115.422(3) of this title.

(b) (No change.)

(c) All aerospace vehicle and component surface coating processes subject to §§115.421(a)(11) or (b)(10), 115.422(5), 115.425(5), and 115.426(5) of this title (relating to Emission Specifications; Control Requirements; Testing Requirements; and Monitoring and Recordkeeping Requirements) in Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Gregg, Hardin, Harris, Jefferson, Liberty, Montgomery, Nueces, Orange, Tarrant, Victoria, and Waller Counties shall be in compliance with these sections as soon as practicable, but no later than December 31, 2001. These aerospace vehicle and component surface coating processes shall continue to comply with §115.421(a)(9) or (b)(8) of this title until these coating processes are in compliance with §§115.421(a)(11) or (b)(10), 115.422(5), 115.425(5), and 115.426(5) of this title.

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

Filed with the Office of the Secretary of State, on March 24, 2000.

TRD-200002114

Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: May 8, 2000
For further information, please call: (512) 239-4712

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Chapter 116. CONTROL OF AIR POLLUTION BY PERMITS FOR NEW CONSTRUCTION OR MODIFICATION

The Texas Natural Resource Conservation Commission (commission) proposes amendments to §116.10, General Definitions; §116.110, Applicability; §116.116, Changes to Facilities; §116.603, Public Participation in Issuance of Standard Permits; §116.620, Installation and/or Modification of Oil and Gas Facilities; §116.621, Municipal Solid Waste Landfills; §116.710, Applicability; §116.715, General and Special Conditions; §116.721; Amendments and Alterations; §116.722, Distance Limitations; §116.750, Flexible Permit Fee; and new §116.119, De Minimis Facilities or Sources; §116.1010, Applicability; §116.1011, Multiple Plant Permit Application; §116.1014, Application Review Schedule; §116.1015, General and Special Conditions; §116.1020, Modifications; §116.1021, Amendments and Alterations; §116.1040, Multiple Plant Permit Public Notice; §116.1041, Multiple Plant Permit Public Comment Procedures; §116.1050, Multiple Plant Permit Application Fee; §116.1060, Multiple Plant Permit Renewal; and §116.1070, Delegation. Sections 116.10, 116.110, 116.116, 116.603, 116.620, 116.621, 116.710, 116.715, 116.722, and 116.750 are proposed as revisions to the state implementation plan.

BACKGROUND AND SUMMARY OF THE FACTUAL BASE FOR THE PROPOSED RULES

The 76th Legislature passed Senate Bill (SB) 766 in 1999. In general, SB 766 recategorized the new source review authorizations under the Texas Clean Air Act (TCAA) and created the new program for the voluntary permitting of grandfathered facilities. Prior to the revisions by SB 766, the TCAA authorized the commission to issue permits for the construction or modification of facilities that will emit air contaminants; standard permits adopted by rule; and exemptions from permitting, also adopted by rule. SB 766 modified this structure by authorizing the commission to issue standard permits using a process that does not require each standard permit to be in a rule. SB 766 provided a new name, permits by rule, for authorizations of certain types of facilities which would not make a significant contribution of air contaminants to the atmosphere. Exemptions from permitting now authorize only changes at insignificant facilities. Finally, the commission is now authorized to develop criteria for facilities that emit a de minimis amount of air contaminants that do not need preconstruction authorization. Within the category of permits, SB 766 created two new permitting options: the voluntary emission reduction permit (VERP) program for permitting of grandfathered facilities, and the multiple plant permit (MPP). SB 766 also amended TCAA, §382.0621(d) to require the increase of emission fees for the largest grandfathered facilities which do not have a permit application pending on or after September 1, 2001.

The commission is implementing this legislation in two phases. The first phase of the implementation of SB 766 was adopted

by the commission on December 16, 1999. Included in the first phase were the VERP program and the new standard permit issuance procedures.

This proposal implements the elements of SB 766 relating to MPPs and de minimis criteria, and administrative revisions relating to exemptions from permitting and permits by rule. This proposal also corrects several typographical errors and incorrect references. Other elements of SB 766, including exemptions from permitting, permits by rule, and emission fees are being addressed in concurrent proposals for new and amended sections in 30 TAC Chapter 101 and Chapter 106. TCAA, §382.051(b)(6) allows the commission to issue an MPP for existing facilities at multiple locations subject to TCAA, §382.0518, Preconstruction Permit, or §382.0519, Voluntary Emissions Reduction Permit. TCAA, §382.05194, Multiple Plant Permit, provides for an MPP, which is a single permit for multiple plant sites that are owned or operated by the same person, if certain emission limits and public participation criteria are met. TCAA, §382.05101, De Minimis Air Contaminants, allows the commission to develop, by rule, the criteria for establishing a de minimis level of air contaminants for facilities or groups of facilities below which a permit under TCAA, §382.0518 or §382.0519, a standard permit under TCAA, §382.05195, or a Permit by Rule under TCAA, §382.05196 is not required. Essentially, the commission may establish a level of emissions of air contaminants for certain facilities or sources below which no preconstruction authorization is needed.

SECTION BY SECTION DISCUSSION

The proposed changes to §116.10 would modify existing definitions to reflect the recategorized air quality preconstruction permitting structure of the commission and to make nonsubstantive corrections. Section 116.10(2), the definition of "Allowable emissions" would be amended to reflect the new permits by rule, to clarify that §116.10(2)(C) pertains to "qualified" grandfathered facilities, and to reflect the current nomenclature for standard permit registration. Section 116.10(5), the definition of "Federally enforceable" would be amended to include permit requirements under Subchapter C of Chapter 116 (sources of hazardous air pollutants), which was inadvertently excluded in an earlier rulemaking. Section 116.10(9), the definition of "Modification of existing facility" would be amended to reflect TCAA, §382.003(9) by including reference to the new MPP.

The proposed changes to §116.110 would include references to the new permits by rule and the new criteria for de minimis facilities or sources as mechanisms under which construction or modification of a facility can occur and remove the redundant reference to "an existing flexible permit" in §116.110(b). The amendments also add the new permit by rule to the existing prohibition on the use of Chapter 106 authorizations for construction or modification of affected sources under Subchapter C of this chapter, Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63).

Amendments to §116.116(c)(4) and (5) would correct an incorrect reference to a section which no longer exists. The correct reference is to §116.111(a)(2)(C), which discusses best available control technology. Amendments to §116.116(d) would include the necessary references to the new permits by rule under Chapter 106, and rearranges some wording for consistency.

The proposed new §116.119 establishes the criteria under which a facility would be considered de minimis and thus would not need a preconstruction authorization. The commission considers de minimis to refer to very small additions to background concentrations of air contaminants which cause no discernable or unacceptable impact to public health and for which permitting would be an ineffective use of commission resources. There would be four options for a facility or source to be considered de minimis. First, the commission will maintain a list of categories of facilities and sources that are considered de minimis. The list will not be incorporated into the rule, but will be maintained in the commission's Office of Permitting, Remediation, and Registration in Austin with copies in each of the commission's regional offices and on the commission's home page on the World Wide Web. The draft List of De Minimis Facilities or Sources is available on the commission's web page. The commission will finalize the list upon adoption of the rule. Once the rule is adopted and the list is finalized, the commission will consider the criteria listed in the rule for amendment of the list. Any person could petition the executive director to amend the list, and the executive director would consider the following when amending the list to ensure that facilities or sources included on the list are de minimis: typical operating scenarios, typical design and location, types and rates of air contaminants emitted, engineering judgement and experience, and toxicological or health impacts. Second, facilities or sources which use no more than prescribed amounts of the following materials at a site would be considered de minimis: cleaning and stripping solvents, coatings, dyes, bleaches, fragrances, and water-based surfactants or detergents. The amounts and materials in the rule were determined by input from the commission's regional offices, that are responsible for site inspections, and by engineering and toxicological review, including, in some cases, air dispersion modeling compared with the commission's effects screening levels (ESLs), which are described as follows, using typical design, location, and emission rates of facilities or sources using the materials. Third, de minimis facilities would also include those that are located inside a building and meet established emission rate caps, without the use of a control device, for individual and multiple substances. The emission rate caps are based on ESLs compared with off-property impacts using air dispersion modeling of a very small site. ESLs are substance-specific guideline comparison values used to determine whether measured air concentrations would be expected to result in adverse health or welfare effects. Finally, an individual facility or source, or groups of facilities or sources, could also be determined by the executive director, on a case-by-case basis, to be de minimis considering: proximity to receptors, emission rates, engineering judgement and experience, and determination that no adverse toxicological effects would occur off-property. De minimis facilities or sources that are subsequently determined by the executive director to be in violation of any commission rule, permit, order, or statute would no longer be considered de minimis and would be required to obtain authorization under this chapter or under Chapter 106, Permits by Rule.

The amendment to §116.603 would also correct a reference to §39.411, Text of Public Notice, to the correct §122.506, Public Notice for General Operating Permits. The reference to the public notice procedures, for general operating permits, instead of to Chapter 39, does not reduce the amount of notice but merely clarifies the notice process to be used.

The amendments to §116.620 and §116.621 would reflect the new permits by rule and the subsequently revised title of Chapter 106.

The amendment to §116.710 would correct an incorrect reference. The correct reference is to §116.110(d), which discusses change in ownership.

Amendments to §§116.715, 116.721, and 116.750 would reflect the new permits by rule and the subsequently revised title of Chapter 106.

The amendment to §116.722 would correct an incorrect reference. The correct reference is to §116.112, which discusses distance limitations.

The proposed new §116.1010 contains conditions defining applicability for facilities eligible to be issued an MPP. TCAA, §382.051(b)(6) allows the commission to issue an MPP for existing facilities at multiple locations subject to TCAA, §382.0518, Preconstruction Permit, or §382.0519, Voluntary Emissions Reduction Permit. TCAA, §382.05194, Multiple Plant Permit, provides for an MPP which is a single permit for multiple plant sites that are owned or operated by the same person, if certain emission limits and public participation criteria are met. Consequently, to be eligible for consolidation under an MPP, the plant sites to be permitted must be owned or operated by the same person or persons under common control.

The aggregate rate of emission of air contaminants cannot exceed the total authorized in existing permits and the rate that would be authorized under any VERPs. There must also be no indication that emissions from the facilities will contravene the intent of the TCAA, including protection of the public's health and property. The MPP may not authorize emissions from any facility that would exceed that facility's highest historic annual rate or levels authorized in the most recent permit. Consistent with commission practice, the highest historic rate would be determined one of two ways: 1) using data that shows the maximum annual emission rate at which the emission unit actually operated and emitted prior to September 1, 1971 for 12 consecutive months, including any increases authorized by a permit by rule; or 2) best engineering judgement in the absence of records, i.e., using data related to emissions (e.g., production, fuel firing, throughput, sulfur content, etc.) as appropriate, which are selected by the applicant and agreed upon by the executive director, to reasonably approximate the actual annual emission rate from any operational year. The executive director will use the emission rate data to establish emission rate limitations for each facility, the sum of which would not exceed the aggregate rate of emissions of air contaminants allowed under the MPP. This would be consistent with the commission's belief that the MPP would provide a flexible mechanism for permitting grandfathered facilities at multiple sites. Applicants would have the flexibility to over-control facilities at sites where the installation of controls is the most cost-effective. Once the rates are established in an MPP, permit holders would be required to amend or alter the permit, as appropriate, to move emissions from facility to facility or site to site.

Emission control equipment may not be removed except to maintain or upgrade existing controls or to reduce the impact of emissions. Applications for an MPP would be submitted on a Form PI-1M, Multiple Plant Permit Application.

The proposed new §116.1011 would implement the requirement in TCAA, §382.05194(g) that the commission establish, by rule, the procedures for application and approval for the use of an MPP. Applications would have to include information to demonstrate that applicable conditions of §116.711, Flexible Permit Application, are met. This demonstration would ensure that any applicable federal requirements are complied with and that information is available to determine what type of monitoring or recordkeeping would be required. For grandfathered facilities that would be included in an MPP which is applied for prior to September 1, 2001, the applicant would be required to submit the information required for a VERP application under §116.811, Voluntary Emission Reduction Permit Application. For existing permitted facilities, applicants would need to provide a copy of the relevant permit. In addition, the commission would require information, as necessary, to verify that emissions of air contaminants from each facility would not adversely impact the public's health and physical property. Since the aggregate emission rate under an MPP would be determined by the sum of existing permitted emission rates and VERP emission rates, applications for grandfathered facilities filed after September 1, 2001 would need authorization under Subchapter B of this chapter prior to being included in an MPP. Finally, the applicant would be required to submit information necessary to calculate the cost of public notice under §116.1040, Multiple Plant Permit Public Notice, in order to determine the appropriate application fee under §116.1050, Multiple Plant Permit Application Fee.

The new §116.1014 would commit the commission to reviewing MPP applications in accordance with §116.614, Application Review Schedule.

The new §116.1015 would allow for the inclusion of general and special conditions in MPPs and would require permit holders to comply with those general and special conditions, including special conditions which provide emission limitations for each facility and which specify the aggregate rate of emissions of air contaminants. Permit holders would also be required to comply with any applicable conditions contained in §116.115, General and Special Conditions.

TCAA, §382.05194 contains no provisions for modification of facilities under a multiple plant permit, as "modification of existing facilities" is defined in §116.10(9), General Definitions. Therefore, the new §116.1020 requires authorization under Subchapter B of this chapter before work is begun on the construction of the modification of any facility permitted under a multiple plant permit.

The new §116.1021 provides a mechanism to amend MPPs as necessary to include revised general and special conditions that reflect changes that are modifications, changes in the method of control of emissions, or changes which will result in an increase in emissions. Permittees would submit a Form PI-1 to request an amendment, which would be subject to the review procedures referenced in §116.116(b), Changes to Facilities. An MPP alteration would be allowed in lieu of amendment for those changes which do not require an MPP amendment. Alterations which involve changes of a general or special condition, or affect control equipment performance require prior commission approval. For alterations due to other changes, the executive director would be notified within ten days of the change, unless a different time frame is specified in the MPP. Any alteration request or notification would include information necessary to demonstrate that the change does not interfere with protection of the public's health and physical property. Changes to a facility which meet an authorization under Chapter 106 would not require amendment or alteration of

an MPP, as long as the aggregate emissions cap or an individual emission limitation would not be exceeded.

To implement the requirements of TCAA, §382.05194(d), the proposed new §116.1040 would require the commission to publish notice of a proposed MPP in a newspaper of general circulation in the area(s) to be affected and in the *Texas Register*. If the MPP will have statewide effect, the notice will be published in the daily newspaper of largest circulation in Dallas and Houston. The notice will include relevant information required by §39.411, Text of Public Notice, and will be published at least 30 days before the commission issues the MPP. Applicants must publish notice of a proposed multiple plant permit amendment consistent with §116.116(b)(4), Changes to Facilities, as multiple plant permit amendments would be reviewed under the existing procedures for permit amendments.

TCAA, §382.05194(e) requires the commission to hold a public meeting regarding proposed MPPs. Under the proposed new §116.1041, the commission would hold a public meting on the proposed MPP with notice of the meeting provided in the same notice required under §116.1040 at least 30 days before the meeting. Consistent with TCAA, §382.05194(f), the commission would respond to public comment received related to the issuance of the MPP at the same time the commission issues or denies the MPP. The response would be made available to the public and each commenter will be mailed a response. Finally, consistent with TCAA, §382.05194(h), the proposed new section also states that applications for an MPP, amendments to an MPP, or revocation of an MPP which are filed before September 1, 2001 are not subject to Texas Government Code, Chapter 2001, meaning no contested case hearing would be allowed.

The new §116.1050 would require a fee of $450 plus the estimated public notice cost for the permit for an application for an MPP. TCAA, §382.062(b) allows the commission to charge and collect a fee for MPPs. This fee would be applied toward recovering the cost of reviewing the MPP applications and the cost of publishing notice.

The new §116.1060 would require MPPs to be renewed consistent with Subchapter D of this chapter.

Consistent with TCAA, §382.05194(i), the new §116.1070 allows the commission to delegate to the executive director any authority regarding MPPs.

FISCAL NOTE

Bob Orozco, Strategic Planning and Appropriations Section, has determined that for the first five-year period the proposed new sections and amendments are in effect there will be no significant fiscal implications for the commission and other units of state and local government as a result of administration or enforcement of the proposed new sections and amendments. The proposed amendments to Chapter 116, Control of Air Pollution By Permits For New Construction Or Modification, would implement certain provisions of SB 766, 76th Legislature, 1999, relating to the issuance of certain permits for the emission of air contaminants. The commission is implementing this legislation in two phases. The first phase of the implementation of SB 766 was adopted by the commission on December 16, 1999. Included in the first phase were the VERP program and the new standard permit issuance procedures. These proposed amendments are the second phase of the implementation of SB 766. Other elements of SB 766 are addressed in concurrent proposals for new and amended sections in Chapters 101 and 106.

The proposed amendments would implement elements of SB 766 relating to the new MPPs, the new criteria for de minimis facilities/sources, the new nomenclature for referring to permits by rule and exemptions from permitting under Chapter 106, and administrative changes and corrections. The proposed amendments allow the commission to issue an MPP for existing facilities at multiple locations subject to the preconstruction permit or VERP provisions of the TCAA. An MPP is a single permit for multiple plant sites that are owned or operated by the same person or persons under common control, that may be issued if certain emission limits and public participation criteria are met. SB 766 also authorized the commission to establish a de minimis level of emissions of air contaminants for certain facilities or sources below which no authorization is required. A new section in Chapter 116 relating to De Minimis Air Contaminants contains the criteria for establishing a minimum level of air contaminants for facilities or groups of facilities below which a permit, a standard permit, or a permit by rule under TCAA is not required.

The purpose of the proposed amendments is to provide an additional permitting option under the MPP and to remove the need for preconstruction or other authorizations for de minimis facilities or sources. These new sections and amendments are intended to increase permitting options and flexibility, as well as make administrative changes and corrections in Chapter 116. The proposed amendments do not require additional emission controls, and the commission does not anticipate significant additional costs for persons or businesses applying the provisions of the proposed amendments. Owners or operators of grandfathered facilities that do not apply for an MPP by September 1, 2001 would not be eligible to consolidate the facility under an MPP unless the facility was permitted under a new source review permit. However, participation in the MPP program is voluntary.

PUBLIC BENEFIT

Mr. Orozco has also determined that for each year of the first five years the proposed new sections and amendments are in effect, the public benefit anticipated from enforcement of and compliance with the proposed amendments will be a potential reduction of air contaminants and an incentive for owners or operators of grandfathered facilities to obtain a permit under the MPP program, by September 1, 2001. Existing grandfathered facilities that are not permitted by this date would have to obtain a new source review permit in order to be eligible for consolidation under an MPP. The new de minimis category could encourage reductions in air contaminants in order to qualify for exclusion from permitting requirements.

These new sections and amendments are intended to increase permitting options and flexibility, as well as make administrative changes and corrections. The MPP and de minimis options are voluntary. Controls, consistent with the VERP program, would be required for inclusion of grandfathered facilities in an MPP. The cost of VERP controls was discussed in the Fiscal Note section of the proposed Chapter 116 preamble during the first phase of the SB 766 implementation (September 10, 1999 issue of the *Texas Register* (24 TexReg 78148)). The MPP is an additional option that essentially provides for flexibility in permitting grandfathered facilities, and the commission does not expect any significant costs for persons or businesses

applying the provisions of the proposed amendments. Owners or operators of grandfathered facilities that do not apply for an MPP by September 1, 2001 would not be eligible to consolidate the facility under an MPP unless the facility was permitted under a new source review permit. However, participation in the MPP program is voluntary.

SMALL AND MICRO-BUSINESS ANALYSES

No significant adverse effects are anticipated to small or micro-businesses as a result of implementing these new amendments. It is estimated that from 150 to 200 small or micro-businesses in Texas have grandfathered facilities. It is anticipated that none of these businesses are candidates for the MPP since most small businesses only have one site. It is anticipated that some small or micro- businesses will qualify as a de minimis facility. The proposed new sections concerning de minimis facilities or sources will remove the need for authorizations for these facilities, which could result in positive fiscal implications for some small and micro-businesses.

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 does not meet the definition of a "major environmental rule" as defined in that statute. "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. These amendments provide additional permitting options and remove the need for authorizations for de minimis sources. The proposed MPP and de minimis options in the proposed amendments are voluntary and the proposed amendments do not authorize any new emissions that will have an adverse effect on the environment. In addition, the proposed amendments do not impose any additional regulatory requirements beyond those that currently exist. These new sections and amendments do not meet the definition of "major environmental rule" because there is no adverse material effect on the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. In addition, §2001.0225(a) only applies to a major environmental rule, the result of which is to: 1. exceed a standard set by federal law, unless the rule is specifically required by state law; 2. exceed an express requirement of state law, unless the rule is specifically required by federal law; 3. exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4. adopt a rule solely under the general powers of the agency instead of under a specific state law.

This rulemaking does not meet any of these four applicability requirements of a "major environmental rule." Specifically, these new sections and amendments do not exceed a standard set by state or federal law, but are proposed under the Texas Health and Safety Code, concerning De Minimis Air Contaminants; and Multiple Plant Permits. The proposed amendments do not exceed a requirement of a delegation agreement and were not developed solely under the general powers of the agency, but were specifically developed to implement the provisions of SB 766. The commission invites public comment on the draft regulatory impact analysis.

TAKINGS IMPACT ANALYSIS

The commission has prepared a takings impact assessment for these proposed rules under Texas Government Code, §2007.043. The following is a summary of that assessment. These proposed rules expand permitting and authorization options for new and existing facilities. The proposed rules do not restrict or limit an owner's right to property that would otherwise exist in the absence of governmental action and therefore do not constitute a takings.

The proposed amendments concerning de minimis criteria, establish parameters for emissions, below which, a facility or site would be considered de minimis and thus not required to obtain preconstruction authorization. The new procedures for obtaining multiple plant permit provide an additional option for permitting of grandfathered facilities. The corrections to cross-references and the insertion of the new term "permits by rule" are administrative in nature. These actions are reasonably taken to fulfill an obligation mandated under state law.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has determined that this rulemaking relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 et seq.), and the commission's rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with 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, commission 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 with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council. For the proposed new sections relating to de minimis, multiple plant permits, and permits by rule, the commission has determined that the rules are consistent with the applicable CMP goal expressed in 31 TAC §501.12(1) of protecting and preserving the quality and values of coastal natural resource areas, and the policy in 31 TAC §501.14(q), which requires that the commission protect air quality in coastal areas. This action does not authorize any new emissions. This action is consistent with Title 40 Code of Federal Regulations because it does not authorize an emission rate in excess of that specified by federal requirements. Interested persons may submit comments during the public comment period on the consistency of the proposed rules with the CMP goals and policies.

PUBLIC HEARING

The commission will hold a public hearing on this proposal in Austin at 10:00 a.m. on May 4, 2000 in Room 201A of Texas Natural Resource Conservation Commission Building B, located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearings and will answer questions before and after the hearing.

SUBMITTAL OF COMMENTS

Comments may be submitted to Lisa Martin, MC 205, Office of Environmental Policy, Analysis, and Assessment, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Log Number 1999- 029B-116-AI. Comments must be received by 5:00 p.m., May 8, 2000. For further information, please contact Beecher Cameron, Policy and Regulations Division, (512) 239-1495.

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

Subchapter A. DEFINITIONS

30 TAC §116.10

STATUTORY AUTHORITY

The amendment is proposed under Texas Health and Safety Code, TCAA, §382.05101, which authorizes the commission to establish a de minimis level of air contaminants for sources that does not require preconstruction authorization; and TCAA, §382.051 and §382.05194, which authorize the commission to issue multiple plant permits and to adopt rules governing their issuance. The amendment is also proposed under Texas Health and Safety Code, TCAA, §382.011, which authorizes the commission to administer the requirements of the TCAA; §382.012, which provides the commission with the authority to develop a comprehensive plan for the state's air; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; §382.0513, which authorizes the commission to establish and enforce permit conditions; §382.0514, which authorizes the commission to require sampling and monitoring; §382.0515, which requires permit applications which demonstrate compliance with state and federal statutes and rules; §382.0518, which requires permits to prior to construction or modification; §382.057, which authorizes the commission to exempt from permitting, changes within any facility which will not make a significant contribution of air contaminants to the atmosphere; §382.05196, which authorizes the commission to adopt permits by rule for types of facilities which will not make a significant contribution of air contaminants to the atmosphere; §382.061, which authorizes the commission to delegate permitting authority to the executive director; §382.062, which authorizes the commission to adopt, charge, and collect fees for permits; and Texas Water Code, §5.122, which authorizes the commission to delegate uncontested matters to the executive director.

The proposed amendment implements §382.05101, concerning De Minimis Air Contaminants; §382.051, concerning Permitting Authority of Commission; Rules; §382.05194, concerning Multiple Plant Permit; §382.011, concerning General Powers and Duties; §382.012, concerning State Air Control Plan; §382.017, concerning Rules; §382.0513, concerning Permit Conditions; §382.0514, concerning Sampling, Monitoring, and Certification; §382.0515, concerning Application for Permit; §382.0518, concerning Preconstruction Permit; §382.057, concerning Exemption; §382.05196, concerning Permits by Rule; §382.061, concerning Delegation of Powers and Duties; §382.062, concerning Application, Permit, and Inspection Fees; and Texas Water Code, §5.122, concerning Delegation of Uncontested Matters to the Executive Director.

§116.10. General 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, and in §101.1 of this title (relating to Definitions), the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) (No change.)

(2) Allowable emissions - The authorized rate of emissions of an air contaminant from a facility as determined in accordance with this section. This rate cannot exceed any applicable state or federal emissions limitation. This definition applies only when determining whether there has been a net increase in allowable emissions under §116.116(e) of this title.

(A) Permitted facility - For a facility with a [~~preconstruction~~] permit under this chapter, the allowable emissions shall be any emission limit established in the permit on a MAERT and any emission limit contained in representations in the permit application which was relied upon in issuing the permit, plus any allowable emissions authorized [~~by an exemption~~] under Chapter 106 of this title (relating to Permits by Rule [~~Exemptions from Permitting~~]).

(B) Facility permitted by rule [~~Exempted facility~~] - For a facility operating under Chapter 106 of this title, the allowable emissions shall be the least of the emissions rate allowed in Chapter 106, Subchapter A of this title (relating to General Requirements), the emissions rate specified in the applicable permit by rule [~~exemption~~], or the federally enforceable emission rate established on a PI-8 form.

(C) Qualified grandfathered [~~Grandfathered facility~~] - For a qualified grandfathered facility, the allowable emissions shall be the maximum annual emissions rate after the implementation of any air pollution control methods to become a qualified facility, plus 10% of the maximum annual emissions rate prior to the implementation of such control methods, but in no case shall the allowable emissions be greater than the maximum annual emissions rate prior to the implementation of such control methods. The maximum annual emissions rate is the emissions rate at the maximum annual capacity according to the physical or operational design of the facility, data from actual operations over a period of no more than 12 months that demonstrates the maximum annual capacity, or other information that demonstrates the maximum annual capacity. Except where a grandfathered facility has been modified, the allowable emissions for the modification shall be determined as a permitted facility.

(D) Standard permit facility - For a facility authorized by standard permit, other than §116.617(2) of this title (relating to Standard Permits for Pollution Control Projects), the allowable emissions shall be the maximum emissions rate represented in the registration to use [~~for~~] the standard permit.

(E)-(F) (No change.)

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

(5) Federally enforceable - All limitations and conditions which are enforceable by the EPA, including:

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

(D) any permit requirements established under 40 CFR §52.21; [~~or~~]

(E) any permit requirements established under regulations approved under 40 CFR Part 51, Subpart I, including permits

issued under the EPA-approved program that is incorporated into the SIP and that expressly requires adherence to any permit issued under such program ; or [.]

(F) any permit requirements established under Subchapter C of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)).

(6)-(8) (No change.)

(9) Modification of existing facility - Any physical change in, or change in the method of operation of, a facility in a manner that increases the amount of any air contaminant emitted by the facility into the atmosphere or that results in the emission of any air contaminant not previously emitted. The term does not include:

(A)-(E) (No change.)

(F) a physical change in, or change in the method of operation of, a facility where the change is within the scope of a flexible permit or a multiple plant permit; or

(G) (No change.)

(10)-(15) (No change.)

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

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Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
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For further information, please call: (512) 239-1966

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Subchapter B. NEW SOURCE REVIEW PERMITS

Division 1. PERMIT APPLICATION

30 TAC §116.110, 116.116, 116.119

STATUTORY AUTHORITY

The amendments and new section are proposed under Texas Health and Safety Code, TCAA, §382.05101, which authorizes the commission to establish a de minimis level of air contaminants for sources that does not require pre-construction authorization; and TCAA, §382.051 and 382.05194, which authorize the commission to issue multiple plant permits and to adopt rules governing their issuance. The amendments and new section are also proposed under Texas Health and Safety Code, TCAA, §382.011, which authorizes the commission to administer the requirements of the TCAA; §382.012, which provides the commission with the authority to develop a comprehensive plan for the state's air; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; §382.0513, which authorizes the commission to establish and enforce permit conditions; §382.0514, which authorizes the commission to require sampling and monitoring; §382.0515, which requires permit applications which demonstrate compliance with state and federal statutes and rules; §382.0518, which requires permits to prior to construction or modification; §382.057, which authorizes the commission to exempt from permitting, changes within any facility which will not make a significant contribution of air contaminants to the atmosphere; §382.05196, which authorizes the commission to adopt permits by rule for types of facilities which will not make a significant contribution of air contaminants to the atmosphere §382.061, which authorizes the commission to delegate permitting authority to the executive director; §382.062, which authorizes the commission to adopt, charge, and collect fees for permits; and Texas Water Code, §5.122, which authorizes the commission to delegate uncontested matters to the executive director.

The proposed amendments and new section implement §382.05101, concerning De Minimis Air Contaminants; §382.051, concerning Permitting Authority of Commission; Rules; §382.05194, concerning Multiple Plant Permit; §382.011, concerning General Powers and Duties; §382.012, concerning State Air Control Plan; §382.017, concerning Rules; §382.0513, concerning Permit Conditions; §382.0514, concerning Sampling, Monitoring, and Certification; §382.0515, concerning Application for Permit; §382.0518, concerning Preconstruction Permit; §382.057, concerning Exemption; §382.05196, concerning Permits by Rule; §382.061, concerning Delegation of Powers and Duties; §382.062, concerning Application, Permit, and Inspection Fees; and Texas Water Code, §5.122, concerning Delegation of Uncontested Matters to the Executive Director.

§116.110. Applicability.

(a) Permit to construct. Before any actual work is begun on the facility, any person who plans to construct any new facility or to engage in the modification of any existing facility which may emit air contaminants into the air of this state shall either:

(1) (No change.)

(2) satisfy the conditions for a standard permit under the requirements in:

(A) (No change.)

(B) Chapter 321, Subchapter B [K] of this title (relating to Concentrated Animal Feeding Operations);

(C)-(D) (No change.)

(3) satisfy the conditions for a flexible permit under the requirements in Subchapter G of this chapter (relating to Flexible Permits); [or]

(4) satisfy the conditions for facilities permitted by rule [exempt facilities] under Chapter 106 of this title (relating to Permits by Rule [Exemptions from Permitting.]) ; or

(5) satisfy the criteria for a de minimis facility or source under §116.119 of this title (relating to De Minimis Facilities or Sources).

(b) Modifications to existing permitted facilities. Modifications to existing permitted facilities may be handled through the amendment of an existing permit [or an existing flexible permit].

(c) Exclusion. Owners or operators of affected sources (as defined in §116.15(1) of this title (relating to Section 112(g) Definitions)) subject to Subchapter C of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)) are not authorized to use:

(1) a permit by rule [~~an exemption~~] under Chapter 106 of this title;

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

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

§116.116. Changes to Facilities.

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

(c) Permit alteration.

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

(4) A request for permit alteration shall include information sufficient to demonstrate that the change does not interfere with the owner or operator's previous demonstrations of compliance with the requirements of §116.111(a)(2)(C) [~~§116.111(3)~~] of this title.

(5) Permit alterations are not subject to the requirements of §116.111(a)(2)(C) [~~§116.111(3)~~] of this title.

(d) Permits by rule [~~and exemptions from permitting~~] under Chapter 106 of this title (relating to Permits by Rule [~~Exemptions from Permitting~~]) in lieu of permit amendment or alteration.

(1) (No change.)

(2) All [~~exempted~~] changes authorized under Chapter 106 of this title to [~~, and permits by rule associated with,~~] a permitted facility shall be incorporated into that facility's permit when the permit is amended or renewed.

(e) Changes to qualified facilities.

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

(5) As used in this subsection, the term "physical and operational change" does not include:

(A) (No change.)

(B) changes to procedures regarding monitoring, determination of emissions , and recordkeeping that are required by a permit.

(6)-(8) (No change.)

(f) (No change.)

§116.119. De Minimis Facilities or Sources.

(a) Facilities or sources that meet the conditions of one or more of the paragraphs of this subsection are considered by the commission to be de minimis, which means that registration or authorization prior to construction is not required:

(1) categories of facilities or sources included on the list entitled "De Minimis Facilities or Sources;"

(2) facilities or sources at a site which, in combination, use the following materials at no more than the rate prescribed in subparagraphs (A)-(F) of this paragraph:

(A) cleaning and stripping solvents, 50 gallons per year;

(B) coatings (excluding plating materials), 100 gallons per year;

(C) dyes, 1,000 pounds per year;

(D) bleaches, 1,000 gallons per year;

(E) fragrances (excluding odorants), 250 gallons per year;

(F) water-based surfactants/detergents, 2,500 gallons per year;

(3) facilities or sources located inside a building at a site which meet the following emission rate caps based on effects screening levels (ESLs) without the addition of control devices, as defined in §101.1 of this title (relating to Definitions).
Figure: 30 TAC §116.119(a)(3)

(4) any individual facility, source, or group of facilities or sources which the executive director determines to be de minimis based upon:

(A) proximity to receptors;

(B) rate of emission of air contaminants;

(C) engineering judgment and experience; and

(D) determination that no adverse toxicological or health effects would occur off property.

(b) De minimis facilities or sources at a site which are subsequently determined by the executive director to be in violation of any commission rule, permit, order, or statute within the commission's jurisdiction, will no longer be considered de minimis and must obtain registration or authorization under this chapter or Chapter 106 of this title (relating to Permits by Rule).

(c) The "List of De Minimis Facilities or Sources" will be maintained in the commission's Office of Permitting, Remediation, and Registration in Austin, with copies maintained in the commission's regional offices, and on the commission's home page on the World Wide Web.

(1) Persons may petition the executive director to amend the "List of De Minimis Facilities or Sources" or the executive director may amend the list as necessary.

(2) When amending the list to add or delete categories of facilities, sources, or groups of facilities or sources, the executive director will consider, at a minimum, the following:

(A) typical operating scenarios;

(B) typical design and location;

(C) the types and rates of air contaminants emitted;

(D) engineering judgment and experience; and

(E) toxicological or health impacts.

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

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Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
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Subchapter F. STANDARD PERMITS

30 TAC §§116.603, 116.620, 116.621

STATUTORY AUTHORITY

The amendments are proposed under Texas Health and Safety Code, TCAA, §382.05101, which authorizes the commission to establish a de minimis level of air contaminants for sources that does not require pre-construction authorization; and TCAA, §382.051 and §382.05194, which authorize the commission to issue multiple plant permits and to adopt rules governing their issuance. The amendments are also proposed under Texas Health and Safety Code, TCAA, §382.011, which authorizes the commission to administer the requirements of the TCAA; §382.012, which provides the commission with the authority to develop a comprehensive plan for the state's air; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; §382.0513, which authorizes the commission to establish and enforce permit conditions; §382.0514, which authorizes the commission to require sampling and monitoring; §382.0515, which requires permit applications which demonstrate compliance with state and federal statutes and rules; §382.0518, which requires permits to prior to construction or modification; §382.057, which authorizes the commission to exempt from permitting, changes within any facility which will not make a significant contribution of air contaminants to the atmosphere; §382.05196, which authorizes the commission to adopt permits by rule for types of facilities which will not make a significant contribution of air contaminants to the atmosphere; §382.061, which authorizes the commission to delegate permitting authority to the executive director; §382.062, which authorizes the commission to adopt, charge, and collect fees for permits; and Texas Water Code, §5.122, which authorizes the commission to delegate uncontested matters to the executive director.

The proposed amendments implement §382.05101, concerning De Minimis Air Contaminants; §382.051, concerning Permitting Authority of Commission; Rules; §382.05194, concerning Multiple Plant Permit; §382.011, concerning General Powers and Duties; §382.012, concerning State Air Control Plan; §382.017, concerning Rules; §382.0513, concerning Permit Conditions; §382.0514, concerning Sampling, Monitoring, and Certification; §382.0515, concerning Application for Permit; §382.0518, concerning Preconstruction Permit; §382.057, concerning Exemption; §382.05196, concerning Permits by Rule; §382.061, concerning Delegation of Powers and Duties; §382.062, concerning Application, Permit, and Inspection Fees; and Texas Water Code, §5.122, concerning Delegation of Uncontested Matters to the Executive Director.

§116.603. Public Participation in Issuance of Standard Permits.

(a) (No change.)

(b) The contents of a public notice of a proposed standard permit shall be in accordance with §122.506 [~~§39.411~~] of this title (relating to Public Notice for General Operating Permits [~~Text of Public Notice~~]) except where clearly not applicable. Each notice will include an invitation for written comments by the public regarding the proposed standard permit. The public notice will specify a comment period of at least 30 days and the public notice will be published not later than the 30th day before the commission issues a standard permit.

(c)-(f) (No change.)

§116.620. Installation and/or Modification of Oil and Gas Facilities.

(a) Emission specifications.

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

(4) New or modified internal combustion reciprocating engines or gas turbines permitted under this standard permit shall satisfy all of the requirements of §106.512 of this title (relating to Stationary Engines and Turbines (Previously SE 6)), except that registration using the Form PI-7 or PI-8 shall not be required. Emissions from engines or turbines shall be limited to the amounts found in §106.4(a)(1) of this title (relating to Requirements for Permitting by Rule [~~Exemption from Permitting~~]).

(5)-(10) (No change.)

(11) No facility which is located less than 1/4 mile from the nearest off-plant receptor shall be allowed to emit hydrogen sulfide H_2S or SO_2 process fugitive emissions unless the equipment is inspected and repaired according to subsection (c)(3) of this section. No facility which is located at least 1/4 mile from the nearest off-plant receptor shall be allowed to emit H_2S or SO_2 process fugitive emissions unless the equipment is inspected and repaired according to subsection (c)(3) of this section or unless the H_2S or SO_2 emissions are monitored with ambient property line monitors according to subsection (e)(1) of this section. Components in sweet crude oil or gas service as defined by Chapter 101 of this title (relating to General Air Quality Rules) are exempt from these limitations.

(12)-(18) (No change.)

(b) Control requirements.

(1) Floating roofs or equivalent controls shall be required on all new or modified storage tanks, other than pressurized tanks which meet §106.476 of this title (relating to Pressurized Tanks or Tanks Vented to Control (Previously SE 83)), unless the tank is less than 25,000 gallons in nominal size or the vapor pressure of the compound to be stored in the tank is less than 0.5 pounds per square inch absolute (psia) at maximum short-term storage temperature.

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

(E) Independent of the permits by rule [~~exemptions~~] listed in this paragraph, if the emissions from any fixed roof tank exceed ten tpy of VOC or ten tpy of sulfur compounds, the tank emissions shall be routed to a destruction device, vapor recovery unit, or equivalent method of control that meets the requirements listed in subparagraph (D) of this paragraph.

(2) (No change.)

(c) Inspection requirements.

(1) Owners or operators who are subject to subsection (a)(7) or (8) of this section shall comply with the following requirements.

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

(J) After completion of the required quarterly inspections for a period of at least two years, the operator of the oil and gas facility may request in writing to the Office of Permitting, Remediation, and Registration [~~Office of Air Quality, New Source Review Permits Division~~] that the monitoring schedule be revised based on the percent of valves leaking. The percent of valves leaking shall be determined by dividing the sum of valves leaking during current monitoring and valves for which repair has been delayed by the total number of valves subject to the requirements. This request shall include all data that has been developed to justify the following modifications in the monitoring schedule.

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

(2) Owners or operators who are subject to subsection (a)(9) or (10) of this section shall comply with the following requirements.

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

(J) After completion of the required quarterly inspections for a period of at least two years, the operator of the oil and gas facility may request in writing to the Office of Permitting, Remediation, and Registration [~~Office of Air Quality, New Source Review Permits Division~~] that the monitoring schedule be revised based on the percent of leaking valves. The percent of valves leaking shall be determined by dividing the sum of valves leaking during current monitoring and valves for which repair has been delayed by the total number of valves subject to the requirements. This request shall include all data that has [~~have~~] been developed to justify the following modifications in the monitoring schedule.

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

(K) (No change.)

(3) (No change)

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

§116.621. Municipal Solid Waste Landfills.

A person may claim a standard permit for the construction or modification to a municipal solid waste landfill (MSWLF) or municipal solid waste facility (MSW facility) as defined in §101.1 of this title (relating to Definitions), including, but not limited to, Type I, Type 1-AE, Type II, Type III, Type IV, Type IV-AE, Type VI, and Type IX sites as defined in §330.41 of this title (relating to Types of Municipal Solid Waste Sites).

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

(8) The owner or operator of each MSWLF unit shall maintain complete and up-to-date records sufficient to readily determine continuous compliance with the requirements of this section for the previous five years of operation. All the records shall be maintained in an operating record in accordance with §330.113(b)(11) of this title (relating to Recordkeeping Requirements). The records shall be available for review upon request by representatives of the commission or any local air pollution agency having jurisdiction. The following recordkeeping requirements shall apply, in addition to those specified in 40 CFR 60, Subpart WWW.

(A) Permit holders who are subject to the permits by rule [~~exemptions~~] of Chapter 106 of this title (relating to Permits by Rule [~~Exemptions from Permitting~~]) , as specified in paragraph (4) of this section shall maintain any records specified in the permit by rule [~~exemption from permitting~~].

(B) (No change.)

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

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Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
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Subchapter G. FLEXIBLE PERMITS

30 TAC §§116.710, 116.715, 116.721, 116.722, 116.750

STATUTORY AUTHORITY

The amendments are proposed under Texas Health and Safety Code, TCAA, §382.05101, which authorizes the commission to establish a de minimis level of air contaminants for sources that does not require pre-construction authorization; TCAA, and §382.051 and §382.05194, which authorize the commission to issue multiple plant permits and to adopt rules governing their issuance. The amendments are also proposed under Texas Health and Safety Code, TCAA, §382.011, which authorizes the commission to administer the requirements of the TCAA; §382.012, which provides the commission with the authority to develop a comprehensive plan for the state's air; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; §382.0513, which authorizes the commission to establish and enforce permit conditions; §382.0514, which authorizes the commission to require sampling and monitoring; §382.0515, which requires permit applications which demonstrate compliance with state and federal statutes and rules; §382.0518, which requires permits to prior to construction or modification; §382.057, which authorizes the commission to exempt from permitting, changes within any facility which will not make a significant contribution of air contaminants to the atmosphere; §382.05196, which authorizes the commission to adopt permits by rule for types of facilities which will not make a significant contribution of air contaminants to the atmosphere §382.061, which authorizes the commission to delegate permitting authority to the executive director; §382.062, which authorizes the commission to adopt, charge, and collect fees for permits; and Texas Water Code, §5.122, which authorizes the commission to delegate uncontested matters to the executive director.

The proposed amendments implement §382.05101, concerning De Minimis Air Contaminants; §382.051, concerning Permitting Authority of Commission; Rules; §382.05194, concerning Multiple Plant Permit; §382.011, concerning General Powers and Duties; §382.012, concerning State Air Control Plan; §382.017, concerning Rules; §382.0513, concerning Permit Conditions; §382.0514, concerning Sampling, Monitoring, and Certification; §382.0515, concerning Application for Permit; §382.0518, concerning Preconstruction Permit; §382.057, concerning Exemption; §382.05196, concerning Permits by Rule; §382.061, concerning Delegation of Powers and Duties; §382.062, concerning Application, Permit, and Inspection Fees; and Texas Water Code, §5.122, concerning Delegation of Uncontested Matters to the Executive Director.

§116.710. Applicability.

(a) (No change.)

(b) Change in ownership. The new owner of a facility, group of facilities, or account shall comply with §116.110(d) [~~§116.110(c)~~] of this title, provided however, that all facilities covered by a flexible permit must change ownership at the same time and to the same person, or both the new owner and existing permit holder must obtain a permit alteration allocating the emission caps or individual emission limitation prior to the transfer of the permit by the commission. After the sale of a facility, or facilities, but prior to the transfer of a permit requiring a permit alteration, the original permit holder remains responsible for ensuring compliance with the existing flexible permit and all rules and regulations of the commission.

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

§116.715. General and Special Conditions.

(a) Flexible permits may contain general and special conditions. The holders of flexible permits shall comply with any and all such conditions. Upon a specific finding by the executive director that an increase of a particular air contaminant could result in a significant impact on the air environment, or could cause the facility, group of facilities, or account to become subject to review under §116.150 and §116.151 and §§116.160-116.163 of this title (relating to Nonattainment Review or Prevention of Significant Deterioration Review) or Subchapter C of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)), the permit may include a special condition which requires the permittee to obtain written approval from the executive director before constructing a facility under a standard permit or a permit by rule [~~an exemption~~] under Chapter 106 of this title (relating to Permits by Rule [~~Exemptions from Permitting~~]).

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

§116.721. Amendments and Alterations.

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

(d) Permit by rule [~~Exemption~~] under Chapter 106 of this title (relating to Permits by Rule [~~Exemptions from Permitting~~]) in lieu of permit amendment or alteration.

(1) Notwithstanding subsections (a) or (b) of this section, no permit amendment or alteration is required if the changes to the permitted facility qualify for a permit by rule [~~an exemption~~] under Chapter 106 of this title unless prohibited by permit provision as provided in §116.715 of this title (relating to General and Special Conditions). All such changes permitted by rule [~~exempted changes~~] to a permitted facility shall be incorporated into that facility's permit at such time as the permit is amended or renewed.

(2) (No change.)

§116.722. Distance Limitations.

No flexible permit may be issued unless the distance and location restrictions found in §116.112 [~~§116.117~~] of this title (relating to Distance Limitations) are met.

§116.750. Flexible Permit Fee.

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

(d) Return of fees. Fees must be paid at the time an application for a flexible permit or flexible permit amendment is submitted. If the applicant withdraws the application prior to issuance of the flexible permit or flexible permit amendment, one-half of the fee will be refunded, except that the entire fee will be refunded for any such application for which a permit by rule [~~an exemption~~] under Chapter 106 of this title (relating to Permits by Rule [~~Exemptions from Permitting~~]) is allowed. No fees will be refunded after a deficient application has been voided, denied, or after a flexible permit or flexible permit amendment has been issued by the agency.

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

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Director, Environmental Law Division
Texas Natural Resource Conservation Commission

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Subchapter J. MULTIPLE PLANT PERMITS

30 TAC §§116.1010, 116.1011, 116.1014, 116.1015, 116.1020, 116.1021, 116.1040, 116.1041, 116.1050, 116.1060, 116.1070,

STATUTORY AUTHORITY

The new sections are proposed under Texas Health and Safety Code, TCAA, §382.05101, which authorizes the commission to establish a de minimis level of air contaminants for sources that does not require pre-construction authorization; and TCAA, §382.051 and §382.05194, which authorize the commission to issue multiple plant permits and to adopt rules governing their issuance. The new sections are also proposed under Texas Health and Safety Code, TCAA, §382.011, which authorizes the commission to administer the requirements of the TCAA; §382.012, which provides the commission with the authority to develop a comprehensive plan for the state's air; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; §382.0513, which authorizes the commission to establish and enforce permit conditions; §382.0514, which authorizes the commission to require sampling and monitoring; §382.0515, which requires permit applications which demonstrate compliance with state and federal statutes and rules; §382.0518, which requires permits to prior to construction or modification; §382.057, which authorizes the commission to exempt from permitting, changes within any facility which will not make a significant contribution of air contaminants to the atmosphere; §382.05196, which authorizes the commission to adopt permits by rule for types of facilities which will not make a significant contribution of air contaminants to the atmosphere; §382.061, which authorizes the commission to delegate permitting authority to the executive director; §382.062, which authorizes the commission to adopt, charge, and collect fees for permits; and Texas Water Code, §5.122, which authorizes the commission to delegate uncontested matters to the executive director.

The proposed new sections implement §382.05101, concerning De Minimis Air Contaminants; §382.051, concerning Permitting Authority of Commission; Rules; §382.05194, concerning Multiple Plant Permit; §382.011, concerning General Powers and Duties; §382.012, concerning State Air Control Plan; §382.017, concerning Rules; §382.0513, concerning Permit Conditions; §382.0514, concerning Sampling, Monitoring, and Certification; §382.0515, concerning Application for Permit; §382.0518, concerning Preconstruction Permit; §382.057, concerning Exemption; §382.05196, concerning Permits by Rule; §382.061, concerning Delegation of Powers and Duties; §382.062, concerning Application, Permit, and Inspection Fees; and Texas Water Code, §5.122, concerning Delegation of Uncontested Matters to the Executive Director.

§116.1010. Applicability.

(a) A person may obtain a multiple plant permit for existing facilities subject to TCAA, §382.0518 or §382.0519 at multiple plant sites that are owned or operated by the same person or persons under common control if:

(1) the aggregate rate of emission of air contaminants to be authorized under the permit does not exceed the total of:

(A) for previously permitted facilities, the rates authorized in the existing permits; and

(B) for existing grandfathered facilities or for facilities authorized under Subchapter H of this chapter (relating to Voluntary Emission Reduction Permits), the rates that would be authorized under Subchapter H of this chapter; and

(2) there is no indication that the emissions from the facilities will contravene the intent of the TCAA, including protection of the public's health and physical property.

(b) A permit issued under this subchapter may not authorize emissions from any facility that exceeds that facility's highest historic annual rate or the levels authorized in the facility's most recent permit. The highest historic annual rate would be determined by either of the following:

(1) using data that shows the maximum annual emission rate at which the emission unit actually operated and emitted prior to September 1, 1971 for 12 consecutive months, including any increases authorized by a permit by rule; or

(2) using data related to emissions (e.g., production, fuel firing, throughput, sulfur content, etc.) as appropriate, which are selected by the applicant and agreed upon by the executive director, to reasonably approximate the actual annual emission rate from any operational year.

(c) Emissions control equipment previously installed at a facility permitted under this chapter may not be removed or disabled unless the action is undertaken to maintain or upgrade the control equipment or to otherwise reduce the impact of emissions authorized by the commission.

§116.1011. Multiple Plant Permit Application.

(a) An application for a multiple plant permit must include a completed Form PI-1M Multiple Plant Permit Application. The Form PI-1M must be signed by an authorized representative of the applicant. The Form PI-1M specifies additional support information which must be provided before the application is deemed complete. In order to be granted a multiple plant permit, the owner or operator of the existing facilities shall submit the following information to the commission:

(1) information to demonstrate compliance with applicable conditions of §116.711 of this title (relating to Flexible Permit Application;

(2) for grandfathered facilities, as defined in §116.10(6) of this title (relating to General Definitions) for which a multiple plant permit application is filed prior to September 1, 2001, the information required by §116.811 of this title (relating to Voluntary Emission Reduction Permit Application);

(3) for permitted facilities, the relevant permit;

(4) relevant information, indicating that the emissions from the facilities will not contravene the intent of the TCAA, including protection of the public's health and physical property; and

(5) information necessary to calculate the cost of public notice under §116.1040 of this title (relating to Multiple Plant Permit Public Notice).

(b) Grandfathered facilities which do not apply prior to September 1, 2001 must first obtain a permit under Subchapter B of this chapter (relating to New Source Review Permits) before they are eligible to be included in a multiple plant permit.

§116.1014. Application Review Schedule.

The multiple plant permit application will be reviewed by the commission in accordance with §116.614 of this title (relating to Application Review Schedule).

§116.1015. General and Special Conditions.

(a) Multiple plant permits may contain general and special conditions, including special conditions which provide emission limitation for each facility and which specify the aggregate rate of emissions of air contaminants. The holders of a multiple plant permit shall comply with any and all such conditions.

(b) Holders of multiple plant permits shall comply with §116.115 of this title (relating to General and Special Conditions), as applicable.

§116.1020. Modifications.

The owner or operator planning the modification of a facility permitted under a multiple plant permit must comply with Subchapter B of this chapter (relating to New Source Review Permits) before work is begun on the construction of the modification.

§116.1021. Amendments and Alterations.

(a) Multiple plant permit amendments. All representations in an application for a multiple plant permit, as well as any general and special conditions contained in the permit, become conditions upon which the subsequent multiple plant permit is issued. It shall be unlawful for any person to vary from such representation or condition if the change is a modification, a change in the method of control of emissions, or will result in an increase in emissions, unless application is made to the commission to amend the multiple plant permit in that regard and such amendment is approved by the commission. Applications to amend a multiple plant permit shall be submitted with a completed Form PI-1 and are subject to the requirements of §116.116(b) of this title (relating to Changes to Facilities).

(b) Multiple plant permit alterations.

(1) A multiple plant permit alteration is for any variation from a representation in a multiple plant permit application or a general or special condition of a multiple plant permit that does not require a multiple plant permit amendment.

(2) All multiple plant permit alterations which may involve a change in a general or special condition contained in the permit, or affect control equipment performance must receive prior approval by the executive director. The executive director shall be notified in writing of all other multiple plant permit alterations within ten days of implementing the change, unless the permit provides for a different method of notification. Any multiple plant permit alteration request or notification shall include information sufficient to demonstrate that the change does not interfere with the owner or operator's previous demonstrations of compliance with the requirements of §116.1011 of this title, including the protection of public health and welfare. The appropriate commission regional office and any local air pollution program having jurisdiction shall be provided copies of all multiple plant permit alteration documents.

(c) Permit by rule under Chapter 106 of this title (relating to Permits by Rule) in lieu of permit amendment or alteration.

(1) Notwithstanding subsections (a) or (b) of this section, no permit amendment or alteration is required if the changes to the permitted facility qualify for a permit by rule under Chapter 106 of this title unless prohibited by permit provision as provided in §116.1015 of this title (relating to General and Special Conditions). All such changes to a permitted facility authorized by Chapter 106 of this title, shall be incorporated into that facility's permit at such time as the permit is amended or renewed.

(2) Emission increases authorized by Chapter 106 of this title, at an existing facility covered by a multiple plant permit shall not cause an exceedance of the aggregate emissions cap or individual emission limitation.

§116.1040. Multiple Plant Permit Public Notice.

The commission will publish notice of a proposed multiple plant permit in the *Texas Register* and in a newspaper of general circulation in the area to be affected. If the multiple plant permit will affect the entire state, the commission will publish notice in *Texas Register* and in the daily newspaper of largest circulation in Dallas and Houston and in other regional newspapers, as appropriate. The notice will include relevant information required by §39.411 of this title (relating to Text of Public Notice) and will be published not later than the 30th day before the date the commission issues the multiple plant permit. Applicants must publish notice of a proposed multiple plant permit amendment consistent with §116.116(b)(4) of this title (relating to Changes to Facilities).

§116.1041. Multiple Plant Permit Public Comment Procedures.

(a) The commission will hold a public meeting to provide an additional opportunity for public comment. The commission will give notice of a public meeting under this section as part of the notice described in §116.1040 of this title (relating to Multiple Plant Permit Public Notice) not later than the 30th day before the date of the meeting.

(b) If the commission receives public comment related to the issuance of a multiple plant permit for existing facilities, the commission will issue a written response to the comments at the same time the commission issues or denies the permit. The response will be made available to the public, and the commission will mail the response to each person who made a comment.

(c) Applications for multiple plant permit issuance, amendment, or revocation which are filed before September 1, 2001, are not subject to Texas Government Code, Chapter 2001.

§116.1050. Multiple Plant Permit Application Fee.

Any person who applies for a multiple plant permit shall remit, at the time of application for such permit, a fee of $450 plus the estimated public notice cost for the permit consistent with the public notice requirements in §116.1040 of this title (relating to Multiple Plant Permit Public Notice).

(1) Fees will not be charged for multiple plant permit alterations, changes of ownership, or changes of location of permitted facilities.

(2) Fees must be paid at the time an application for a permit is submitted. If the applicant withdraws the application for the permit prior to initiation of the public notice process by the commission, the estimated cost of public notice will be refunded to the applicant. No fees will be refunded after a deficient application has been voided or after initiation of the public notice process by the commission.

§116.1060. Multiple Plant Permit Renewal.

Multiple plant permits shall be renewed in accordance with Subchapter D of this chapter (relating to Permit Renewals).

§116.1070. Delegation.

The commission may delegate to the executive director any authority in this subchapter.

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

Filed with the Office of the Secretary of State, on March 24, 2000.

TRD-200002149
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: August 2, 2000
For further information, please call: (512) 239-1966

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Chapter 305. CONSOLIDATED PERMITS

Subchapter M. WASTE TREATMENT INSPECTION FEE PROGRAM

30 TAC §305.502, §305.503

The Texas Natural Resource Conservation Commission (commission) proposes amendments to §305.502, Definitions and Abbreviations and §305.503, Fee Assessment. These amendments are proposed to Chapter 305, Consolidated Permits, Subchapter M, Waste Treatment Inspection Fee Program.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The purpose of the proposed amendments is to incorporate recent legislative changes impacting fees for aquaculture production facilities. Senate Bill (SB) 873, 76th Legislature, 1999, added §26.0292 to the Texas Water Code (TWC) which directs that combined fees for the waste treatment inspection program and the Clean Rivers Program may not total more than $5,000 in any year. Currently, annual waste treatment inspection fees for industrial dischargers, including aquaculture facilities, are established with a cap not to exceed $25,000.

The commission is proposing amendments to §305.503 to include a provision capping the waste treatment inspection fee for aquaculture production facilities at $5,000. Currently, no fee is assessed for aquaculture facilities for the Clean Rivers Program, under 30 TAC §220.21(d). The commission has determined that because the number of aquaculture facilities with active individual wastewater discharge permits is relatively small, the amount of funds that would be collected by the Clean Rivers Program through a redistribution of the fees for aquaculture production facilities is insignificant. Therefore, the Clean Rivers Program fee for aquaculture facilities will remain at zero, and the waste treatment inspection fee will be set so as not to exceed $5,000 annually.

SB 873 also directs that the commission by rule provide that fees charged among aquaculture facilities be reasonably assessed according to the pollutant load of the facility. The current fee rate schedule is based in part upon the assignment of "points" as a measure of pollutant potential, flow volume, contamination, and pollutant parameters (e.g. ammonia, suspended solids, oxygen demand, etc.). Under the revised rules, fees for aquaculture facilities will continue to be assessed according to this point system. A separate fee rate schedule is not proposed for aquaculture facilities because pollutant loadings and pollutant potential from these facilities were not determined to be significantly different than those from many other industries for which fees are calculated. In order to distribute the waste treatment inspection fee more proportionately among aquaculture facilities, the commission will allow these facilities

to apply for an annual average flow in their individual permits to replace the current daily average flow limit. This change will lower the waste treatment inspection fee for those facilities that only discharge a limited number of days per year, which is typical for certain types of aquaculture production facilities. The change to annual average flows will be made as the permits for these facilities come up for renewal, or as a result of a permit amendment.

SECTION BY SECTION DISCUSSION

Proposed §305.502 will add a definition for aquaculture production facilities, correct typographical errors, incorporate minor style changes for consistency with the *Texas Register* format, and improve readability.

Proposed §305.503 will be revised to include a cap on the annual fee for aquaculture production facilities at $5,000. In addition, the amendment will include minor style changes for consistency with the *Texas Register* format and improve readability.

FISCAL NOTE

Bob Orozco, Technical Specialist with Strategic Planning and Appropriations, has determined that for the first five-year period the proposed amendments to Chapter 305, Consolidated Permits, are in effect there will be no significant fiscal implications for units of state and local government as a result of administration or enforcement of the proposed amendments.

The proposed amendments would implement certain provisions contained in SB 873, an act relating to the regulation of aquaculture. The act directs the commission to set wastewater treatment inspection fees and the Clean Rivers Program fees for aquaculture facilities at a rate not to exceed a total of $5,000 based upon the pollutant load of the facility. Aquaculture facilities are those facilities engaged in the propagation and/or rearing of aquatic species which utilize ponds, lakes, fabricated tanks and raceways, or similar structures.

Currently, the maximum annual wastewater treatment inspection fee for all wastewater permit holders, including aquaculture facilities, is $25,000. The proposed rules continue the current practice of assigning points as a measure of pollutant potential, flow volume, contamination, and pollutant parameters. The commission would allow these types of facilities to use a rate schedule which allows facilities to be assigned an average annual flow in their permits rather than the current practice of determining the fee based on daily average flow. This change is anticipated to lower the waste treatment inspection fee for those facilities, such as aquaculture production facilities, that discharge wastewater infrequently.

PUBLIC BENEFIT

Mr. Orozco also has determined that for each year of the first five years the proposed amendments to Chapter 305 are in effect, the public benefit anticipated from enforcement of and compliance with the proposed amendments will be lower operating costs for certain aquaculture businesses that pay wastewater treatment inspection fees.

The commission anticipates that limiting wastewater treatment inspection fees and Clean Rivers Program fees for aquaculture facilities to a maximum of $5,000 will reduce revenues to the state by approximately $40,000 per year. Currently, there are ten aquaculture facilities paying wastewater treatment inspection fees. As a result of the proposed rules, one facility will realize a $20,000 decrease in wastewater treatment inspection fees, four facilities will realize a decrease of between $1,800 to $7,500, and the other five (including two facilities operated by the Texas Parks and Wildlife Department) will experience no change in their wastewater treatment inspection fees. Setting fees based on average annual flow is anticipated to also lower the wastewater treatment inspection fee further for those facilities that discharge wastewater infrequently.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSES

Some of the aquaculture production facilities that will receive savings in fees paid to the commission are small businesses and micro-businesses. Currently, there are ten aquaculture facilities paying wastewater treatment inspection fees. As a result of the proposed rules, one facility will realize a $20,000 decrease in fees, four facilities will realize a decrease of between $1,800 to $7,500, and the other five (including two facilities operated by the Texas Parks and Wildlife Department) will experience no change in their wastewater treatment inspection fees.

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 it does not meet the definition of "major environmental rule." The specific intent of this rulemaking is to designate the maximum amount of waste treatment inspection fees that may be charged to aquaculture production facilities. The specific purpose of the fee is to help pay the expenses of the commission in inspecting waste treatment facilities and enforcing the laws of the state and rules of the commission governing waste discharges and waste treatment facilities. The proposed rules will have only a minimal impact so that there will be no material effect on the items listed in the definition. In addition, the proposed rules do not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a), in that the waste treatment inspection fees are specifically required by TWC, §26.0292; the proposed amendments do not exceed any express requirements of state law; and the proposed amendments do not involve any delegation agreements or contracts.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these rules under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the rulemaking is to implement provisions of legislation, SB 873, that place a cap on fees that may be assessed on aquaculture production facilities. The legislation directs the commission to limit fees charged to aquaculture production facilities for the waste treatment inspection program and Clean Rivers Program to no more than $5,000 total in any one year. Promulgation and enforcement of these rules will not burden private real property which is the subject of the rules because most aquaculture facilities will realize a cost savings as a result of the proposed amendments.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed this rulemaking and found that the proposal is a rulemaking subject to the Texas Coastal Management Program (CMP) and must be consistent with all applicable goals and policies of the CMP. The commission

has prepared a consistency determination for this proposed rule pursuant to 31 TAC §505.22 and has found that the rulemaking is consistent with the applicable CMP goals and policies. The following is a summary of that determination. The CMP goals applicable to the rulemaking are the goals to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs). CMP policies applicable to the proposed rule include the following: 1) discharges in the coastal zone shall comply with water-quality-based effluent limits; 2) discharges in the coastal zone that increase pollutant loadings to coastal waters shall not impair designated uses of coastal waters and shall not significantly degrade coastal water quality unless necessary for important economic or social development; and 3) to the greatest extent practicable, new wastewater outfalls shall be located where they will not adversely affect critical areas. Promulgation and enforcement of this proposal will be consistent with the applicable CMP goals and policies because the rule amendments will require that the combined total of waste treatment inspection fees and Clean Rivers fees charged to aquaculture facilities cannot exceed $5,000. These amendments would not adversely affect the applicable CMP goals which are to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of CNRAs, because the amendments are not substantive in nature but rather only affect the amount of fees charged aquaculture production facilities. In addition, the proposed rules do not violate any applicable provisions of the CMP's stated goals and policies. The commission invites public comment on the consistency of the proposed rules.

SUBMITTAL OF COMMENTS

Comments regarding this proposal may be submitted to Lola Brown, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas, 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 1999-036-305-WT. Comments must be received by 5:00 p.m., May 8, 2000. For further information, please contact Yvonna Pierce, Office of Permitting, Remediation, and Registration, (512) 239-4618.

STATUTORY AUTHORITY

The amendments are proposed under the TWC, §5.102, which provides the commission with general powers to carry out duties under the TWC and §§5.103, 5.105, and 5.120, which provide the commission with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state and to establish and approve all general policies of the commission. Additionally, these amendments are proposed under the TWC, §26.0291 and §26.0292, which provides the commission with the authority to impose an annual waste treatment inspection fee on permittees and to cap fees for aquaculture facilities at $5,000 per year.

No other codes or statutes will be affected by these proposed amendments.

§305.502. Definitions and Abbreviations.

(a) Definitions. The definitions contained in the Texas Water Code, §26.001, shall apply herein. The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

(1) Annual waste treatment fee–A fee charged to each permittee holding a permit or otherwise authorized to treat or discharge wastewater under the Texas Water Code, Chapter 26.

(2) Aquaculture production facility–An establishment engaged in the propagation and/or rearing of aquatic species which utilizes ponds, lakes, fabricated tanks and raceways, or other similar structures.

(3) [~~(2)~~] Biomonitoring–The determination of total (whole-effluent) toxicity of permitted discharges as required by and consistent with the provisions of §307.1(d) of this title (relating to General Policy Statement).

(4) [~~(3)~~] Commission–The Texas Natural Resource Conservation Commission.

(5) [~~(4)~~] Flow limit–The maximum amount of wastewater discharge authorized during any term of the permit, expressed as a daily average flow, a daily maximum flow, an annual average, or an annual maximum.

(6) [~~(5)~~] Flow–The total by volume of all wastewater discharges authorized under a permit expressed as an average flow per day, a maximum flow per day, an annual average, or an annual maximum, exclusive of variable or occasional stormwater discharges. Generally, the flow is based on the sum of the volumes of discharge for all outfalls of a facility, but excludes internal outfalls. However, for those facilities for which permit limitations on the volumes of discharge apply only to internal outfalls, the flow is based on the sum of the volumes of discharge for all internal outfalls of the facility, exclusive of variable or occasional stormwater discharges.

(7) [~~(6)~~] Flow volume–

(A) Type I–These wastewaters include sanitary wastewater, process wastewater flows, or any mixed wastewaters containing more than 10% process wastewaters;

(B) Type II–These wastewaters include non-contact cooling water or mixed flows which contain at least 90% non-contact cooling water and not more than one million gallons per day of process wastewater.

(8) [~~(7)~~] Fund–The water quality fund.

(9) [~~(8)~~] Heat load parameter–The temperature limitation specified in a permit. For purposes of assessing the waste treatment fee, points are assigned according to the existence of a temperature limitation within a waste discharge permit.

(10) [~~(9)~~] Inactive permit–A permit which authorizes a waste treatment facility, but where the facility itself is not yet operational or where operation has been suspended.

(11) [~~(10)~~] Land application/evaporation permit–A permit which does not authorize the discharge of wastewaters into surface waters in the state. These permits include, but are not limited to, permits for evaporation ponds and irrigation systems.

(12) [~~(11)~~] Major permit–A permit designated as a major permit, in conformance with applicable EPA [~~Environmental Protection Agency (EPA)~~] guidance documents, by either EPA or the commission and subject to provisions of National Pollutant Discharge Elimination System (NPDES) [~~NPDES~~] or Texas Pollutant Discharge Elimination Systems (TPDES) [~~TPDES~~] permit authority, respectively.

(13) [~~(12)~~] Parameter–A variable which defines a set of physical properties whose values determine the characteristics of a

waste discharge. Those parameters to be considered under the waste treatment facility fee are:

(A) pollutant potential;

(B) flow volume;

(C) biochemical oxygen demand (BOD)/chemical oxygen demand (COD)/total organic carbon (TOC) value;

(D) total suspended solids (TSS) value;

(E) ammonia value;

(F) heat load; and

(G) major/minor designation.

(14) [~~(13)~~] Payment–Receipt by the commission of the full amount of the annual waste treatment fee.

(15) [~~(14)~~] Permit–Any permit issued by the Texas Natural Resource Conservation Commission under authority of the Texas Water Code, Chapter 26, including those permits issued under the authority of both the Texas Water Code, Chapter 26, and other statutory provisions (such as the Health and Safety Code, Chapter 361). For the purpose of this subchapter, the term "permit" shall include any other authorization for the treatment or discharge of wastewater, including permits by rule.

(16) [~~(15)~~] Pollutant potential–A rating assigned to a permit based on:

(A) for industrial permits, the source(s) of wastewater, the Standard Industrial Classification of the facility, and the specific type of operation; or

(B) for domestic permits, an authorized flow of greater than 1.0 million gallons per day (mgd) [~~mgd~~] and/or the existence of biomonitoring requirements or toxic numerical discharge limits.

(17) [~~(16)~~] Report only permit–A permit which authorizes the variable or occasional discharge of wastewaters with a requirement that the volume of discharge be reported but without any limitation on the volume of discharge.

(18) [~~(17)~~] Stormwater outfall or permit–A permit or outfall(s) which authorizes the variable or occasional discharge of accumulated stormwater and stormwater runoff, but without any specific limitation on the volume of discharge.

(19) [~~(18)~~] Toxicant numerical limit–A permit discharge limit established for any toxicant identified or otherwise defined in accordance with the provisions of §307.6 of this title (relating to Toxic Materials).

(20) [~~(19)~~] Traditional pollutants–The wastewater parameters typically found in wastewater discharge permits, specifically BOD/COD/TOC, TSS, and ammonia. For purposes of assessing the waste treatment fee, points are assigned to these parameters if they are included in a permit.

(b) Abbreviations. The following abbreviations apply to these sections.

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

(4) Mg/l (milligrams per liter)–All limits measured in mg/l are converted to pounds per day (lb/day) using the following conversion: mg/l multiplied by the flow volume in mgd [~~MGD~~] multiplied by 8.34 equals lb/day.

(5)-(8) (No change.)

§305.503. Fee Assessment.

(a) (No change.)

(b) In assessing a fee, the commission may consider the following parameters for each permit:

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

(7) the costs of obtaining and administering the TPDES [~~Texas pollutant discharge elimination system~~] program, upon delegation by the EPA [~~Environmental Protection Agency (EPA)~~].

(c) (No change.)

(d) For the purpose of fee calculation, chemical oxygen demand (COD) [~~COD~~] and total organic carbon (TOC) [~~TOC~~] are converted to biochemical oxygen demand (BOD) [~~BOD~~] values and the higher value is assessed points. The conversion for TOC is[~~:~~] three pounds of TOC is equal to one pound of BOD (3:1). The conversion for COD is eight pounds of COD is equal to one pound of BOD (8:1).

(e) For the purpose of fee calculation, a permit which authorizes a secondary treatment system consisting of ponds or lagoons at limits of 30 milligrams per liter (mg/l) [~~mg/l~~] BOD an 90 mg/l total suspended solids (TSS) [~~TSS~~] shall be assumed to be equivalent to 20 mg/l BOD and 20 mg/l TSS. This equivalency is based on treatment provided by different types of secondary treatment systems.

(f) Fee rate schedule. Except as provided in subsection (g) of this section, each permit shall be assessed a fee based on the specific parameters assigned to the permit and determined by the following schedule. Each permit shall be reviewed to determine the individual values for the parameters covered by this schedule.

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

(4) Heat load. [~~:~~] If heat loading parameter is not present = 0 points; if [~~If~~] heat loading parameter is present = 10 points. Heat Load Points = _____.

(5) (No change.)

(g) Set point permits. The following fees are assessed for permits to which the parameters under subsection (f) of this section are not applicable.

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

(3) Aquaculture production facility discharge permits. The annual fee for aquaculture production facilities shall not exceed $5,000.

(h)-(j) (No change.)

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

Filed with the Office of the Secretary of State, on March 23, 2000.

TRD-200002109
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: July 12, 2000
For further information, please call: (512) 239-0348

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part 3. TEXAS YOUTH COMMISSION

Chapter 85. ADMISSION AND PLACEMENT

Subchapter B. PLACEMENT PLANNING

37 TAC §85.29, §85.33

The Texas Youth Commission (TYC) proposes an amendment to §85.29, concerning Program Completion and Movement of Other Than Sentenced Offenders and new §85.33, concerning Program Completion and Movement of Sentenced Offenders. The amendment to §85.29 will ensure that youth committed to Texas Youth Commission (TYC) under an indeterminate sentence and classified by TYC as a type A violent offender, will be treated the same as youth sentenced under determinate sentence. Specifically, the procedures for approval of release of type A violent offenders have been added. The proposed new §85.33 will replace the existing version. The new rule is much like the existing, but will add the newly created department of sentenced offender disposition to the release and transfer approval system. The administrator of the sentenced offender disposition department will communicate with county courts and/or the Texas Department Criminal Justice (TDCJ) regarding disposition of sentenced offenders. Prior to communicating with the courts or TDCJ, the final approval TYC authority for release or transfer of youth is specified.

Terry Graham, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Graham also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be increased protection of the general public through greater efficiency reviewing sentenced offender cases in TYC. There is no anticipated economic cost to persons who are required to comply with the sections as proposed. No private real property rights are affected by the adoption of the rules.

Comments on the proposal may be submitted to Gail Graham, Policy and Manuals Manager, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765.

The amendment and new section is proposed under the Human Resources Code, §61.075, concerning Determination of Treatment, which provides the Texas Youth Commission authority to determine certain dispositional options of youth committed to the commission; under a determinate sentence.

The proposed amendment and new section implements the Human Resource Code, §61.034.

§85.29. Program Completion and Movement of Other Than Sentenced Offenders.

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

(e) Program Completion Criteria and Movement.

(1) Youth Whose Classifying Offense is Type A Violent Offender.

(A) (No change.)

(B) Procedure. The release of a qualified youth from a high restriction facility to either medium restriction or home level restriction may occur as follows:

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

(iii) The Special Services Committee must conduct an exit interview with the youth to determine whether the youth meets criteria . [~~, and~~] The committee must review and approve the release packet and recommend the release.

(iv) The superintendent/quality assurance administrator must approve and recommend the release and forward the release packet to the [~~juvenile corrections~~] department of sentenced offender disposition in central office.

(v) The administrator of sentenced offender disposition will review the release packet and other supplemental information including Incident Reports, delinquent history, chronological entries, phase progression reports, and youth discipline/movement records to determine and ensure compliance with agency policy regarding release criteria and sufficiency of the release plan.

(vi) The assistant deputy executive director for rehabilitation services will review the release packet for clinical integrity of the psychological evaluation, forensic risk assessment and release case plans.

(vii) The appropriate director of juvenile corrections will recommend approval or disapproval of the release.

(viii) The assistant deputy executive director for juvenile corrections will recommend approval or disapproval of the release.

(ix) The deputy executive director (final release authority) must approve or disapprove the release.

(x) All documentation is returned to the administrator of sentenced offender disposition who will confirm the final disposition to the facility administrator and coordinate the release process.

~~*[(v)* The assistant deputy executive director for rehabilitation services will review the release packet for quality assurance of information presented and adequacy of the release plan.]~~

~~*[(vi)* The assistant deputy executive director for juvenile corrections (final release authority) will approve and confirm the release to the facility administrator.]~~

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

(f)-(h) (No change.)

§85.33 Program Completion and Movement of Sentenced Offenders.

(a) Purpose. The purpose of this rule is to provide criteria and a process whereby staff may determine when a sentenced offender youth has completed a program, is eligible to be moved to another program, released home, placed on parole status, or may be transferred to the Texas Department of Criminal Justice (TDCJ).

(b) Applicability.

(1) This rule does not address all types of disciplinary movements. See (GAP) Chapter 95, Subchapter A of this title (relating to Disciplinary Practices).

(2) This rule does not apply to youth committed to TYC on indeterminate commitments. See (GAP) §85.29 of this title (relating to Program Completion and Movement of Other Than Sentenced Offenders).

(c) Explanation of Terms Used.

(1) Program completion criteria - See the term explanation in (GAP) §85.29 of this title, Program Completion and Movement of Other Than Sentenced Offenders.

(2) Administrative transfer - See the term explanation in (GAP) §85.29 of this title, Program Completion and Movement of Other Than Sentenced Offenders.

(3) Transition movement - See the term explanation in (GAP) §85.29 of this title, Program Completion and Movement of Other Than Sentenced Offenders.

(4) Parole status - See the term explanation in (GAP) §85.29 of this title, Program Completion and Movement of Other Than Sentenced Offenders.

(5) Category 1 offenses - The offenses, specifically the commission, attempted commission, conspiracy to commit, solicitation, solicitation of a minor to commit, or engaging in organized criminal activity to commit: murder, capital murder, sexual assault, or aggravated sexual assault, the commission of which was on or after January 1, 1996, and for which a youth has been given a determinate sentence.

(6) Category 2 offenses - The offenses, except category 1 offenses, committed on or after January 1, 1996, for which a youth has been given a determinate sentence.

(d) General Restrictions. Due to the nature of determinate sentences, some rules governing the classification, placement, release, transition, parole status, and disciplinary movement of sentenced offenders must be applied differently. Specifically:

(1) Classification. A youth classified at commitment as a sentenced offender shall retain a sentenced offender classification as long as the youth remains under the jurisdiction of TYC as a result of that commitment. See (GAP) §85.23 of this title (relating to Classification).

(2) Initial Placement. On initial placement, all sentenced offenders shall be assigned to high restriction facilities unless the deputy executive director waives such placement for a particular youth.

(e) Program Completion Processes.

(1) Program staff will explain completion criteria to every youth during orientation to each placement.

(2) Prior to a transition movement, a youth may request and in doing so will be granted a level II hearing.

(3) TYC shall not accept the presence of a detainer as an automatic bar to earned release. The agency shall release a youth to authorities pursuant to a warrant.

(4) Progress toward successful completion of criteria shall be evaluated by the Special Services Committee six months after admission to TYC and when the minimum period of confinement is complete and at other times as requested by the Committee. The review will be documented on the Review of Progress Toward Successful Completion of Release Criteria for Sentenced Offenders CCF-155.

(A) If, at the review, it is determined the youth has completed criteria required for transition, movement is considered. A transition placement is always to a placement of equal or less restriction than the youth's current placement.

(B) If, at the review, it is determined the youth has not completed criteria required for a transition or release movement, the youth may be continued in the placement or considered for transfer to TDCJ under legal requirements and procedures herein.

(5) TYC program staff where the youth is assigned shall determine when program completion criteria have been met.

(f) Youth sentenced to commitment in the Texas Youth Commission (TYC) for offenses committed on or after January 1, 1996.

(1) General Requirements.

(A) Minimum Period of Confinement. The minimum period of confinement is ten (10) years for youth sentenced for capital murder; three (3) years for youth sentenced for an aggravated controlled substance felony or a felony of the first degree; two (2) years for a felony of the second degree; one (1) year for a felony of the third degree; or completion of the sentence, whichever occurs first.

(B) Placement. Sentenced offenders shall serve the entire minimum period of confinement applicable to the youth's classifying offense in high restriction facilities unless the youth is:

(i) transferred to TDCJ earlier in accordance with legal requirements or committing court approval; or

(ii) transitioned or released earlier under provisions in this section.

(C) Parole. Sentenced offenders shall not attain parole status at any time prior to completion of serving the minimum period of confinement unless approved by the committing court.

(D) Administrative Transfer. Administrative transfer movements may be made among programs of equal restrictions without a due process hearing. An administrative movement shall not be made in lieu of a movement for which a due process hearing is mandatory.

(E) Jurisdiction Termination. TYC jurisdiction shall be terminated and a sentenced offender discharged when he/she is transferred to TDCJ (by age 21) or his/her sentence is complete (except as specified in subparagraph (F) of this paragraph). All sentenced offender youth in TYC custody at age 21 are transferred to TDCJ for completion of their sentence.

(F) Concurrent Commitments. In the event that a youth is committed to TYC under concurrent determinate sentence and indeterminate commitment orders both commitment orders will be given effect, with the determinate sentence order having precedence. Any movement and transfer options available under the determinate sentence order and determined to be appropriate must occur prior to completion of the determinate sentence. Other exceptions are as follows:

(i) The youth will be classified and managed as a sentenced offender until such time as the determinate sentence order is completed or TYC jurisdiction expires, whichever occurs first. If a youth's determinate sentence is complete prior to the expiration of TYC jurisdiction, the youth will be newly classified in accordance with the classifying offense associated with the indeterminate commitment.

(ii) Both orders are given effect, i.e., the minimum period of confinement under the determinate sentence and the Minimum Length of Stay (MLS) associated with the indeterminate commitment will run concurrently. If the applicable minimum period

of confinement under the determinate sentence is completed before the applicable MLS under the indeterminate commitment, the youth will not be considered for release until the MLS has also been completed.

(iii) The youth is discharged from the determinate sentence order upon completion of the determinate sentence, but the indeterminate commitment order will be given effect until normal discharge criteria are met. Under this rule, the youth may remain under TYC supervision until age 21, regardless of the expiration date of the determinate sentence.

(2) Program Completion Criteria and Movement.

(A) Youth Whose Classifying Offense is a Category 1 Offense.

(i) Criteria. A category 1 sentenced offender youth will be eligible for transition/release to a placement of less than high restriction when the following criteria have been met:

(I) no major rule violations within 90 days prior to the transition/release review; and

(II) completion of the minimum period of confinement, except as provided in clause (iii) of this subparagraph; and

(III) completion of phase 4 resocialization goals; and

(IV) completion of Individual Case Plan (ICP) objectives:

(-a-) completion of required ICP objectives for transition to medium restriction, except objectives which cannot be completed in the current placement, but which may be completed in a medium restriction placement; or

(-b-) completion of all ICP objectives for release on parole to home level restriction.

(ii) Procedure. The release of a qualified youth from a high restriction facility to either medium restriction or home level restriction may occur as follows:

(I) Staff must develop a release plan that identifies risk factors and is adequate to ensure public safety and positive reintegration. Staff must also develop a release packet of information.

(II) The supervising program administrator must review and approve the release packet for quality and make a recommendation regarding the release.

(III) The Special Services Committee must conduct an exit interview with the youth to determine whether the youth meets criteria. The Committee must review and approve the release packet and recommend the release.

(IV) The superintendent/quality assurance administrator must approve and recommend the release and forward the release packet to the department of sentenced offender disposition in central office.

(V) The administrator of sentenced offender disposition will review the release packet and other supplemental information including Incident Reports, delinquent history, chronological entries, phase progression reports, and youth discipline/movement records to determine and ensure compliance with agency policy regarding release criteria and sufficiency of the release plan.

(VI) The assistant deputy executive director for rehabilitation services will review the release packet for clinical integrity of the psychological evaluation, forensic risk assessment and release case plans.

(VII) The appropriate director of juvenile corrections will recommend approval or disapproval of the release.

(VIII) The assistant deputy executive director for juvenile corrections will recommend approval or disapproval of the release.

(IX) The deputy executive director (final release authority) must approve or disapprove the release.

(X) All documentation is returned to the administrator of sentenced offender disposition who will confirm the final disposition to the facility administrator and coordinate the release process.

(iii) Exceptions for Youth Whose Classifying Offense Is Capital Murder. A youth sentenced for capital murder may be considered for transition/release prior to completion of the minimum period of confinement when the following criteria have been met.

(I) Criteria. Criteria as listed in clause (i) of this subparagraph, with one exception: the youth has completed at least three (3) years of the minimum period of confinement.

(II) Procedure. Procedures for transition/release from a high restriction facility as listed in clause (ii) of this subparagraph, with the following additional requirements:

(-a-) The executive director (final TYC approval authority) will approve or disapprove the request for a hearing by the committing juvenile court for early release.

(-b-) All documentation is returned to the administrator of sentenced offender disposition who will confirm the final disposition to the facility administrator, request the hearing by the court, appoint the staff who will represent TYC in the hearing, and coordinate the hearing and release process.

(-c-) The court (final release authority) must approve the early transition/release.

(B) Youth Whose Classifying Offense is a Category 2 Offense.

(i) Criteria. A category 2 sentenced offender youth will be eligible for transition/release to a placement of less than high restriction when the following criteria have been met.

(I) no major rule violations within 90 days prior to the transition/release review; and

(II) completion of the minimum period of confinement; and

(III) completion of phase requirements:

(-a-) phase 3 resocialization goals for transition to medium restriction; or

(-b-) phase 4 resocialization goals for release to home level restriction; and

(IV) completion of ICP objective requirements:

(-a-) completion of required ICP objectives for transition to medium restriction, except objectives which cannot be completed in the current placement, but which may be completed in a medium restriction placement; or

(-b-) completion of all ICP objectives for release to home level restriction.

(ii) Procedure. The release of a qualified youth from a high restriction facility to either medium restriction or home level restriction may occur as follows:

(I) Staff must develop a release plan that identifies risk factors and is adequate to ensure public safety and positive reintegration. Staff must also develop a release packet of information.

(II) The supervising program administrator must review and approve the release packet for quality and make a recommendation regarding the movement.

(III) The Special Services Committee must conduct an exit interview with the youth to determine whether the youth meets criteria and must review and approve the release packet, and recommend the release.

(IV) The superintendent/quality assurance administrator must approve and recommend the release, and forward the release packet to the department of sentenced offender disposition in central office.

(V) The administrator of sentenced offender disposition will review the release packet and other supplemental information including Incident Reports, delinquent history, chronological entries, phase progression reports, and youth discipline/movement records to determine and ensure compliance with agency policy regarding release criteria and sufficiency of the release plan.

(VI) The appropriate director of juvenile corrections (final release authority) will approve or disapprove the release.

(VII) All documentation is returned to the administrator of sentenced offender disposition who will confirm the final disposition to the facility administrator and coordinate the release process.

(C) Youth Who Have Been Disciplinarily Returned to Residential Placement.

(i) Following the youth's completion of the minimum period of confinement and release on parole to home level restriction, a sentenced offender is subject to TDCJ transfer rules and TYC policies where specifically addressed.

(ii) Should a youth be returned to a high or medium restriction placement via a level I or II disciplinary hearing, the youth's eligibility criteria and release procedure for movement from this placement is the criteria and release procedure stated in this policy with one exception: the corresponding minimum length of stay in (GAP) §85.29 of this title, Program Completion and Movement of Other Than Sentenced Offenders shall apply rather than the minimum period of confinement.

(3) Transfer From TYC High Restriction To TDCJ, Institution Division. Transfer from a high restriction facility to the Texas Department of Criminal Justice, Institutional Division may occur as described in this paragraph.

(A) Criteria For Certain Capital Murder Youth. A transfer shall occur (court approval is not required) for a youth, at age 21, who:

(i) was sentenced for capital murder; and

(ii) has not completed the minimum period of confinement applicable to the youth's classifying offense (10 years) or the sentence if less than 10 years.

(B) Criteria For Youth Whose Parole Has Been Revoked. A transfer shall occur if ordered by the juvenile court. TYC may request a juvenile court hearing for a youth whose parole has been revoked and the following criteria have been met:

(i) youth is at least age 16; and

(ii) youth's parole was revoked for:

(I) felony, Class A misdemeanor, or a high risk offense; or

(II) any other violation which resulted in placement in an intermediate sanction program at which the youth has failed to progress; and

(iii) youth has not completed his/her sentence; and

(iv) youth's conduct indicates that the welfare of the community require the transfer.

(C) Criteria For Other Youth. A transfer shall occur if ordered by the juvenile court. TYC may request a juvenile court hearing for any other youth if the following criteria have been met:

(i) youth is at least age 16; and

(ii) youth has spent at least six months in a high restriction facility; and

(iii) youth has not completed his/her sentence; and

(iv) youth has met at least one of the following behavior criteria:

(I) youth has committed a felony or Class A misdemeanor while assigned to residential placement; or

(II) youth persistently has committed major rule violations (on three or more occasions); or

(III) youth has engaged in chronic disruption of program (five security admissions or extensions in one month or ten in three months); or

(IV) youth has demonstrated an inability to progress in his/her resocialization program due to persistent non compliance with treatment objectives; and

(v) alternative interventions have been tried without success. (For example: special treatment plans, disciplinary transfer, extended stay); and

(vi) youth's conduct indicates that the welfare of the community requires the transfer.

(D) Procedures. Procedures for effecting a transfer requiring court approval in accordance with subparagraphs (B) and (C) of this paragraph are as follows:

(i) The staff must prepare an early transfer request packet that identifies risk factors and a treatment summary and review of alternative interventions tried.

(ii) The supervising program administrator must review and approve the transfer packet for quality and make a recommendation regarding the transfer.

(iii) The Special Services Committee must determine whether the youth meets criteria, and must approve packet and recommend transfer.

(iv) The superintendent/quality assurance administrator must approve and recommend transfer and forward the packet to the department of sentenced offender disposition in central office.

(v) The administrator of sentenced offender disposition will review the packet for requesting transfer of a sentenced offender to TDCJ-ID and other supplemental information including Incident Reports, delinquent history, chronological entries, phase progression reports, and youth discipline/movement records to determine and ensure compliance with agency policy regarding transfer criteria.

(vi) The assistant deputy executive director for rehabilitation services will review the transfer packet for clinical integrity of the psychological evaluation, forensic risk assessment and justification or recommendation in the absence of or despite mental health issues.

(vii) The appropriate director of juvenile corrections will recommend approval or disapproval of the transfer.

(viii) The assistant deputy executive director for juvenile corrections will recommend approval or disapproval of the transfer to the deputy executive director.

(ix) The deputy executive director (final TYC approval authority) must approve or disapprove the early transfer and request for a hearing by the committing juvenile court.

(x) All documentation is returned to the administrator of sentenced offender disposition who will confirm the final disposition to the facility administrator, request the hearing by the court, appoint the staff who will represent TYC in the hearing, and coordinate the hearing and transfer process.

(xi) The court (final transfer authority) must approve the early transfer.

(4) Transfer From TYC High or Medium Restriction To TDCJ, Parole Division. Transfer from a medium or high restriction facility to the TDCJ, Parole Division shall occur (court approval is not required) based on the youth's age as follows.

(A) Age 19 Factor.

(i) Criteria. A youth who reached age 19 while in a high restriction facility will be transferred to TDCJ, Parole Division when he becomes eligible for parole release.

(ii) Procedure.

(I) Staff must develop a release plan that identifies risk factors and is adequate to ensure public safety and positive reintegration. The plan should reflect communication with a TDCJ parole officer regarding available resources. Staff must develop a release packet of information.

(II) The supervising program administrator must review and approve packet for quality and make a recommendation regarding the release.

(III) Special Services Committee (or equivalent committee) must conduct an exit interview with the youth to determine whether the youth meets criteria, and must review and approve the packet, and recommend the release.

(IV) The superintendent/quality assurance administrator must approve and recommend the release and forward both the release packet and the packet for requesting transfer of the offender to TDCJ-PD to the department of sentenced offender disposition in central office.

(V) The administrator of sentenced offender disposition will review the release packet and other supplemental information including Incident Reports, delinquent history, chronological entries, phase progression reports, and youth discipline/movement records to determine and ensure compliance with agency policy regarding release criteria and sufficiency of the release plan and submit the packet requesting transfer of the offender to TDCJ, Parole Division. Within 90 days of receipt, TDCJ will process the information and forward to the Texas Board of Pardons and Paroles who will set the conditions for release. On receipt of the conditions, the administrator of sentenced offender disposition will insert the conditions into the release packet and forward the packet to the juvenile corrections department in central office.

(VI) The assistant deputy executive director for rehabilitation services will review the release packet for clinical integrity of the psychological evaluation, forensic risk assessment and release case plans while considering the availability of resources within TDCJ.

(VII) The appropriate director of juvenile corrections will recommend approval or disapproval of the release.

(VIII) The assistant deputy executive director for juvenile corrections will review the release packet and recommend approval or disapproval to the deputy executive director.

(IX) The deputy executive director (final TYC release authority) must approve the release.

(X) The final arrangements for the transfer are made by either the department of sentenced offender disposition or the high or medium restriction administrator, in consultation with the department of sentenced offender disposition, depending on whether youth went to a medium restriction facility or went directly to TDCJ, Parole Division. The superintendent/quality assurance administrator will contact TDCJ, Parole Division to confirm transfer date. TDCJ personnel will serve the Order of Transfer in person on that day, at which time the sentenced offender youth is discharged from the TYC and transferred to the TDCJ, Parole Division.

(B) At Age 21.

(i) Criteria.

(I) At age 21, a youth who was sentenced for any offense other than capital murder and who has not completed the sentence will be transferred to TDCJ, Parole Division.

(II) At age 21, a youth sentenced for capital murder, who has not completed the sentence and who has not been transferred to TDCJ or released under supervision (movement from high restriction) by juvenile court order will be transferred to:

(-a-) TDCJ-Institution Division, if he has not completed the 10-year minimum confinement period under paragraph (f)(3) of this subsection; or

(-b-) TDCJ-Parole Division, if he has completed the 10-year minimum confinement period.

(ii) Procedure.

(I) Prior to 90 days before the youth's 21st birthday, staff must develop a transition plan. The plan should reflect communication with a TDCJ parole officer regarding available resources. Staff must develop a packet requesting transfer of the offender to TDCJ-PD.

(II) Prior to 90 days before the youth's 21st birthday, the superintendent/quality assurance administrator must send required documentation to the department of sentenced offender disposition.

(III) The administrator of sentenced disposition will review the documentation and submit to TDCJ, Parole Division.

Within 90 days of receipt, TDCJ will process the information and forward to the Texas Board of Pardons and Paroles who will set the conditions for release. On receipt of the conditions the administrator of sentenced offender disposition will notify the superintendent and/or quality assurance administrator of the conditions and coordinate the release process.

(IV) The superintendent/quality assurance administrator will contact the department of sentenced offender disposition who will contact the TDCJ, Parole Division to confirm the transfer date (youth's 21st birthday). TDCJ personnel will serve the Order of Transfer in person on that day, at which time the sentenced offender youth is discharged from TYC and transferred to TDCJ, Parole Division.

(5) Transfer From TYC Home Parole To TDCJ, Parole Division.

(A) Criteria. Transfer from TYC parole at home level restriction to TDCJ, Parole, shall occur (court approval not required) at age 21 if the youth has not completed his/her sentence.

(B) Procedure.

(i) Prior to 90 days before the youth's 21st birthday, parole/quality assurance supervisor must develop a continuing parole plan. The plan should reflect communication with a TDCJ parole officer regarding available resources. Staff must develop a packet requesting transfer of the offender to TDCJ-PD.

(ii) Prior to 90 days before the youth's 21st birthday, the parole/quality assurance supervisor must send required documentation to the department of sentenced offender disposition.

(iii) The administrator of sentenced disposition will review the documentation and submit to TDCJ, Parole Division. Within 90 days of receipt, TDCJ will process the information and forward to the Texas Board of Pardons and Paroles who will set the conditions for release. On receipt of the conditions the administrator of sentenced offender disposition will notify the superintendent and/or quality assurance administrator of the conditions and coordinate the transfer process.

(iv) The parole/quality assurance supervisor will contact the department of sentenced offender disposition and TDCJ, Parole Division to confirm transfer date (youth's 21st birthday), at which time the youth will be discharged from TYC and transferred to TDCJ, Parole Division.

(g) Youth sentenced to commitment in TYC for offenses committed before January 1, 1996.

(1) Movement and Parole. Sentenced offenders who meet program completion criteria for transition or parole shall not be released without proper authorization:

(A) When a juvenile court orders that a sentenced offender be released under supervision, the youth shall be transitioned or paroled, as appropriate to the youth's progress at the time of the court's order.

(B) When the juvenile court orders that a sentenced offender be recommitted to TYC without a determinate sentence, the youth's eligibility for release on parole or transition or disciplinary movements shall be governed by the release criteria and procedures for the classification the youth would have received if not a sentenced offender.

(2) Disciplinary Movement. A sentenced offender may be assigned to any appropriate placement, including a high restriction facility, following a level I or II disciplinary hearing.

(h) Notification. Parents or guardians will be notified of all movements.

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

Filed with the Office of the Secretary of State, on March 24, 2000.

TRD-200002153
Steve Robinson
Executive Director
Texas Youth Commission
Earliest possible date of adoption: May 7, 2000
For further information, please call: (512) 424-6244

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37 TAC §85.33

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

The Texas Youth Commission (TYC) proposes the repeal of §85.33, concerning Program Completion and Movement of Sentenced Offenders. The repealed section will allow for the publication of a new section.

Terry Graham, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is repealed there will be no fiscal implications for state or local government as a result of repealing the section.

Mr. Graham also has determined that for each year of the first five years the section is repealed the public benefit anticipated as a result of repealing the section will be more efficient government in that a new more effective rule will be published. There will be no effect on small businesses. There is no anticipated economic cost to persons as a result of the repealed section. No private real property rights are affected by this repeal.

Comments on the proposal may be submitted to Gail Graham, Policy and Manuals Manager, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas, 78765.

The repeal is proposed under the Human Resources Code, §61.075, concerning Determination of Treatment, which provides the Texas Youth Commission authority to determine certain dispositional options of youth committed to the commission under a determinate sentence.

The proposed repeal implements the Human Resource Code, §61.034.

§85.33. Program Completion and Movement of Sentenced Offenders.

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

Filed with the Office of the Secretary of State, on March 24, 2000.

TRD-200002152
Steve Robinson

Executive Director
Texas Youth Commission
Earliest possible date of adoption: May 7, 2000
For further information, please call: (512) 424-6244

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Part 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

Chapter 155. REPORTS AND INFORMATION GATHERING

Subchapter C. PROCEDURES FOR RESOLVING CONTRACT CLAIMS AND DISPUTES

37 TAC §155.31

The Texas Department of Criminal Justice (TDCJ) proposes new §155.31 and simultaneously repeals the existing §155.31 concerning procedures for resolving contract claims. The new section clarifies procedures for resolving breach of contract claims between TDCJ and other contract parties with respect to all written contracts, referencing the newly adopted Chapter 2260, Government Code. The new language is necessary in order to have in place rules governing breach of contract disputes.

David P. McNutt, Director of Financial Services for TDCJ, has determined that there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal and new section as proposed, except the impact of paying for resolution of applicable disputes, which cannot be predicted.

Mr. McNutt has also determined that the public benefit anticipated as a result of enforcing the new section will be clarification on the process and procedures for resolving contract claims. There will be no effect on small businesses or micro-businesses as a result of enforcing this section. There is no anticipated economic cost to individuals required to comply with the repeal and new section as proposed.

Comments should be directed to Carl Reynolds, General Counsel, Texas Department of Criminal Justice, P. O. Box 13084, Austin, Texas 78711. Written comments from the general public should be received within 30 days of the publication of this proposal.

(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 Criminal Justice or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under Government Code, §492.013, which grants general rulemaking authority and Texas Government Code, §2260.052(c).

Cross Reference to Statute: Texas Government Code, §2260.052(c).

§155.31. Establishing Procedures for Resolving Contract Claims and Disputes.

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

Filed with the Office of the Secretary of State, on March 27, 2000.

TRD-200002196
Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Earliest possible date of adoption: May 7, 2000
For further information, please call: (512) 463-9693

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The new section is proposed under Government Code, §492.013, which grants general rulemaking authority and Texas Government Code, §2260.052(c).

Cross Reference to Statute: Texas Government Code, §2260.052(c).

§155.31. Establishing Procedures for Resolving Contract Claims and Disputes.

(a) Purpose. These rules are intended to serve as guidelines for the negotiation and mediation of a claim of breach of contract asserted by a contractor against TDCJ under the Government Code, Chapter 2260. These rules are binding upon TDCJ. These rules are not intended to replace agency procedures relating to breach of contract claims that are mandated by state or federal law, but are intended to provide procedures when none are so mandated.

(b) Policy. It is the policy of the Texas Board of Criminal Justice (the Board) and TDCJ to resolve breach of contract claims as efficiently and as expeditiously as possible, consistent with prudent stewardship of State of Texas assets.

(c) Applicability. This section does not apply to an action of a unit of state government for which a contractor is entitled to a specific remedy pursuant to state or federal constitution or statute.

(1) This section does not apply to a contract action proposed or taken by a unit of state government for which a contractor receiving Medicaid funds under that contract is entitled by state statute or rule to a hearing conducted in accordance with Government Code, Chapter 2001.

(2) This section does not apply to contracts:

(A) between a unit of state government and the federal government or its agencies, another state or another nation;

(B) between two or more units of state government;

(C) between a unit of state government and a local governmental body, or a political subdivision of another state;

(D) between a subcontractor and a contractor;

(E) subject to §201.112 of the Transportation Code;

(F) within the exclusive jurisdiction of state or local regulatory bodies;

(G) within the exclusive jurisdiction of federal courts or regulatory bodies; or

(H) that are solely and entirely funded by federal grant monies other than for a project defined in subsection (d)(9) of this section.

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

(1) Chief administrative officer - The executive director responsible for the day-to-day operations of TDCJ.

(2) Claim - A demand for damages by the contractor based upon TDCJ's alleged breach of the contract.

(3) Contract - A written contract between TDCJ and a contractor by the terms of which the contractor agrees either:

(A) to provide goods or services, by sale or lease, to or for TDCJ; or

(B) to perform a project as defined by Government Code, §2166.001.

(4) Contractor - Independent contractor who has entered into a contract directly with TDCJ. The term does not include:

(A) the contractor's subcontractor, officer, employee, agent or other person furnishing goods or services to a contractor;

(B) an employee of a unit of state government; or

(C) a student at an institution of higher education.

(5) Counterclaim - A demand by TDCJ based upon the contractor's claim.

(6) Day - a calendar day. If an act is required to occur on a day falling on a Saturday, Sunday or holiday, the first working day which is not one of these days should be counted as the required day for purpose of that act.

(7) Event - An act or omission or a series of acts or omissions giving rise to a claim. The following list contains illustrative examples of events, subject to the specific terms of the contract.

(A) Examples of events in the context of a contract for goods or services:

(i) the failure of TDCJ to timely pay for goods and services;

(ii) the failure to pay the balance due and owing on the contract price, including orders for additional work, after deducting any amount owed TDCJ for work not performed under the contract or in substantial compliance with the contract terms;

(iii) the suspension, cancellation or termination of the contract;

(iv) final rejection of the goods or services tendered by the contractor, in whole or in part;

(v) repudiation of the entire contract prior to or at the outset of performance by the contractor;

(vi) withholding liquidated damages from final payment to the contractor.

(B) Examples of events in the context of a project:

(i) the failure to timely pay the unpaid balance of the contract price following final acceptance of the project;

(ii) the failure to make timely progress payments required by the contract;

(iii) the failure to pay the balance due and owing on the contract price, including orders for additional work, after deducting work not performed under the contract or in substantial compliance with the contract terms;

(iv) the failure to grant time extensions to which the contractor is entitled under the terms of the contract;

(v) the failure to compensate the contractor for occurrences for which the contract provides a remedy;

(vi) suspension, cancellation or termination of the contract;

(vii) rejection by TDCJ, in whole or in part, of the "work", as defined by the contract, tendered by the contractor;

(viii) repudiation of the entire contract prior to or at the outset of performance by the contractor;

(ix) withholding liquidated damages from final payment to the contractor;

(x) refusal, in whole or in part, of a written request made by the contractor in strict accordance with the contract to adjust the contract price, the contract time, or the scope of work.

(8) Parties - The contractor and TDCJ who have entered into a contract in connection with which a claim of breach of contract has been filed under this section.

(9) Project - As defined in Government Code, §2166.001, a building construction project that is financed wholly or partly by a specific appropriation, bond issue or federal money, including the construction of:

(A) a building, structure, or appurtenant facility or utility, including the acquisition and installation of original equipment and original furnishing; and

(B) an addition to, or alteration, modification, rehabilitation or repair of an existing building, structure, or appurtenant facility or utility.

(10) Services - The furnishing of skilled or unskilled labor or consulting or professional work, or a combination thereof, excluding the labor of an employee of a unit of state government.

(e) Prerequisites to Suit. The procedures contained in this section are exclusive and required prerequisites to suit under the Civil Practice & Remedies Code, Chapter 107, and the Government Code, Chapter 2260.

(f) Sovereign Immunity. This section does not waive TDCJ's sovereign immunity to suit or liability.

(g) Notice of Claim of Breach of Contract.

(1) A contractor asserting a claim of breach of contract under the Government Code, Chapter 2260, shall file notice of the claim as provided by this section.

(2) The notice of claim shall:

(A) be in writing and signed by the contractor or the contractor's authorized representative;

(B) be delivered by hand, certified mail return receipt requested, or other verifiable delivery service, to the chairperson of the Contract Disputes Committee, Assistant Director of Purchasing and Leases, Texas Department of Criminal Justice, Spur 59 off Highway 75 North, Administration Building, Room 137, Huntsville, Texas 77340; and

(C) state in detail:

(i) the nature of the alleged breach of contract, including the date of the event that the contractor asserts as the basis of the claim and each contractual provision allegedly breached;

(ii) a description of damages that resulted from the alleged breach, including the amount and method used to calculate those damages; and

(iii) the legal theory of recovery, i.e., breach of contract, including the causal relationship between the alleged breach and the damages claimed.

(3) In addition to the mandatory contents of the notice of claim as required by paragraph (2) of this subsection, the contractor may submit supporting documentation or other tangible evidence to facilitate TDCJ's evaluation of the contractor's claim.

(4) The notice of claim shall be delivered no later than 180 days after the date of the event that the contractor asserts as the basis of the claim.

(h) Agency Counterclaim.

(1) TDCJ asserting a counterclaim under the Government Code, Chapter 2260, shall file notice of the counterclaim as provided by this section.

(2) The notice of counterclaim shall:

(A) be in writing;

(B) be delivered by hand, certified mail return receipt requested or other verifiable delivery service to the contractor or representative of the contractor who signed the notice of claim of breach of contract; and

(C) state in detail:

(i) the nature of the counterclaim;

(ii) a description of damages or offsets sought, including the amount and method used to calculate those damages or offsets; and

(iii) the legal theory supporting the counterclaim.

(3) In addition to the mandatory contents of the notice of counterclaim required by paragraph (2) of this subsection, TDCJ may submit supporting documentation or other tangible evidence to facilitate the contractor's evaluation of TDCJ's counterclaim.

(4) The notice of counterclaim shall be delivered to the contractor no later than 90 days after TDCJ's receipt of the contractor's notice of claim.

(5) Nothing herein precludes TDCJ from initiating a lawsuit for damages against the contractor in a court of competent jurisdiction.

(i) Contract Disputes Committee (the Committee).

(1) The executive director will name the members and chairman of a Committee or Committees to serve at his or her pleasure. It will be the responsibility of the 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 or disputes.

(2) TDCJ stresses that, to every extent possible, disputes between a contractor and TDCJ employee, design professional, or other contractor in charge of a project or providing services in connection with 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 breach of contract claim is not reached with the department office, the contractor should file a request with the Committee chairperson. In no event may such a claim be filed with the department more than 180 days after the date of the event giving rise to the claim.

(3) The Committee will secure detailed reports and recommendations from the responsible department office, and may confer with any other department office it deems appropriate.

(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 additional relevant information and respond to information the Committee has received from the department office.

(5) The Committee chairperson 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 chairperson in writing within 20 days of the date such notice is received, and the chairperson will forward the agreed disposition to the executive director for a final and binding order on the claim. If the contractor is dissatisfied with the proposal of the Committee, the contractor may appeal to the executive director. If the department office is dissatisfied with the proposal of the Committee, the department office may appeal to the executive director.

(j) Appeal to the Executive Director

(1) An aggrieved contractor or department office may file a written appeal of the Committee's decision to the executive director within ten (10) days of the Committee's decision. The executive director or his or her designee may uphold, reverse, or modify the decision of the Committee.

(2) The executive director or his or her designee will give written notice of the proposed disposition of the claim or dispute to the contractor and department office. If that disposition is acceptable to the contractor, the contractor shall advise the executive director, in writing, within 20 days of the date such notice is received. The department office shall have no right to object to the disposition of the claim or dispute made by the executive director or his or her designee.

(k) Request for Voluntary Disclosure of Additional Information.

(1) Upon the filing of a claim or counterclaim, parties may request to review and copy information in the possession or custody or subject to the control of the other party that pertains to the contract claimed to have been breached, including, without limitation:

(A) accounting records;

(B) correspondence, including, without limitation, correspondence between TDCJ and outside consultants it utilized in preparing its bid solicitation or any part thereof or in administering the contract, and correspondence between the contractor and its subcontractors, materialmen, and vendors;

(C) schedules;

(D) the parties' internal memoranda;

(E) documents created by the contractor in preparing its offer to TDCJ and documents created by TDCJ in analyzing the offers it received in response to a solicitation.

(2) Subsection (a) of this section applies to all information in the parties' possession regardless of the manner in which it is recorded, including, without limitation, paper and electronic media.

(3) The contractor and TDCJ may seek additional information directly from third parties, including, without limitation, TDCJ's third-party consultants and the contractor's subcontractors.

(4) Nothing in this section requires any party to disclose the requested information or any matter that is privileged under Texas law.

(5) Material submitted pursuant to this subsection and claimed to be confidential by the contractor shall be handled pursuant to the requirements of the Public Information Act.

(l) Duty to negotiate. The parties shall negotiate in accordance with the timetable set forth in subsection (m) of this section to attempt to resolve all claims and counterclaims. No party is obligated to settle with the other party as a result of the negotiation.

(m) Timetable.

(1) Following receipt of a contractor's notice of claim, the Contract Disputes Committee (the "Committee") shall review the contractor's claim(s) and TDCJ's counterclaim(s), if any, and initiate negotiations with the contractor to attempt to resolve the claims(s) and counterclaim(s).

(2) Subject to paragraph (3) of this subsection, the parties shall begin negotiations within a reasonable period of time, not to exceed 60 days following the later of:

(A) the date of termination of the contract;

(B) the completion date, or substantial completion date in the case of construction projects, in the original contract; or

(C) the date TDCJ receives the contractor's notice of claim.

(3) TDCJ may delay negotiations until after the 180th day after the date of the event giving rise to the claim of breach of contract by:

(A) delivering written notice to the contractor that the commencement of negotiations will be delayed; and

(B) delivering written notice to the contractor when TDCJ is ready to begin negotiations.

(4) The parties may conduct negotiations according to an agreed schedule as long as they begin negotiations no later than the deadlines set forth in paragraphs (2) and (3) of this subsection, whichever is applicable.

(5) Subject to paragraph (6) of this subsection, the parties shall complete the negotiations that are required by this section as a prerequisite to a contractor's request for contested case hearing no later than 270 days after TDCJ receives the contractor's notice of claim.

(6) The parties may agree in writing to extend the time for negotiations on or before the 270th day after TDCJ receives the contractor's notice of claim. The agreement shall be signed by representatives of the parties with authority to bind each respective party and shall provide for the extension of the statutory negotiation period until a date certain. The parties may enter into a series of written extension agreements that comply with the requirements of this section.

(7) The contractor may request, in writing, a contested case hearing before the State Office of Administrative Hearings ("SOAH") pursuant to subsection (r) of this section after the 270th day after TDCJ receives the contractor's notice of claim or the expiration of any extension agreed to under paragraph (6) of this subsection.

(8) The parties may agree to mediate the dispute at any time before the 270th day after TDCJ receives the contractor's notice of claim or before the expiration of any extension agreed to by the parties pursuant to paragraph (6) of this subsection. The mediation shall be governed by subsections (s), (t), (u), (v), (w), and (x) of this section.

(9) Nothing in this section is intended to prevent the parties from agreeing to commence negotiations earlier than the deadlines established in paragraphs (2) and (3) of this subsection, or from continuing or resuming negotiations after the contractor requests a contested case hearing before SOAH.

(n) Conduct of Negotiation.

(1) Negotiation is a consensual bargaining process in which the parties attempt to resolve a claim and counterclaim. A negotiation under this subchapter may be conducted by any method, technique, or procedure authorized under the contract or agreed upon by the parties, including, without limitation, negotiation in person, by telephone, by correspondence, by video conference, or by any other method that permits the parties to identify their respective positions, discuss their respective differences, confer with their respective advisers, exchange offers of settlement, and settle.

(2) The parties may conduct negotiations with the assistance of one or more neutral third parties. If the parties choose to mediate their dispute, the mediation shall be conducted in accordance with subsections (s), (t), (u), (v), (w), and (x) of this section. Parties may choose an assisted negotiation process other than mediation, including, without limitation, processes such as those described in subsections (aa), (bb), (cc), and (dd) of this section.

(3) To facilitate the meaningful evaluation and negotiation of the claim(s) and any counterclaim(s), the parties may exchange relevant documents that support their respective claims, defenses, counterclaims or positions.

(4) Material submitted pursuant to this subsection and claimed to be confidential by the contractor shall be handled pursuant to the requirements of the Public Information Act.

(o) Settlement Approval Procedures. The parties' settlement approval procedures shall be disclosed prior to, or at the beginning of, negotiations. To the extent possible, the parties shall select negotiators who are knowledgeable about the subject matter of the dispute, who are in a position to reach agreement, and who can credibly recommend approval of an agreement.

(p) Settlement Agreement.

(1) A settlement agreement may resolve an entire claim or any designated and severable portion of a claim.

(2) To be enforceable, a settlement agreement must be in writing and signed by representatives of the contractor and TDCJ who have authority to bind each respective party.

(3) A partial settlement does not waive a parties' rights under the Government Code, Chapter 2260, as to the parts of the claims or counterclaims that are not resolved.

(q) Costs of Negotiation. Unless the parties agree, in writing, otherwise, each party shall be responsible for its own costs incurred in connection with a negotiation, including, without limitation, the costs of attorney's fees, consultant's fees and expert's fees.

(r) Request for Contested Case Hearing.

(1) If a claim for breach of contract is not resolved in its entirety through negotiation, mediation or other assisted negotiation

process in accordance with this section on or before the 270th day after TDCJ receives the notice of claim, or after the expiration of any extension agreed to by the parties pursuant to subsection (m)(6) of this section, the contractor may file a request with TDCJ for a contested case haring before SOAH.

(2) A request for a contested case hearing shall state the legal and factual basis for the claim, and shall be delivered to the chief administrative officer of TDCJ or other officer designated in the contract to receive notice within a reasonable time after the 270th day or the expiration of any written extension agreed to pursuant to subsection (m)(6) of this section.

(3) TDCJ shall forward the contractor's request for contested case hearing to SOAH within a reasonable period of time, not to exceed thirty days, after receipt of the request.

(4) The parties may agree to submit the case to SOAH before the 270th day after the notice of claim is received by TDCJ if they have achieved a partial resolution of the claim or if an impasse has been reached in the negotiations and proceeding to a contested case hearing would serve the interests of justice.

(s) Mediation Timetable.

(1) The contractor and TDCJ may agree to mediate the dispute at any time before the 270th day after TDCJ receives a notice of claim of breach of contract, or before the expiration of any extension agreed to by the parties in writing.

(2) A contractor and TDCJ may mediate the dispute even after the case has been referred to SOAH for a contested case. SOAH may also refer a contested case for mediation pursuant to its own rules and guidelines, whether or not the parties have previously attempted mediation.

(t) Conduct of Mediation.

(1) Mediation is a consensual process in which an impartial third party, the mediator, facilitates communication between the parties to promote reconciliation, settlement, or understanding among them. A mediator may not impose his or her own judgment on the issues for that of the parties. The mediator must be acceptable to both parties.

(2) The mediation is subject to the provisions of the Governmental Dispute Resolution Act, Government Code, Chapter 2009. For purposes of this subchapter, "mediation" is assigned the meaning set forth in the Civil Practice and Remedies Code, §154.023.

(3) To facilitate a meaningful opportunity for settlement, the parties, shall to the extent possible, select representatives who are knowledgeable about the dispute, who are in a position to reach agreement, or who can credibly recommend approval of an agreement.

(u) Agreement to Mediate.

(1) Parties may agree to use mediation as an option to resolve a breach of contract claim at the time they enter into the contract and include a contractual provision to do so. The parties may mediate a breach of contract claim even absent a contractual provision to do so if both parties agree.

(2) Any agreement to mediate should include consideration of the following factors.

(A) The source of the mediator. Potential sources of mediators include governmental officers or employees who are qualified as mediators under Section 154.052, Civil Practice and Remedies Code, private mediators, SOAH, the Center for Public Policy Dispute Resolution at The University of Texas School of Law, an alternative dispute resolution system created under Chapter 152, Civil Practice and Remedies Code, or another state or federal agency or through a pooling agreement with several state agencies. Before naming a mediator source in a contract, the parties should contact the mediator source to be sure that it is willing to serve in that capacity. In selecting a mediator, the parties should use the qualifications set forth in subsection (v) of this section.

(B) The time period for the mediation. The parties should allow enough time in which to make arrangements with the mediator and attending parties to schedule the mediation, to attend and participate in the mediation, and to complete any settlement approval procedures necessary to achieve final settlement. While this time frame can vary according to the needs and schedules of the mediator and parties, it is important that the parties allow adequate time for the process.

(C) The location of the mediation.

(D) Allocation of costs of the mediator.

(E) The identification of representatives who will attend the mediation on behalf of the parties, if possible, by name or position within TDCJ or contracting entity.

(F) The settlement approval process in the event the parties reach agreement at the mediation.

(v) Qualification and Immunity of the Mediator.

(1) The mediator shall possess the qualifications required under Civil Practice and Remedies Code, §154.052, be subject to the standards and duties prescribed by Civil Practice and Remedies Code, §154.053 and have the qualified immunity prescribed by Civil Practice and Remedies Code, §154.055, if applicable.

(2) The parties should decide whether, and to what extent, knowledge of the subject matter and experience in mediation would be advisable for the mediator.

(3) The parties should obtain from the prospective mediator the ethical standards that will govern the mediation.

(w) Confidentiality of Mediation and Final Settlement Agreement.

(1) A mediation conducted under this section is confidential in accordance with Government Code, §2009.054.

(2) The confidentiality of a final settlement agreement to which TDCJ is a signatory that is reached as a result of the mediation is governed by Government Code, Chapter 552.

(x) Costs of Mediation. Unless the contractor and TDCJ agree, in writing, otherwise, each party shall be responsible for its own costs incurred in connection with the mediation, including costs of document reproduction for documents requested by such party, attorney's fees and consultant or expert fees. The costs of the mediation process itself shall be divided equally between the parties.

(y) Initial Settlement Agreement. Any settlement agreement reached during the mediation shall be signed by the representatives of the contractor and TDCJ, and shall describe any procedures required to be followed by the parties in connection with final approval of the agreement.

(z) Final Settlement Agreement.

(1) A final settlement agreement reached during, or as a result of, mediation, that resolves an entire claim or any designated and severable portion of a claim, shall be in writing and signed by

representatives of the contractor and TDCJ who have authority to bind each respective party.

(2) If the settlement agreement does not resolve all issues raised by the claim and counterclaim, the agreement shall identify the issues that are not resolved.

(3) A partial settlement does not waive a contractor's rights under the Government Code, Chapter 2260, as to the parts of the claim that are not resolved.

(aa) Assisted Negotiation Processes. Parties to a contract dispute under Government Code, Chapter 2260 may agree, either contractually or when a dispute arises, to use assisted negotiation (alternative dispute resolution) processes in addition to negotiation and mediation to resolve their dispute.

(bb) Factors supporting the Use of Assisted Negotiation Processes. The following factors may help parties decide whether one or more assisted negotiation processes could help resolve their dispute:

(1) the parties recognize the benefits of an agreed resolution of the dispute;

(2) the expense of proceeding to contested case hearing at SOAH is substantial and might outweigh any potential recovery;

(3) the parties want an expedited resolution;

(4) the ultimate outcome is uncertain;

(5) there exists factual or technical complexity or uncertainty which would benefit from expertise of a thirty-party expert for technical assistance or fact-finding;

(6) the parties are having substantial difficulty communicating effectively;

(7) a mediator third party could facilitate the parties' realistic evaluation of their respective cases;

(8) there is an on-going relationship that exists between parties;

(9) the parties want to retain control over the outcome;

(10) there is a need to develop creative alternatives to resolve the dispute;

(11) there is a need for flexibility in shaping relief;

(12) the other side has an unrealistic view of the merits of their case;

(13) the parties (or aggrieved persons) need to hear an evaluation of the case from someone other than their lawyers.

(cc) Use of Assisted Negotiation Processes. Any of the following methods, or a combination of these methods, or any assisted negotiation process agreed to by the parties, may be used in seeking resolution of disputes or other controversy arising under Government Code, Chapter 2260. If the parties agree to use an assisted negotiation procedure, they should agree in writing to a detailed description of the process prior to engaging in the process.

(1) Mediation (See the appropriate sections).

(2) Early evaluation by a third-party neutral.

(A) This is a confidential conference where the parties and their counsel present the factual and legal bases of their claim and receive a non-binding assessment by an experienced neutral with subject-matter expertise or with significant experience in the substantive area of law involved in the dispute.

(B) After summary presentation, the third-party neutral identifies areas of agreement for possible stipulations, assesses the strengths and weaknesses of each party's position, and estimates, if possible, the likelihood of liability and the dollar range of damages that appear reasonable to him or her.

(C) This is a less complicated procedure than the min-trial, described in paragraph (4) of this subsection. It may be appropriate for only some issues in dispute, for example, where there are clear-cut differences over the appropriate amount of damages. This process may be particularly helpful when:

(i) the parties agree that the dispute can be settled;

(ii) the dispute involves specific legal issues;

(iii) the parties disagree on the amount of damages;

(iv) the opposition has an unrealistic view of the dispute;

(v) the neutral is a recognized expert in the subject area or area of law involved.

(3) Neutral fact-finding by an expert.

(A) In this process, a neutral third-party expert studies a particular issue and reports findings on that issue. The process usually occurs after most discovery in the dispute has been completed and the significance of particular technical or scientific issues is apparent.

(B) The parties may agree in writing that the fact-finding will be binding on them in later proceedings (and entered into as a stipulation in the dispute if the matter proceeds to contested case hearing), or that it will be advisory in nature, to be used only in further settlement discussions between representatives of the parties. This process may be particularly helpful when:

(i) factual issues requiring expert testimony may be dispositive of liability or damage issues;

(ii) the use of a neutral is cost effective;

(iii) the neutral's findings could narrow factual issues for contested case hearing.

(4) Mini-trial.

(A) A min-trial is generally a summary proceeding before a representative of upper management from each party, with authority to settle, and a third-party neutral selected by agreement of the parties. A mini-trial is usually divided into three phases: a limited information exchange phase, the actual hearing, and post-hearing settlement discussions. No written or oral statement made in the proceeding may be used as evidence or an admission in any other proceeding.

(B) The information exchange stage should be brief, but it must be sufficient for each party to understand and appreciate the key issues involved in the case. At a minimum, parties should exchange key exhibits, introductory statements, and a summary of witnesses' testimony.

(C) At the hearing, representatives of the parties present a summary of the anticipated evidence and any legal issues that must be decided before the case can be resolved. The third-party neutral presides over the presentation and may question witnesses and counsel, as well as comment on the arguments and evidence. Each

party may agree to put on abbreviated direct and cross-examination testimony. The hearing generally takes no longer than 1-2 days.

(D) Settlement discussions, facilitated by the third-party neutral, take place after the hearing. The parties may ask the neutral to formally evaluate the evidence and arguments and give an advisory opinion as to the issues in the case. If the parties cannot reach an agreed resolution to the dispute, either side may declare the mini-trial terminated and proceed to resolve the dispute by other means.

(E) Mini-trials may be appropriate when:

(i) the dispute is at a stage where substantial costs can be saved by a resolution based on limited information gather;

(ii) the matter justifies the senior executive's time required to complete the process;

(iii) the issues involved include highly technical mixed questions of law and fact;

(iv) the matter involves trade secrets or other confidential or proprietary information; or

(v) the parties seek to narrow the large number of issues in dispute.

(dd) Approval. Any settlement reached pursuant to this section may require the approval of the Texas Board of Criminal Justice, the Attorney General of Texas, the Governor of Texas, or the Texas Legislature, as required by Board policy, statutes and rules of the State of Texas, and the General Appropriations Act.

(ee) Intent. It is the intent of TDCJ to comply with the provisions of Texas Government Code, Chapter 2260. To the extent that any term or provision of this rule is in conflict with Chapter 2260, the terms and provisions of Chapter 2260 shall prevail.

(ff) Disclaimer. TDCJ and the Board do not waive sovereign immunity from suit or liability due to the establishment of this rule. TDCJ and the Board consider the procedure described in Chapter 2260 and this rule to be the exclusive means of resolving breach of contract claims against state agencies.

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

Filed with the Office of the Secretary of State, on March 27, 2000.

TRD-200002195
Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Earliest possible date of adoption: May 7, 2000
For further information, please call: (512) 463-9693

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Chapter 163. COMMUNITY JUSTICE ASSISTANCE DIVISION STANDARDS

37 TAC §163.39

The Texas Department of Criminal Justice proposes an amendment to §163.39 concerning residential services provided by community supervision and corrections departments.

The purpose of this amendment is to update the standard to reflect changes to §244.002, Local Government Code, concerning the posting of a notice at the proposed location of a correctional or rehabilitation facility within 1,000 feet of a residential area, school, public park, church, synagogue, or other place of worship. It provides more detail concerning notices for public meetings concerning correctional and rehabilitation facilities required by §509.010, Government Code. The amendment also clarifies the minimum standards for levels of security at residential facilities, as required by §509.006(c), Government Code. It provides the minimum preconditions for granting emergency furloughs permitted by §509.006(b), Government Code. The amendment also establishes that residential facilities generally may not substantially burden a defendant's free exercise of religion, but notes that, in accordance with §76.018, Government Code, there is a rebuttable presumption that rules, orders, decisions, or practices that apply to an individual in custody at a residential facility are in the furtherance of a compelling state interest and the least restrictive means of furthering that interest, and do not substantially burden the defendant's free exercise of religion.

David P. McNutt, Director of Financial Services for the Texas Department of Criminal Justice has determined that there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment as proposed.

Mr. McNutt also has determined that the public benefit anticipated as a result of this amendment as proposed will be to ensure the public is notified of the proposed location of residential facilities, enhance security at residential facilities, and avoid violations of the religious rights of defendants.

There will be no effect on small businesses or micro-businesses as a result of enforcing this section. There will be no anticipated economic cost to individuals required to comply with the amendment, as proposed.

Comments should be directed to Carl Reynolds, P.O. Box 13824, Austin, Texas 78711. Written comments from the general public should be received within 30 days of the publication of this proposal.

The amendment is proposed under Texas Government Code, §492.013, which grants the Texas Board of Criminal Justice general rulemaking authority; and Texas Government Code, §509.003, which grants the Community Justice Assistance Division the authority to propose, and the board to adopt, minimum standards for programs and other aspects of the operation of community supervision and corrections departments.

Cross Reference to Statute: Government Code, §509.003, Standards and Procedures; Government Code, §509.006, Community Corrections Facilities; Government Code, §509.010, Public Meeting; Local Government Code, §244.002, Notice of Proposed Location; Local Government Code, §244.005, Written Request to Receive Notice; Civil Practice and Remedies Code, §110.003, Religious Freedom Protected; Government Code, §76.018, Application of Laws Relating to Free Exercise of Religion.

§163.39. Residential Services.

(a) General Administration.

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

(3) Notice of Construction or Operation of a Facility.

(A) If a CSCD or private vendor operating under a contract with a CSCD proposes to construct or operate a correctional or rehabilitation facility within 1,000 feet of a residential area, a

primary or secondary school, property designated as a public park or public recreation area by the state or a political subdivision of the state, or a church, synagogue, or other place of worship, the CSCD must prominently post an outdoor sign at the proposed location of the facility. The sign must be at least 24 by 36 inches in size written in lettering at least two inches in size. The sign must state that a correctional or rehabilitation facility is intended to be located on the premises, and provide the name and business address of the CSCD. The municipality or county in which the correctional or rehabilitation facility is to be located may require the sign to be both in English and a language other than English if it is likely that a substantial number of the residents in the area speak a language other than English as their familiar language.

(B) The CSCD must provide notice of the proposed location of the facility to the commissioners court of the county and/or governing body of the municipality where the facility is intended to be located if the commissioners court or governing body has submitted, by resolution, a written request to receive notice.

(4) [~~(3)~~] Public Meetings. [~~CSCDs/agencies interested in establishing a Community Corrections Facility (CCF) or County Correctional Center (CCC) shall hold public meetings in accordance with statutory requirements and provide documentation and results of the meetings to TDCJ-CJAD.~~] A CSCD may not establish a community corrections facility unless the community justice council serving the CSCD has held a public meeting before the action is taken. In addition, a CSCD may not expend funds provided by the Community Justice Assistance Division, acquire real property, or use a facility or real property acquired or improved with state funds for a community corrections facility unless the community justice council serving the CSCD has held a public meeting before the action is taken. The public meeting must be held at a site as close as practicable to the location at which the proposed action is to be taken. The meeting must not be held on a Saturday, Sunday, or legal holiday. The meeting must begin after 6:00 p.m. More than 30 days before the date of the meeting, the department that the facility is to serve, or a vendor proposing to operate a facility, must:

(A) publish by advertisement in three consecutive issues of a newspaper of, or in newspapers that collectively have, general circulation in the county in which the proposed facility is to be located a notice that is not less than 3 1/2 inches by 5 inches containing the following information:

(i) the date, hour, place, subject of the hearing;

(ii) address of the facility or property on which a proposed action is to be taken; and

(iii) a description of the proposed action; and

(B) mail a copy of the notice to each police chief, sheriff, city council member, mayor, county commissioner, county judge, school board member, state representative, and state senator who serves or represents the area, unless the proposed facility has been previously authorized to operate at a particular location by a community justice council.

(5) [~~(4)~~] Maximum Resident Capacity and Facility Utilization. The maximum resident capacity of a CCF or CCC shall be defined as the total number of offenders who can be housed at the facility at any given time as determined by the operating agency and approved by the TDCJ-CJAD director. CCFs and CCCs funded through TDCJ-CJAD shall reach 90% capacity within the first six months of operation and maintain a minimum of 90% thereafter, utilizing appropriate and eligible placements only.

(6) [~~(5)~~] Contract Residential Facilities (CRF). CSCD directors or designees contracting for residential services to operate CCFs and CCCs with TDCJ-CJAD funds shall ensure that the contract residential service provider adheres to all applicable statutes, TDCJ-CJAD standards, policies, guidelines, and terms of the contract between the CSCD and the said provider.

(7) [~~(6)~~] Mission Statement. The CSCD director or designee shall maintain a mission statement that reflects the general purpose and overall goals of the program.

(b)-(e) (No change.)

(f) Supervision.

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

(8) Levels of security. The CSCD director must ensure that levels of security appropriate for the population served by the facility are maintained at all times. These levels of security must create, as a minimum, a monitored and structured environment in which a resident's interior and exterior movements and activities can be supervised by specific destination and time. The facility director or designee may, in his or her discretion, grant offenders exterior movements. Exterior movements include, but are not limited to employment programs, community service restitution, support/treatment programs, and programmatic incentives. The following minimum requirements must be met for all exterior movements:

(A) the facility director or designee approves the exterior movement;

(B) a staff member orally advises the offender of the conditions and limitations of the exterior movement;

(C) the offender acknowledges in writing an understanding of the conditions and limitations of the exterior movement;

(D) a staff member makes random announced and/or unannounced personal or telephone contact(s) with the offender during the exterior movement;

(E) exterior movements involving programmatic incentives may only be granted if the following additional requirements are met:

(i) the offender meets all established requirements for the programmatic incentive, as determined by the supervisor of the program, and submits a written request for the exterior movement;

(ii) the requested absence will not exceed 72 hours unless there are unusual circumstances;

(iii) the offender provides an itinerary for the absence including method of travel, departure and arrival times, and locations during the exterior movement; and

(iv) the facility director or designee approves the itinerary and establishes the conditions of the exterior movement involving programmatic incentives.

(9) Emergency furloughs. The facility director or designee may, in his or her discretion, grant an emergency furlough to an offender for the purpose of allowing the offender to attend a funeral, visit a seriously ill person, obtain medical treatment, or attend to other exceptional business. Emergency furloughs may only be granted if the following conditions are met:

(A) the offender submits a written request for the emergency furlough;

(B) the facility director or designee verifies through an independent source including, but not limited to a physician, Red Cross representative, minister or a priest, that the presence of the offender is appropriate;

(C) the offender provides proposed itinerary including method of travel, departure and arrival times, and locations during the emergency furlough;

(D) the requested absence will not exceed 72 hours unless there are unusual circumstances;

(E) the court of original jurisdiction approves the travel if the offender will depart the State of Texas;

(F) the facility director or designee approves the itinerary and establishes the conditions of the emergency furlough; and

(G) a staff member makes random announced and/or unannounced personal or telephone contacts with the offender to verify the location of the offender during the emergency furlough.

(g)-(r) (No change.)

(s) Religious Programs.

(1) The CSCD director or designee shall have written policies that [~~which~~] govern religious programs for offenders. The policies shall address the provision of opportunities for offenders to voluntarily practice the requirements of their respective faith and the use of community resources, when appropriate.

(2) A CSCD may not substantially burden a offender's free exercise of religion except with the least restrictive measures in furtherance of a compelling interest. In court, there is a presumption that a policy or practice that applies to an offender in the custody of a CSCD residential facility is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that interest. The presumption may be rebutted with evidence provided by the offender.

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

Filed with the Office of the Secretary of State, on March 27, 2000.

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Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Earliest possible date of adoption: May 7, 2000
For further information, please call: (512) 463-9693

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part 20. TEXAS WORKFORCE COMMISSION

Chapter 841. WORKFORCE INVESTMENT ACT

Subchapter C. TRAINING PROVIDER CERTIFICATION

40 TAC §841.44

The Texas Workforce Commission (Commission) proposes an amendment to §841.44 relating to the Determination of Subsequent Eligibility of training providers.

Background and Purpose: The Workforce Investment Act (WIA) requires that before an entity can provide training services to WIA participants with individual training accounts, the entity must be determined eligible to receive WIA funds. WIA lists some of the required elements for both initial and subsequent eligibility determinations. Chapter 841 describes the process and procedure for making initial and subsequent eligibility determinations. The proposed amendment to §841.44 clarifies that in applications for subsequent determinations of eligibility, just as in initial applications, the local workforce development board (Board) is responsible for providing notice of determinations of eligibility. Further, in determinations of subsequent eligibility, the Board must provide notice within 30 days of receipt of the subsequent eligibility application. The proposed amendment also provides for reconsideration of a denial of an application for subsequent eligibility and reapplication.

Randy Townsend, Chief Financial Officer, has determined that for the first five years the rule is in effect, the following statements will apply:

there are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rule;

there are no estimated reductions in costs to the state or to local governments expected as a result of enforcing or administering the rule;

there are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing and administering the rule;

there are no foreseeable implications relating to costs or revenues to the state or to local governments as a result of enforcing or administering the rule; and

there are no anticipated costs to persons who are required to comply with the rule as proposed.

Mr. Townsend has also determined that there is no anticipated adverse impact on small businesses (including micro-businesses) as a result of enforcing or administering the rule because any regulatory burdens or impact on small businesses, if any, would be a result of federal requirements, federal WIA statute and regulations and other federal regulations and requirements, which are the basis for this proposed rule. In addition, training services providers are required to submit specific verifiable information on performance to Boards and the Commission in order to establish and retain continuing eligibility to receive funds from WIA to provide training services. We cannot determine the likely or potential fiscal burden or impact of that provision, although our presumption is that it would be insignificant, customary, or of no financial consequence.

Jean Mitchell, Director of Workforce Development, has determined that the public benefit anticipated as a result of the rule as proposed will be to provide clarification relating to how determinations of subsequent eligibility will be handled by the Com-

mission and the Boards that will in turn clarify the application process.

Mark Hughes, Director of Labor Market Information, has determined that there is no foreseeable negative impact upon employment conditions in this state as a result of the proposed rule.

Comments on the proposed rule may be submitted to Barbara Cigainero, Workforce Development Division, Texas Workforce Commission, 101 East 15th Street, Room 130BT, Austin, Texas 78778; Fax Number 512-463-3424; or E-mail to barbara.cigainero@twc.state.tx.us. Comments must be received by the Commission no later than 30 days from the date this proposal is published in the *Texas Register*.

The amended rule is proposed under Texas Labor Code §§301.061 and 302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Commission services and activities.

The proposal affects the Texas Labor Code, Title 4.

§841.44. Determination of Subsequent Eligibility.

(a) Each Board [~~LWDB~~] shall annually establish minimum requirements for subsequent eligibility. In determining subsequent eligibility, Boards [~~LWDBs~~] shall consider the following:

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

(4) the performance of a provider of a program(s) of training services, including the extent to which the annual standards of performance established by the Board[~~LWDB~~] have been achieved;

(5)-(7) (No change.)

(b) No later than July 1, 2000, each Board [~~LWDB~~] shall ensure that training providers, in developing programs of training services and establishing performance criteria for successful course completion, use in descending order:

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

(c) Boards [~~LWDBs~~] may require enhancements to programs or courses to meet local industry needs.

(d) For programs of training services certified as initially eligible on or after July 1, 2000, a Board shall provide a written notice of determination of acceptance or rejection of a subsequent eligibility application to an applying entity within 30 calendar days of the receipt of the completed subsequent eligibility determination application.

(e) Board policy shall determine the circumstances under which reconsideration may be afforded to an entity whose application for subsequent eligibility certification determination was denied. An entity whose application for recertification was denied may reapply no sooner than six months after the date of the written notice of denial.

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

Filed with the Office of the Secretary of State, on March 23, 2000.

TRD-200002100
J. Randel (Jerry) Hill
General Counsel
Texas Workforce Commission
Earliest possible date of adoption: May 7, 2000
For further information, please call: (512) 463-8812

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TITLE 4. AGRICULTURE

Part 1. TEXAS DEPARTMENT OF AGRICULTURE

Chapter 3. BOLL WEEVIL ERADICATION PROGRAM

Subchapter J. ORGANIC COTTON RULES

4 TAC §§3.607 - 3.609

The Texas Department of Agriculture has withdrawn from consideration proposed new §§3.607 - 3.609, which appeared in the February 11, 2000, issue of the *Texas Register* (25 TexReg 994).

Filed with the Office of the Secretary of State on March 27, 2000.

TRD-200002206
Dolores Alvarado HIbbs
Deputy General Counsel
Texas Department of Agriculture
Effective date: March 27, 2000
For further information, please call: (512) 463-4075

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TITLE 19. EDUCATION

Part 2. TEXAS EDUCATION AGENCY

Chapter 61. SCHOOL DISTRICTS

Subchapter AA. COMMISSIONER'S RULES

Division 2. SCHOOL FINANCE

19 TAC §61.1012

The Texas Education Agency has withdrawn from consideration a proposed new §61.1012, which appeared in the October 1, 1999, issue of the *Texas Register* (24 TexReg 8405).

Filed with the Office of the Secretary of State on March 27, 2000.

TRD-200002202
Criss Cloudt
Associate Commissioner
Texas Education Agency
Effective date: March 27, 2000
For further information, please call: (512) 463-9701

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

Chapter 155. REPORTS AND INFORMATION GATHERING

Subchapter C. PROCEDURES FOR RESOLVING CONTRACT CLAIMS AND DISPUTES

37 TAC §155.31

The Texas Department of Criminal Justice has withdrawn from consideration a proposed amendment to §155.31, which appeared in the October 15, 2000, issue of the *Texas Register* (24 TexReg 8926).

Filed with the Office of the Secretary of State on March 27, 2000.

TRD-200002194
Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Effective date: March 27, 2000
For further information, please call: (512) 463-9693

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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 4. AGRICULTURE

Part 1. TEXAS DEPARTMENT OF AGRICULTURE

Chapter 1. WEIGHTS AND MEASURES

The Texas Department of Agriculture (the department) adopts amendments to §§12.1, 12.11, 12.12, 12.40, 12.42, 12.50 concerning Weights and Measures without changes to the proposed text as published in the January 21, 2000, issue of the *Texas Register* (25 TexReg 337). The sections are adopted without changes and will not be republished. The amendments are adopted generally to clarify definitions, registration requirements, provisions regarding expiration and issuance of licenses. The increase in fees at §12.12 is adopted to allow the department to recover its full costs of testing, in accordance with the Texas Agriculture Code, §12.0144.

The amendment to §12.1 clarifies the definition of Anniversary Date, adds the definition for Operator of a Device, clarifies the definition of County, Deputy and State Public Weigher, and adds to the definition of Service Report. The amendment to §12.11 clarifies the language concerning annual registration, initial and renewal registration procedures, and display of certificate of registration; to state the department's responsibility if renewal notices are not received by the operator; and prohibits the transfer of a device registration. Also, the numbering within the section has changed due to the additions. The amendments to §12.12 clarify the distinction between a liquid measuring device and a bulk meter, provide a means to classify multi-product dispensers and specify the increase in device registration fees. The amendments to §12.40 clarify the language concerning the expiration of a Licensed Service Company's license and modify the classes of licenses. The amendments to §12.42 change the address of the destination for the service report, clarify the conditions for which a service report is required, and add time requirements for submission and the destination for out-of-order tags. Also, the numbering within the section has changed due to the additions. The amendment to §12.50 modifies the classes of licenses.

A comment was received from the Texas Petroleum Marketers and Convenience Store Association (TPCA) regarding the amendments to §12.12, specifically concerning the device registration fees. The TPCA expressed concerns regarding the cost component of the fuel pump calibration program which necessitated a fee increase. The department is under statutory mandate to recover costs associated with the administration of the weights and measures program and although fees had not been raised since 1991, program responsibilities have increased while FTEs and appropriations have diminished year after year. In past years, the department has been charging the same rate for all fuel pumps, regardless of the additional testing required for multiple blend devices, resulting in cost recovery of only 73% of actual direct and indirect costs. The department believes that a revision of the fee schedule to provide an equitable fee structure to all fuel retailers while accommodating the influx of multi-product dispensers in the market place is necessary, and has adopted the proposed fees in §12.12 without changes. The department has determined that the new fees should not be collected immediately, and, in order to allow registrants time to adjust to the new fees, the fees will not be imposed until the next renewal period, for registrations expiring on July 31, 2000, and thereafter.

Subchapter A. GENERAL PROVISIONS

4 TAC §12.1

The amendment to §12.1 is adopted under the Texas Agriculture Code (the Code), §13.002, which provides the Texas Department of Agriculture with the authority to enforce the provisions of the Texas Agriculture Code, Chapter 13, concerning weights and measures; and the Code §12.016, which provides the department with the authority to adopt rules necessary for administration of the Code.

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

Filed with the Office of the Secretary of State on March 22, 2000.

TRD-200002096
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Effective date: April 11, 2000
Proposal publication date: January 21, 2000
For further information, please call: (512) 463-4075

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Subchapter B. DEVICES

4 TAC §12.11, §12.12

The amendments to §12.11 and §12.12 are adopted under the Texas Agriculture Code (the Code), §13.002, which provides the Texas Department of Agriculture (the department) with the authority to enforce the provisions of the Code, Chapter 13,

concerning weights and measures; the Code, §13.1011, which provides the department with the authority to adopt rules registration under Chapter 13; §13.1151, which provides the department with the authority to set and charge a registration fee for registration of a pump, scale or bulk or liquefied petroleum gas metering device registered under the Code, §13.1011; and the Code, §12.016, which provides the department with the authority to adopt rules necessary for administration of the Code.

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

Filed with the Office of the Secretary of State on March 22, 2000.

TRD-200002097
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Effective date: April 11, 2000
Proposal publication date: January 21, 2000
For further information, please call: (512) 463-4075

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Subchapter E. LICENSED SERVICE COMPANIES

4 TAC §12.40, §12.42

The amendments to §12.40 and §12.42 are adopted under the Texas Agriculture Code (the Code), §13.002, which provides the Texas Department of Agriculture (the department) with the authority to enforce the provisions of the Texas Agriculture Code, Chapter 13, concerning weights and measures; the Code, §13.1012, which provides the department with the authority to register persons to conduct installation or service activities and to adopt rules setting out requirements for registrants; and the Code §12.016, which provides the department with the authority to adopt rules necessary for administration of the Code.

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

Filed with the Office of the Secretary of State on March 22, 2000.

TRD-200002098
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Effective date: April 11, 2000
Proposal publication date: January 21, 2000
For further information, please call: (512) 463-4075

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Subchapter F. LICENSED INSPECTION COMPANIES

4 TAC §12.50

The amendment to §12.50 is adopted under the Texas Agriculture Code (the Code), §13.002, which provides the Texas Department of Agriculture (the department) with the authority to enforce the provisions of the Texas Agriculture Code, Chapter 13, concerning weights and measures; the Code §13.302 , which provides the department with the authority to license persons to inspect or test liquefied petroleum gas meters and adopt rules for inspecting, testing and keeping records of liquefied petroleum gas meters; and the Code §12.016, which provides the department with the authority to adopt rules necessary for administration of the Code.

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

Filed with the Office of the Secretary of State on March 22, 2000.

TRD-200002099
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Effective date: April 11, 2000
Proposal publication date: January 21, 2000
For further information, please call: (512) 463-4075

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Chapter 3. BOLL WEEVIL ERADICATION PROGRAM

Subchapter J. ORGANIC COTTON RULES

4 TAC §§3.600 - 3.606

The Texas Department of Agriculture (the department) adopts new Chapter 3, Subchapter J, §§3.600 - 3.606 concerning organic cotton regulations, with changes to the proposal published in the February 11, 2000, issue of the *Texas Register* (25 TexReg 993). New §§3.600 - 3.606 are adopted with changes. The department has withdrawn proposed new §§3.607 - 3.609, published in the February 11, 2000, issue of the *Texas Register*, and has simultaneously filed new §§3.607 - 3.609 in a separate submission in the "Proposed section" of this issue of the *Texas Register*.

Because of the complexity of issues involved and the large number of comments received from the variety of persons affected by the new sections, the department feels that some background information on the boll weevil eradication program is warranted in order to fully explain the evolution of the program to this point and why the adoption of organic cotton rules is necessary at this time. Texas is the largest cotton producing state in the nation. In 1999, Texas produced 30% of all US bales of cotton, over 5 million bales, with over 6 million acres in cotton production. Texas is also the largest producer of organic cotton in the nation, with 70% of the United States' organic cotton acreage grown in Texas on about 10,089 acres. Texas organic cotton is recognized worldwide as a quality product primarily due to Texas' strict organic certification program requirements. The organic cotton market has experienced much growth in recent years with Texas in the forefront as a major provider of cotton to a growing organic product industry.

The boll weevil and pink bollworm have long been considered a menace to the cotton industry, leading to the declaration of both as public nuisances by the Texas legislature. After years of discussion of growers and others in the cotton industry of establishing in law and implementing a state-wide, comprehen-

sive boll weevil eradication program and after the veto of such legislation in 1991, the boll weevil eradication program was established in law in 1993. The law was amended in 1993 and 1995, and again in 1997 as a result of a successful challenge to the constitutionally of the eradication program. Both the original and the current law include language specifically directed at production of organic cotton. The 1993 law required that the board adopt rules that protected the eligibility of organic growers to be certified by the Commissioner; that such rules ensure that certification continue to meet national standards in order for organic cotton to maintain international marketability; and that such rules maintain the effectiveness of the boll weevil eradication program. That section of the law was amended in 1995 to include a provision allowing indemnification of organic growers for reasonable losses that result from a prohibition of production of organic cotton, or from any requirement of destruction of organic cotton. The new language also provided that the board could require mitigation of losses with the production of an alternative crop, that the board cannot treat or require treatment of organic cotton fields with chemicals not approved for use on certified organic cotton, and that plow-up could be required as an alternative to chemical treatment. Another significant change made in 1995 was that rules and procedures developed relating to organic cotton growers were to, in all events, maintain the effectiveness of the eradication program. The last change to this section, made in 1997, gave rulemaking authority to the department, rather than the foundation board.

The purpose of the boll weevil and pink bollworm eradication program, as stated by the legislature, is to eradicate the boll weevil and the pink bollworm. The law provides a mechanism by which cotton growers can establish boll weevil eradication programs on a zone basis to meet the needs of their respective areas and work through a single entity to manage a state-wide eradication and suppression program. The Texas Boll Weevil Eradication Foundation, Inc., is a nonprofit entity authorized by law to carry out boll weevil eradication programs in Texas. Texas is one of 17 cotton-growing states in which eradication programs are being or have been conducted. Texas, however, is the only state conducting an eradication program where organic cotton production is significant. The Texas boll weevil eradication program law is unique in that it provides for protection of certified organic production and for the use of integrated pest management techniques in implementing the eradication program. The foundation is headed by an 18-member Board of Directors, made up of elected representatives from established zones and others appointed by the Commissioner of Agriculture. The Commissioner, through department staff has oversight authority over the operations of the foundation, including approval of program budgets and expenditures. The Commissioner also has authority to establish nonstatutory zones by rule and to conduct referenda to establish a program and assessment within a zone. The department is also the regulatory agency responsible for enforcement of the law and rules relating to the eradication program, and has rulemaking authority to administer the boll weevil law.

The eradication program is a grower-driven program. In order for a program to be established in a zone, the growers in the zone must, by referendum, approve the establishment of a program and a maximum assessment to fund the program. As part of the process to establish a zone and zone program, grower representatives, with the assistance of the foundation technical staff, develop comprehensive zone budgets. These budgets serve as a basis for determining the amount of assessment to be paid by growers to fund an eradication program in their zone. It has been the department's experience that the assessment rate is generally the most controversial part of the process of establishing a zone program. Generally, growers can agree that a program is needed, but may have concerns on the ability to pay an assessment. Growers play an important part in making decisions about the program in their zone and grower steering committees work closely with the department and the foundation towards eradication.

Prior to 1998, there were three established eradication zones with active eradication programs. In calendar year 1999 more zones held referenda, voting in programs and assessments to fund their programs, bringing the total to 8 active zones. Eradication activities have begun in all zones in which the program and assessments have been approved. The addition of more zones has also increased the amount of acreage now included in the statewide eradication effort from 1.5 million to over 3.5 million acres. With the increase in areas covered and cotton acreage in active zones, also comes an increase in the amount of organic cotton acreage being produced in eradication zones. In the three active zones, prior to 1999, organic production approximated 450 acres. With the activation of new zones, organic acreage within active eradication zones has increased to over 7,500 acres.

The program utilized by the foundation for boll weevil eradication is a precise pest management program based on years of thorough research and, under the direction of the Commissioner and the department, is carried out in an economically and environmentally sound manner. The program generally involves four years of labor intensive activities followed by a minimal maintenance program to prevent re- infestation. Eradication activities include mapping and trapping of all cotton fields in a zone, accompanied by cultural, mechanical and chemical controls. Each zone program varies by region, depending on climate and agronomic practices. The ultimate goal of each zone program is for the zone to become weevil-free, allowing cotton growers to become more competitive in the market by lowering production costs, particularly chemical costs, and increasing yields. For example, in the Southern Rolling Plains zone, currently in its 5th year of the program and nearing the point of declaring eradication, boll weevil trap counts have decreased by 99%, and pesticide use has been reduced by 96.1%, benefiting the environment.

The cornerstone of the eradication program is to have a comprehensive zone-wide control effort, which is monitored closely by trapping and using appropriate control methods. As noted, in the early years of the eradication program, activities are intense, including the chemical treatments for control of weevils. Although mechanical and cultural controls are utilized as much as possible during this phase of the program, the primary method of control is through the application of malathion during early and late season. Where no effective control treatments occur, cotton acreage harbors boll weevil populations capable of infesting or reinfesting neighboring cotton fields.

Alternative methods of control, including the boll weevil bait stick, the *Catalaccus grandis* parasite (wasp), and the use of diatamateous earth have been tried in the past on a small-scale with limited success. Both Texas state law and the department's organic certification program rules prohibit the spraying of certified organic or transitional organic cotton with malathion. The distribution of organic cotton production

within active eradication zones makes the foundation's task in controlling boll weevils a more difficult challenge because most of the organic cotton acreage in production is surrounded by conventional cotton fields.

In the past, most organic growers in the (then only three) active eradication zones have chosen to be indemnified not to grow organic cotton and have entered into individual agreements with the foundation in that regard. In areas that were not in active eradication zones, all cotton growers were responsible for treating their own fields as they saw fit to control pests. There was no unified monitoring of boll weevil activity or no requirement to act once weevils reached a certain level of infestation. By voting in an eradication program, growers in a zone have acknowledged the need to have a unified effort for control of boll weevils, and have also made a financial investment in the program by virtue of their paying assessments to fund the program. Organic cotton growers in a zone are also required to pay an assessment if cotton is planted. In the conducting of public hearings on the proposal, the department heard many comments regarding the financial investment made by conventional growers and how they feel that investment is jeopardized when organic cotton is allowed to grow untreated. In the same vein, however, most of those growers agree that a cotton grower should not be prevented from growing cotton if he or she chooses to do so.

It is anticipated that a significant amount of organic production could occur in the newer active zones. Where production of other organic crops has occurred in an active eradication zone, the foundation has treated the area around the organic field using an established protocol for treatment around sensitive areas. This protocol includes having an environmental division within the eradication program that monitors pesticide applications near sensitive sites, works with complaints received in regard to those areas and performs quality control on field operations. The foundation also takes steps to minimize drift onto sensitive areas by more closely monitoring weather conditions when applications are made, keeping spray pressure at a minimum to produce a larger droplet, using ground equipment and maintaining buffer zones. With the growing of additional organic cotton, and recognizing the potential need for the foundation to enter into agreements with growers regarding their production and the potential need for the department to require destruction of an organic cotton field as a last resort, the department has proposed a rule package that it believes establishes fair and equitable procedures for dealing with the production of organic cotton in active eradication zones. While entering into agreements with growers on an individual basis by the foundation has worked on a small scale and has minimized the problems that may arise related to untreated cotton, with the existence of a significant amount of acreage in newly active zones, the department believes that it is necessary to have uniform procedures in place for all zones, and in particular it is necessary to have a standard indemnification formula in place for compensation of organic growers whose cotton is required to be destroyed. The department has attempted to balance, in these rules, the various roles that it plays as the agency responsible for overseeing implementation of the boll weevil eradication program and regulating that program, as well as the agency whose charge is to open markets for Texas agricultural products including organic agricultural products, and the agency that has developed and enforces the states organic certification program. The overall goals of this rule package are to allow organic cotton producers to grow their cotton without fear of reprimand or discriminatory treatment in regards to how the eradication program is conducted, while at the same time assuring the success of the boll weevil eradication program is not compromised, and to provide organic cotton growers reasonable ompensation should they be required to destroy their organic cotton field due to a boll weevil infestation. he department believes that ultimately, the success of the program will benefit all growers and the public in general by reducing the use of pesticides used to control the boll weevil and by allowing Texas cotton growers to be more competitive in the marketplace.

The new rules explicitly provide that the decision to plant certified organic or transitional cotton in any field located in an active eradication zone will be made solely by the grower. The department recognizes the need for the organic cotton market to be sustained and the effect that a loss of the market share even for one year would have on Texas organic cotton growers and the organic product industry that has been established. In order to assure that the foundation and the department are aware of where organic production is occurring, the rules include provisions for the department to inform organic growers that they should notify the foundation of their planting intentions. The foundation is then required to communicate with organic growers in active zones to discuss eradication activities in and around organic crops, including planning to minimize problems such as drift. The foundation is further required to take reasonable steps to protect the certification of organic crops. In the event that an organic field is inadvertently treated directly or through drift, the grower will be indemnified.

To address concerns voiced by organic growers that they might be treated unfairly in comparison to conventional growers in regards to the establishment of the trigger level and placing of traps, the rules provide that those standards will be based on scientific and entomological considerations and be implemented in a fair and equitable manner. The rules also specifically provide that, once trapping of fields begins and trigger levels are monitored, that organic cotton fields will be subject to the same trap count trigger levels as conventional cotton fields. Organic growers will be informed of trigger levels at the beginning of each season, and if the trigger level changes, the foundation will inform them at least 48 hours before implementing a new trap trigger level. Traps will be checked at the same intervals as those in conventional cotton fields. If an organic cotton field surpasses the established trap count trigger level, the field in question will be inspected by a technical review committee made up of individuals who are experts in the area of pest management using objective standards developed by the foundation's technical advisory committee, which advises the board on pest management matters. No action will be taken until such a review has occurred and all reasonable options are explored for addressing the control of boll weevils in the field. The committee will make a recommendation to the commissioner for action and the commissioner will make a final determination on what action is appropriate. In the event that destruction of organic cotton is deemed by the commissioner as absolutely necessary in order to maintain the effectiveness of the eradication program, growers are notified that the crop must be destroyed and provided with time to destroy the crop. The rule also provides for extensions of the time for a grower to destroy a crop under certain situations. The rule also provides that growers will be fairly compensated for their losses, and provides eligibility standards for indemnification on a base-acreage system. Flexibility to enter into good faith negotiations with the foundation prior to planting organic cotton to discuss indemnification is also provided. As

noted previously, and discussed in more detail in this preamble, the sections addressing the eligibility requirements for indemnification (§3.607) and the calculation of indemnity (§3.608) have been simultaneously withdrawn and refiled as new sections in response to comments received on the proposal. Although the department has proceeded to adopt new §§3.600 - 3.606 of Subchapter J, the adopted sections will have an effective date of May 15, 2000, to allow the department to promulgate new §§3.607-3.609 relating to eligibility for indemnification, calculation of indemnification and payment of assessment. Further, because the department believes that there may be a need to revisit these rules after undergoing one season of experience in their application, the department intends to review the rules again in January of 2001 and to set public hearings on Subchapter J to take public comment on whether or not changes should be made for the next growing season.

New § 3.601 is adopted with changes. The definition of "certified organic crop" has been changed by adding the word "private" before the words "certifying agent" for purposes of clarification and consistency with the department's organic certification program, the same change has been made to the definition of "transitional crop". The definition of "plow-up" has been changed to require shredding or plowing of cotton in a manner which destroys all hostable plants. This change is made based on a comment received from cotton growers and the Texas Boll Weevil Eradication Foundation to assure that hostable plants are not left in a field subjecting it to reinfestation by boll weevils. The definition of "trap count" has been changed to provide that traps are inspected on routine, rather than a weekly basis. This change is made to allow for flexibility in inspections, and was also made in response to a comment received on the proposal. New §3.602 is adopted with changes. A phrase has been added to provide that this section will not impair rights of parties to negotiate terms of indemnification, as allowed by this subchapter. This phrase is added to provide more flexibility to the foundation and growers to come to mutually acceptable terms where indemnification is appropriate or required. New §3.603(a) is amended to make reference to a "registered private certifying agent", to make this section consistent with §3.601. In §3.603(b), the date for the department to notify organic producers to report planting intentions to the foundation has been changed from January 1 to January 15 of each year based on a comment received. Section 3.604 has been changed at subsection (b) by replacing the words "products not allowed by the producer's certifying entity with the terms "prohibited materials". This change makes the reference consistent with the department's organic certification program rules. Subsection (d) of §3.604 has been changed by deleting reference to the foundation's board of directors. The reference is deleted, based on a comment received, to accurately reflect on whose behalf applications are being made.

Section 3.605 has been changed at subsection (b) to clarify that trigger levels are set by the foundation pursuant to §3.605(c). In addition, subsection (b) has been changed to change the terms "first full season" to "first season-long phase" of the eradication program. This change is made to more accurately reflect the time at which trap count trigger levels are set. Subsection (d) at paragraph (1) has been changed to provide that the representative on the technical review committee from the Texas Agricultural Extension Service office serving the respective area may be a designee of the integrated pest management (IPM) specialist, rather than a county extension agent. This change is made to clearly make the IPM specialist the designated person on the committee, or in the event he or she cannot serve, give the IPM specialist flexibility in designating someone else to represent the extension service. Paragraph (d)(4) has been changed to provide that the technical review committee shall make a recommendation within 48 hours after the field surpasses the trap count trigger level. Paragraph (d)(5) has been changed to provide that the commissioner shall make a final determination on action required within one business day of receiving the committee's recommendation. The changes to paragraphs (4) and (5) are made to assure that a decision on action required will be made in a timely manner by the technical review committee and the commissioner.

New §3.606 is adopted with changes. The time for a crop to be destroyed before compensation will be denied as provided at subsection (c)(2), has been changed from within 20 to within 14 days from the date of notification that the crop must be destroyed or expiration of an approved extension. The time after which the department may assess an administrative penalty for failure to destroy a crop required to be destroyed has been changed from within 21 to within 15 calendar days after the date of notification or expiration of any approved extension. The date after which a crop will be destroyed by the department or its designee has been changed from the 21st day to the 15th day after the date of notification or expiration of any approved extension. The dates in subsection (c), paragraphs (1)-(4) have been changed to make the timelines more accurately reflect the urgent need to get an infestation under control once a destruction determination has been made, especially given the time that has already lapsed since the infestation was discovered. In summary, once a potential infestation problem is discovered, the field must be inspected by a technical committee, options for action reviewed and destruction recommended, the recommendation must then be reviewed by the commissioner and destruction ordered, and then the grower will be notified to destroy. The changes also make the timelines consistent with timelines already established in the department's cotton stalk destruction program.

Comments were received from the following organizations: the International Federation of Organic Agriculture Movements, Theley, Germany; the Pestizid Aktions-Netwerk e.V. (PAN Germany); the Pesticides Trust, London; Florida Certified Organic Growers and Consumers, Inc., Gainesville, Florida; the Texas Organic Cotton Marketing Cooperative, O'Donnell, Texas; the Pesticide Action Network, San Francisco, California; the Southern Mutual Help Association, New Iberia, Louisiana; the Southern Sustainable Agriculture Working Group, Elkins, Arkansas; the Texas Organic Growers' Association, Austin, Texas; the Organic Consumers' Association, Duluth, Minnesota; the South Dakota Organic Crop Improvement Association Chapter #1, Selby, South Dakota; the Organic Trade Association, Greenfield, Massachusetts; the Northern Plains Sustainable Agriculture Society. Comments from these organizations were generally in opposition to the proposed rules. The comments generally centered on the compensation for organic growers and the preservation of the organic cotton market. Additionally, the comments generally addressed broad areas outside the scope of the proposal, including the boll weevil eradication program as a whole and the general use of pesticides.

Comments were also received from Plains Cotton Growers, Inc., Lubbock, Texas; Lamesa Cotton Growers, Inc., Lamesa, Texas; the Permian Basin Boll Weevil Eradication Zone Steering Committee, Ackerly, Texas; the Western High Plains Boll

Weevil Eradication Zone Steering Committee, Plains, Texas; the Northwest Plains Boll Weevil Eradication Zone Steering Committee, Muleshoe, Texas; and the Southern Rolling Plains Cotton Growers Association, Inc., San Angelo, Texas. Comments from these organizations were generally in opposition to the proposed rules. These comments also generally centered on the compensation for organic growers. The Texas Boll Weevil Eradication Foundation Inc., (the foundation) also commented generally in favor of the proposal and provided some comments which were adopted by the department in the new rule, as previously noted.

In addition to the receipt of many written comments from both traditional and organic cotton growers, grower organizations, organizations otherwise involved in the production of cotton in Texas and representatives of the affected zone steering committees, the department also received many comments from businesses both in Texas and out-of-state that buy and/or sell organic cotton products or other organic products and individuals who use organic products. The department also conducted three public hearings in Lubbock, Lamesa and Muleshoe, Texas, which were attended by approximately 176 persons, primarily traditional cotton growers.

In addition to the comments noted above and those which have been incorporated into the new sections, the department received other comments on the proposal. Specifically on the new sections, the following comments were submitted which were not adopted by the department. In regards to §3.602(b), the foundation suggested that since it is the burden of the organic producer to notify the foundation of organic production in an active zone, consequences should be imposed for failure to perform that duty, including ineligibility for any type of indemnification or financial protection. The department disagrees with this comment and believes that the consequences for failure to report organic production are already clear.

In regards to §3.604(b), relating to Protection of Organic Certification, a comment by Osama El-Lissy, former program director for the foundation, pointed our that all aerial applications are done through contractors who are responsible for the performance of all aerial applications and assume "the liability for any property damage resulting from negligence, gross negligence, or strict liability arising from the acts, wrongs, and omissions of the contractor". In reference to that, Mr. El-Lissy suggests changing the language to read "In the event the foundation or an employee of the foundation inadvertently treats . . .". The department disagrees with the proposed language because to only include employees of the foundation would not cover any contracted labor, such as aerial applicators who make applications on behalf of the foundation. Also, it is the department's understanding that the foundation would actually be involved in coming to an agreement with a grower whose cotton has been inadvertently sprayed, then the foundation may seek reimbursement from the applicator's insurance company. To take the foundation out of the picture on that part would require that growers deal directly with applicators' insurance companies, which was not intended.

In regards to §3.605 (1), relating to the establishment of trap count trigger levels, the foundation has suggested adding the words "based on the foundation's experience" after "sound scientific and entomological considerations." The foundation has also asked that the words "and shall be implemented in a fair and equitable manner" be removed. It is the foundation's opinion that this sentence will serve as "fodder for lawsuits", and the foundation contends that no discretion is exercised in implementing trigger levels. Rather, if the number of weevils in an area surpasses the trigger level, the field is sprayed (if conventional) without discretion. The department disagrees with the proposed change because it believes that the language "based on sound scientific and entomological considerations" clearly and appropriately means that the trap count trigger level will be set in an objective manner. The department also believes that the language stating that the implementation of a trigger level and placing of traps shall be in a fair and equitable manner is also appropriate and is based on concerns of organic growers that the implementation of the program in relation to organic cotton, as to what triggers action and where traps are placed will not be implemented in a fair and equitable manner. The department does agree with the foundation that the implementation of trigger levels for either traditional or organic cotton should be based on objective, scientific methods. In regards to subsection (d) relating to the technical review committee, Mr. El-Lissy has suggested that the technical review committee be eliminated in favor of a system that relies strictly on trap captures, crop stage, and the progress of the eradication program. The department disagrees with this comment and believes that the use of the technical review committee process, with the level of expertise of its members and the direction provided by the foundation's technical advisory committee, will go far to assure that a thorough review of all factors relating to the need for action will be considered before any destruction of organic cotton is required. In regards to subsection (c), relating to the requirement that there be no destruction of cotton after the field reaches the cut-out stage, many conventional cotton growers have expressed the desire to remove this subsection completely. Mr. El- Lissy, who initially agreed to the inclusion of this provision, commented that he now believes this should not be applicable in the second and third season-long years of the program. The department believes that the proposed language should be adopted as proposed because several experienced entomologists, including Mr. El-Lissy, have indicated that once a crop reaches cut-out stage, plowing that crop does not significantly reduce its threat to the eradication effort. Also, because the department has no actual experience to indicate that the proposed language will create problems, it would be appropriate to leave this provision in at this point and revisit the issue for the next growing season, if necessary. In regards to §3.606 (b), relating to crop destruction extensions, the Western High Plains, Permian Basin, and Northwest Plains grower steering committees suggested that no extensions be allowed. The foundation has suggested that extensions only be granted for delays caused by weather, and that only one extension should be granted in each situation. The department disagrees with those comments, and believes that the proposed language is appropriate. This determination is made based on the department's experience with a similar existing program for the its stalk destruction in established pest management zones. In that program, the department has seen the need to allow extensions in certain situations that are generally beyond the control of the grower whose crop has been ordered to be destroyed. On subsection (c), relating to penalties for not destroying a crop by the deadline, conventional cotton growers in general, and the foundation, commented that the destruction timeline is too long. Specifically, the foundation has suggested that the second deadline of 20 days be changed to 10. Other comments from conventional cotton growers included decreasing the initial deadline for an organic grower

to destroy a crop to three days and/or mandating that the grower lose the rights to any indemnification after 10 days. While the department agrees with growers and the foundation that the timeframes for destruction should be decreased, the department believes that the proposed timelines would be too short to allow a grower sufficient time to plowup a field on his or her own. The timeframes that have been adopted in this section are based on timeframes established by law and/or rule under the department's stalk destruction program. No comments were received on proposed §3.609, and the department has adopted that section without changes.

In addition to comments on specific sections, the department also received some general comments which were not incorporated into the adopted rule. Organic growers and their supporters requested that a guaranteed percentage of organic cotton be allowed to grow, without being subject to destruction under the rules. Comments state that this request was made in an effort to assure that all of the organic cotton production in Texas is not destroyed, resulting in a loss of markets for organic growers. The commenters point out that because of certification requirements, an organic grower whose crop has been destroyed or who is forced to treat in the same manner as conventional growers, could lose certification for up to three years, which would have a devastating effect on marketing efforts. The department believes that there is not a need for the designation of a percentage of organic production. The adopted rules do not prohibit the growth of organic cotton, nor do they require organic growers to enter into agreements not to grow organic cotton. The department further believes that the implementation of the technical review committee process to determine what action should be taken when a certain trigger level is reached will be fair and equitable and will result in destruction being required only when absolutely necessary in order for the eradication program not to be jeopardized.

Another general comment made by or on behalf of organic growers is that the foundation not be allowed to treat sensitive areas and that the foundation be required to use alternative treatment methods in organic cotton fields and incorporate integrated pest management (IPM) techniques into its eradication plan. The comments noted that the use of IPM is required by law. It is the department's belief that some of the comments received in this regard, in particular comments received from individuals and business supporters of the organic cotton industry, were generated by the mistaken impression that the foundation would be conducting a blanket spray program which would basically spray all areas within a zone, without regard to sensitive areas such as organic fields, schools and residential areas. The department believes that the foundation is already incorporating IPM techniques into its eradication plan and that the foundation has an established protocol for program activities around sensitive areas. The department does, however, strongly encourage the foundation to continue its efforts to incorporate more IPM techniques into its eradication plan as is possible, and to work closely with organic growers and other persons residing in active eradication zones and persons responsible for schools or other sensitive areas in or near treatment areas to assure that the threat of drift is minimized.

In regards to sensitive areas, the foundation has on staff an environmental department that is responsible for monitoring pesticide applications near sensitive sites, working with complaints, and performing quality control on field operations. A sensitive area is defined as any location adjacent to or near cotton fields where offsite drift of program chemical is unacceptable. This definition includes all organic fields. Once a site is deemed to be environmentally sensitive, an environmental monitoring specialist (EMS) must be on hand at the cotton field for any program-applied chemical application. Each zone has at least one. This EMS is responsible for ensuring that there is no offsite drift of program-applied chemical onto sensitive areas. The EMS accomplishes this by monitoring weather conditions and setting out dye cards that are coated with a white material that turns black when it comes into contact with oil-based materials (such as malathion). The foundation provides a detailed manual to all environmental monitoring specialists detailing the proper methods of weather observation and the proper use of dye cards. The foundation also takes further steps to minimize drift, including: instructing pilots to fly five feet above canopy; discontinuing applications when the wind speed exceeds 10 mph; instructing foundation ground observers to monitor wind speed and application height; instructing ground observers to ensure that people are not working in or near the field; keeping spray pressure at a minimum to produce a larger droplet that minimizes drift but is still efficacious in killing the boll weevil; and using ground equipment in areas where airplanes cannot safely be used.

In regards to use of IPM techniques, the definition of IPM provided in the Texas Agriculture Code, §74.102(11), defines IPM as "the coordinated use of pest and environmental information with available pest control methods, including pesticides, natural predator controls, cultural farming practices, and climatic conditions, to prevent unacceptable levels of pest damage by the most economical means and with the least possible hazard to people, property, and the environment." In addition to the use of chemical treatment for boll weevil control, the foundation also utilizes cultural and mechanical controls where possible. Cultural controls practiced by the foundation include having coordinated uniform cotton planting and harvesting dates, as organized by grower steering committees in each zone, assisting the department in enforcing stalk destruction deadlines in areas where such deadlines have been established, and providing an early plow-up rebate on a grower's assessment payment as an incentive to destroy cotton stalks as soon as possible after harvest. Mechanical controls include use of boll weevil traps to measure adult boll weevil population densities and identify their locations and to remove those trapped from the boll weevil population. In regards to the use of alternative methods of control, although research and testing is ongoing, there is no current proved alternative control method which can be used on a wide-scale to control boll weevil populations. Efforts in the past have been in the form of research projects conducted for or by the Texas A&M University System, Agricultural Extension Service and the Agricultural Research Service Division of the United States Department of Agriculture, centered around two primary methods, use of the boll weevil bait stick (BWACT) and the Catolaccus grandis, a boll weevil parasite, and success using those methods has been limited, in part due to availability and cost. As noted previously, research and testing of alternative methods of controlling boll weevil populations are ongoing. The department intends to become more active both at the state level, working with the Texas Agricultural Extension Service, and at the federal level, working with the United States Department of Agriculture, to seek funding of research on viable, cost-effective alternative methods to assist in organic production in Texas.

Another general proposal, which was proposed by Plains Cotton Growers to be incorporated throughout the new sections and

the department's organic certification rules was a suggestion that the treatment of organic cotton fields with malathion be allowed as part of emergency spray program. This suggestion was modeled after language included in the recently proposed national organic production standards. The proposal was an effort to address the concern by organic growers that if their cotton is sprayed with malathion, that their certification would be lost and to allow for the treatment of organic cotton in the same manner as conventional cotton. The proposed national rule allows an organic grower to maintain a field's certified status if a field is sprayed as part of an emergency spray program, but the organic production from the sprayed field may not be sold as organic. More specifically, the proposal requested that the department's organic certification rules be changed to adopt the proposed language found in the national rule and that similar changes be made to proposed new §§3.600, 3.604(b) and (d), 3.605(d)(6), 3.606(a) and (d)(1), and §3.608(b) and (d)(3). Organic growers believe that adopting this proposal will cause them to lose their certification and if not that, would result in a loss of markets where cotton having undergone any application of pesticides will not be acceptable to buyers. The department disagrees that the proposal should be adopted. Texas state law clearly prohibits the application of pesticides to organic cotton, and the department has found no existing federal law or rule which would preempt Texas law in this regard. Moreover, Texas organic certification standards, known nationally and internationally as being the strictest in the nation, would not allow cotton which has been sprayed with malathion to maintain its organic certification. Finally, the department is required by law to protect the organic certification program and its markets, and, as pointed out by the organic growers, even if certification were somehow maintained, some markets would be lost, and certainly the integrity of the Texas organic certification program put at risk.

Upon review of the many comments received on §3.607, relating to eligibility for indemnity, and §3.608, relating to calculation of indemnity, and recognizing the apparent need to reconsider the eligibility and indemnification provisions of the organic cotton regulations, the department has determined that the proposal put forth on these sections should be withdrawn, and new sections proposed. Both the notice of withdrawal of proposed §3.608 and new proposed §3.608 have been filed for publication in this issue of the *Texas Register*. Comments from organic growers on §3.607 included that the rules for future zones should be retroactive as a grower would have to have 1999 production to be eligible for indemnification in a zone that passes this season, that a system be put in place that allows current organic growers to expand eligible cotton acreage in an active zone, and that base acreage be fully transferable. Conventional growers have commented that an organic grower's base acreage should be based strictly on a three year average, and 1999 plantings should not be an option. Comments from organic cotton growers on §3.608, in regards to the timing of payment of the indemnity included a request for an option to defer payment until after January 1 for tax purposes, a request that the foundation be required to establish an escrow account to secure the availability of payments, and a request that there be a penalty in some amount assessed to the foundation for late payment of an organic indemnity. In regards to the decision not to plant organic cotton (and receive indemnity), traditional cotton growers commented that an organic grower should be required to plant cotton in order to receive an indemnity. In regards to payment factors, some conventional growers, and the steering committees that commented, suggested that an organic APH be used for yield calculation. Organic growers commented that this would not be an accurate measurement on many farms and, overall organic cotton acreage would likely be greater than using the 10-year APH yield.

The majority of comments received on the proposal related to §3.608 and the payment calculation, and ranged from conventional cotton growers and their representatives who believe there should be no indemnification for organic growers, to conventional growers who believe that indemnification is warranted but the proposed payment is too high, to organic cotton growers and their supporters who believe that the proposed indemnification formula provides too little compensation, that they should be compensated for 100% of the value of their crop, rather than the proposed 70%. Conventional cotton growers believe that payment to organic growers will pose an unbearable strain on their already tight zone budgets and will garner support for not continuing the program in their zones. Organic growers believe that the proposed indemnification formula will not cover their production costs and will result in their suffering great financial loss. Some more specific suggestions included that the indemnification be Acres x organic APH x (FCIC cotton rate + 10 cents) x 50% or that indemnification be Acres x APH yield x 80 cents/pound x 50%. One other comment suggested that the market price for organic cotton should be used each year. Comments were also submitted regarding the statement of fiscal implications to organic growers and how, in the commenters' opinions, the compensation formula proposed would definitely have an adverse affect not only on growers, but on the persons employed in the organic cotton industry in Texas, and businesses that count on being supplied with organic cotton. In regards to indemnification after eradication has been declared in a zone, organic growers commented that post-eradication indemnity should be 100% of the value of the crop. Conventional grower representatives suggested that only growers who had base acreage in an active eradication program should be eligible for post-eradication indemnity. Comments were also received indicating that there is consensus among all groups (except those who wish to pay organic growers nothing) that a section should be added allowing the foundation (through grower steering committees) and organic growers to negotiate alternative arrangements.

Again, the department has withdrawn §§3.607 - 3.609 and filed newly proposed §§3.607 - 3.609 taking into consideration comments received and additional information regarding the operation of other federal agricultural programs and information provided by both organic and conventional growers in regard to average production and production costs. The department intends to adopt a final rule at the end of the 30-day comment period.

New §§3.600 and 3.601 provide a statement of authority and purpose for the subchapter and provide definitions to be used in the subchapter. New §3.602 provides that the decision to plant certified or transitional cotton in an active eradication zone is up to the grower producing the crop. New §3.603 provides requirements for communication between organic growers, the department and the Texas Boll Weevil Eradication Foundation. New §3.604 provides for protection of organic certification and indemnification to growers when an organic crop or field is inadvertently treated or exposed through drift to products not allowed for treatment on an organic crop. New §3.605 establishes requirements and procedures

for setting and monitoring boll weevil trap count trigger levels. This section also provides for a review of fields that surpass the established trigger level by a technical review committee which will recommend to the Commissioner of Agriculture what eradication activity may be necessary, including destruction of the cotton crop, if warranted. New §3.606 provides procedures for notice and requests for extensions in the event a grower is notified that destruction of a cotton crop is necessary. This section also provides for the grower to choose conventional treatment of a crop in lieu of destruction

The new sections are adopted under the Texas Agriculture Code (the Code), §74.125, which provides the department with the authority to develop rules and procedures to protect the eligibility of organic cotton growers to be certified by the commissioner of agriculture, ensure that certification by the commissioner meets national certification standards, and in all events maintain the effectiveness of the boll weevil or pink bollworm eradication program administered under the Code, Chapter 74, Subchapter D, including rules that provide indemnification for organic cotton growers for reasonable losses that result from a prohibition of production of organic cotton or from any requirement of destruction of cotton; and the Code, §74.120, which provides the department with the authority to adopt reasonable rules to carry out the purposes of the Code, Chapter 74, Subchapter D.

§3.600. Statement of Purpose and Authority.

The Texas Agriculture Code (the Code), Chapter 74, Subchapter D, §74.1011 designates the Texas Boll Weevil Eradication Foundation, Inc. (the foundation) as the entity to carry out boll weevil and pink bollworm eradication in Texas. The Code, §74.120, provides the Commissioner of Agriculture with the authority to adopt reasonable rules to carry out the purposes of Chapter 74, Subchapter D. The Code, §74.125 provides that the Commissioner shall adopt rules and procedures to protect the eligibility of certified organic and transitional cotton production in active eradication zones while ensuring the ultimate success of the boll weevil eradication program in Texas. Section 74.125 further provides that rules adopted under that section may provide indemnity for the organic cotton growers for reasonable losses that result from a prohibition of production of organic cotton or destruction of organic cotton. Mitigation of losses with production of an alternative crop may be required by the foundation board of directors. The foundation board may not treat or require treatment of organic cotton with chemicals that are not allowed for use on certified organic cotton. Plow-up of an organic cotton field may be required as an alternative to treatment with chemicals.

§3.601. Definitions.

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

(1) Active eradication zone – A boll weevil eradication zone established in accordance with the Texas Agriculture Code, Chapter 74, Subchapter D, in which a referendum of cotton growers has been held and both the establishment of an eradication program and a maximum assessment have been approved by growers for that zone and eradication activities are in progress or the zone has been declared eradicated by the commissioner.

(2) Certified organic crop – A crop which has undergone independent third party verification by the department or a registered private certifying agent that the crop has been produced in compliance with the Texas Organic Standards, Chapter 18 of this title (relating to Organic Standards and Certification), and qualified for full organic status, including the requirement that the land on which the crop is grown has had no prohibited materials applied for at least 36 months prior to harvest.

(3) Commissioner – The Commissioner of Agriculture or her designee.

(4) Department – The Texas Department of Agriculture

(5) Foundation – The Texas Boll Weevil Eradication Foundation

(6) Plow-up – To shred or plow in a manner which destroys all hostable plants.

(7) Transitional crop – A crop which has undergone independent third party verification by the department or a registered private certifying agent that the crop has been produced in compliance with the Texas Organic Standards, Chapter 18 of this title, and fulfills all requirements except the 36 months required for full organic status. A certified transitional organic crop must be produced on land that has had no prohibited materials applied for at least 12 months prior to harvest.

(8) Trap count – The number of boll weevils recorded as captured in a pheromone trap as inspected on a routine basis by an employee of the foundation.

(9) Trigger levels – Standards established by the foundation for the number of weevils recorded in a trap or for the number of weevils trapped per acre that would initiate further action by the foundation.

§3.602. Planting of Certified Organic or Transitional Cotton in Active Eradication Zones.

The decision on whether to plant certified organic or transitional cotton in any field located in an active eradication zone will be made solely by the grower producing the crop, subject to any designations of prohibited growing areas under the Code, §74.118, and rules adopted thereunder. Neither the foundation nor the department will urge or persuade, in any way, a grower or growers to plant or not to plant certified organic or transitional cotton. This provision shall not affect the rights of the parties to negotiate in good faith pursuant to 3.607 of this title (relating to Eligibility for Indemnification).

§3.603. Communication with Organic Producers; Notification of Organic Production.

(a) Growers applying for or holding certified organic or transitional organic certification with the department or a registered private certifying agent and who intend to devote acres to organic or transitional crops must submit all appropriate documentation to the department's Organic Certification Program, in accordance with Chapter 18 of this title (relating to Organic Standards and Certification), in order to be recognized by the foundation as a certified organic or transitional grower for purposes of this section.

(b) The department will contact all producers with certified organic or transitional acreage in an active boll weevil eradication zone before January 15 of each year by sending notice to the address on file with the department's Organic Certification Program for the grower. These producers will be informed that they should notify the foundation of their planting intentions no later than the date of planting the crop. It is the responsibility of the grower to inform the foundation of the location of all certified organic or transitional production within an active boll weevil eradication zone.

(c) The foundation will communicate with all growers of certified organic or transitional crops in active eradication zones to

discuss eradication activities in and around the production of such crops and to plan measures to minimize problems such as drift.

§3.604. Protection of Organic Certification.

(a) The foundation will take steps reasonably necessary to protect the certification of organic crops during the course of its normal eradication activities.

(b) In the event the foundation or an individual working for the foundation inadvertently treats a certified organic or transitional field or portion of a crop, either directly or through drift, with prohibited materials, the foundation will indemnify the grower in accordance with subsection (d) of this section. This indemnification will continue on an annual basis until the earliest date that the exposed field or crop is eligible to return to the status it held prior to the inadvertent treatment by the foundation.

(c) For purposes of this section, a determination of whether or not a direct treatment or drift occurred will be made by the department in accordance with established procedures.

(d) In the event of a confirmed case of direct treatment or drift of chemical applied for or by the foundation, the grower will receive just and reasonable compensation in an amount recommended by the foundation board and approved by the commissioner.

§3.605. Trigger Levels.

(a) During the first season of treatment in an active boll weevil eradication zone, the "diapause" phase of the program, all organic producers may plant certified organic or transitional cotton consistent with §3.602 of this title (relating to Planting of Certified Organic or Transitional Cotton in Active Eradication Zones), without regard to boll weevil trap captures. Producers will be required to communicate with the foundation as prescribed in §3.603 of this title (relating to Communication with Organic Producers; Notification of Organic Production).

(b) Certified organic or transitional cotton fields in active boll weevil eradication zones will adhere to the same trap count trigger levels that are set by the foundation and pursuant to subsection (c) for conventional cotton fields in that zone beginning in the first season-long phase of the program and continuing each season thereafter.

(c) Trap count triggers will be set under the following conditions.

(1) The foundation will inform organic growers of the trigger levels at the beginning of each season.

(2) The trap count trigger level may change during the season, and when these changes are made, the foundation will inform organic growers at least 48 hours prior to implementing a new trap count trigger level.

(3) Traps around organic cotton fields will be checked at the same interval as traps around conventional fields in the same zone.

(4) The establishment of the trap count trigger level and placing of traps will be based on sound scientific and entomological considerations and shall be implemented in a fair and equitable manner.

(d) If an organic or transitional field surpasses the set trap count trigger level, a technical review committee will determine if destruction of that field or other alternative action should be required using the following procedures.

(1) This committee will consist of the foundation program director or his designee, a member of the foundation's technical advisory committee appointed by the commissioner, and an Integrated Pest Management (IPM) specialist, or his designee, from the Texas Agricultural Extension Service serving the respective area.

(2) No less than two committee members will meet at the field in question within 48 hours after the field surpasses the trap count trigger level.

(3) The committee will consider factors established by the foundation's technical advisory committee and approved by the foundation's board and the commissioner including, but not limited to, crop damage, trap captures in nearby traps, and cost to the eradication program.

(4) The technical review committee shall make a written recommendation to the commissioner on the organic cotton field in question specifying the recommended actions and justification for those actions. This recommendation shall be made within 48 hours after the field surpasses the trap count trigger level.

(5) The commissioner shall review the technical review committee's recommendation and make a final determination on the action required within one business day of receiving the committee's recommendation.

(6) Should the commissioner determine that some type of eradication activity should occur, the grower may be required to either destroy the crop as prescribed in §3.606 of this title (relating to Crop Destruction), or may choose to allow the crop to be treated .

(e) Destruction of an organic cotton crop under this section will not be required, regardless of trap captures, once the crop in that field has reached cut-out stage for that season. This stage will be determined through the following process.

(1) For purposes of this section, "cut-out stage" is defined as at least 50% of cotton plants in a field having four or fewer nodes above white flower.

(2) The grower will contact the foundation when they believe their crop has reached cut-out stage;

(3) A foundation representative will inspect the field within 48 hours after being contacted by the grower to confirm that it has reached cut-out stage.

(4) If there is a dispute relating to the stage of the crop, the IPM agent/specialist or county extension agent serving the area, will inspect the crop and determine if cut-out stage has been reached.

(5) The foundation will notify the department when it is determined that a field has reached cut-out stage.

§3.606. Crop Destruction; Extensions, Choice of Conventional Treatment.

(a) Crop destruction. A grower who has been notified that destruction of their organic cotton crop is necessary will have no more than seven calendar days from the date of receipt of notification to destroy that crop by plow-up.

(b) Extension requests. A request for a deadline extension will be handled as follows.

(1) The department may, on written request by a grower, grant an extension of the destruction deadline. Request for extensions may be granted for the following reasons:

(A) weather factors;

(B) illness;

(C) mechanical failure; or

(D) other good cause, as determined by the department.

(2) A written request for an extension of the destruction deadline must be submitted on a form prescribed by the department.

(3) Request forms may be obtained from either the department or the foundation.

(4) Failure to complete the form in its entirety may result in denial of the request.

(5) All requests for extensions shall be postmarked on or prior to the destruction deadline

(c) Penalties for not destroying a crop by the deadline.

(1) If the crop is not destroyed within seven calendar days of the date of notification or expiration of an approved extension, the compensation the grower is entitled to under §3.608 of this title (relating to Calculation of Indemnity), for that acreage will be decreased by 50%.

(2) If the crop is not destroyed within 14 calendar days of the date of notification or expiration of an approved extension, the grower will no longer be entitled to compensation under §3.608 of this title, for that acreage.

(3) The department may assess an administrative penalty of not more than $5,000 per day if the crop is not destroyed within 15 calendar days after the date of notification or expiration of an approved extension.

(4) If the crop is not destroyed by the 15th day after the date of notification or expiration of an approved extension, the department or its designee may destroy the crop.

(d) Choosing conventional treatment.

(1) In lieu of crop destruction, a grower may notify the foundation and the department that he or she chooses to cancel his or her organic or transitional certification on the acreage that has been ordered to be destroyed so that conventional treatment may be used.

(2) Such notification must be provided in writing to both the foundation and the department and must be postmarked, if sent by mail, or faxed before the destruction deadline. The same penalties described in subsection (c) will apply if notification is not received by the destruction deadline.

(3) After both the foundation and the department receive this notification, the Foundation will treat the field in the same manner as all conventional cotton fields in the same zone.

(4) A grower choosing to cancel organic certification will not be entitled to compensation under §3.608 of this title, for that acreage.

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

Filed with the Office of the Secretary of State on March 27, 2000.

TRD-200002208
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Effective date: May 15, 2000
Proposal publication date: February 11, 2000
For further information, please call: (512) 463-4075

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Chapter 17. MARKETING AND PROMOTION DIVISION

Subchapter G. GO TEXAN PARTNER PROGRAM RULES

4 TAC §§17.301, 17.303 - 17.306, 17.308

The Texas Department of Agriculture (the department) adopts amendments to Chapter 17, Subchapter G, §§17.301, 17.303 - 17.306 and 17.308 concerning the GO TEXAN Partner Program (GOTEPP), without changes to the proposal published in the February 11, 2000, edition of the *Texas Register* (25 TexReg 998).

The amendments are adopted to clarify existing sections and make the application process more efficient. Further, the Department believes that the broadening of eligibility to specifically include businesses in addition to those meeting the definition of "small business" will result in a potential increase in the diversity of Texas agricultural products marketed and economic benefits to the public. Section 17.301(9) is amended to expand the number of eligible small businesses by including entities with fifty or fewer full time employees or $1 million or less gross receipts. Section 17.303(6) is amended to specifically include businesses, other than those meeting the definition of small business, along with other entities. This change will clarify that businesses not meeting the definition of small business may meet eligibility criteria under this eligibility category. Section 17.304(4) is amended to require all franchise tax, child support, conflict of interest and program eligibility information in one form provided by the department. This change will make the application process more convenient for the public and more efficient for the department. Section 17.305, at paragraph (1), is amended to require the name of the entity, phone number and email address, if available, of the applicant on the cover page for the project request. This change will facilitate communication between the applicant and the department. Section 17.305(3) is amended to clarify that paragraph. Section 17.305, at paragraph (4), is amended to require the inclusion in the project narrative of projected sales increase information and a statement identifying which eligibility criteria in § 17.303 of the program rules is met by the applicant. This change will expedite the processing of project requests by the department. New paragraph (8) has been added to §17.305 to require applicants to submit, along with their original project request, ten copies of the request for distribution to the board. Section 17.306(f) is amended to require the deposit of funds within ten business days after receiving a request for funds from the department. This change will allow successful applicants to keep the matching funds until the department is prepared to implement the approved project. Also, subsection (f) is being amended to grant the GO TEXAN Partner Program Advisory Board authority to accept in-kind contributions with a documented, clear monetary value from program applicants, in an amount not to exceed 10% of the total grant amount. This change will serve to expand the pool of potential applicants. Section 17.308(f) is amended to clarify use of certain project request funds. This change will give notice to applicants that 15% of all funds for each approved project request will be spent on the department's GO TEXAN program.

No comments were received on the proposal.

The amendments to §§17.301, 17.303 - 17.306 and 17.308 are adopted under the Texas Agriculture Code (the Code) §12.016, which provides the department with the authority to adopt rules as necessary for the administration of its powers and duties under the Code; the Code, §12.0175 which authorizes the department to establish programs to promote products grown in Texas and products made from ingredients grown in Texas and to charge a membership fee for those programs not to exceed $50; and the Code, §46.012, which provides the department with the authority to adopt rules to administer the GO TEXAN Partner Program.

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

Filed with the Office of the Secretary of State on March 22, 2000.

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TITLE 16. ECONOMIC REGULATION

Part 2. PUBLIC UTILITY COMMISSION OF TEXAS

Chapter 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

Subchapter H. ELECTRICAL PLANNING

Division 2. ENERGY EFFICIENCY AND CUSTOMER-OWNED RESOURCES

16 TAC §25.181

The Public Utility Commission of Texas (commission) adopts new §25.181 relating to Energy Efficiency Goal with changes to the proposed text as published in the November 12, 1999 *Texas Register* (24 TexReg 9919). The rule is adopted to implement Senate Bill 7 (SB 7), Act of May 21, 1999, 76th Legislature, Regular Session, chapter 405, 1999, Texas Session Law Service 2543 (Vernon) which amends several sections of the Public Utility Regulatory Act (PURA). PURA §39.905 requires each electric utility to reduce Texas customers' energy consumption by a minimum of 10% of the utility's annual growth in demand in Texas by January 1, 2004. To achieve this goal, utilities must provide incentives through standard offer programs or limited targeted market transformation programs. The incentives are to be paid to energy services companies or retail electric providers for the implementation of the energy efficiency programs.

In adopting this rule, the commission seeks to achieve the installation of long-lasting energy efficiency measures that will result in reduced energy consumption and lower energy bills of Texas customers across all customer classes. To ensure that the energy savings goals are reached, the commission will implement interim goals at levels below the 10% goal that are to be reached by January 1, 2004. Each utility shall include in its April 1, 2000 rate-filing package for transmission and distribution (T&D) rates, funds for achieving the energy efficiency goal in this rule. On January 1, 2002, when the commission-approved T&D rates go into effect, the standard offer and market transformation programs shall be implemented. During the transition period from January 1, 2000 to December 31, 2001, electric utilities will implement energy efficiency programs that spend all of the demand side management (DSM) funds previously approved in rates.

Utilities shall carry out the energy efficiency programs by providing incentive payments to participating energy efficiency service providers (EESPs), who will market such services to customers. To promote a competitive market, all programs shall offer the same, or standard, incentive payment for each Kilowatt (kW) and Kilowatt-hour (kWh) saved; however, the amount of incentive payment may vary according to customer class in order to effectively reach all customer classes. Inspections, measurement and verification (M&V) procedures, and an initial independent measurement and verification expert (independent M&V expert) review shall be conducted to ensure that the electric utilities' projected savings are achieved, and that the funding expended on achieving such savings is cost-effective. Only energy savings that result from these programs shall be counted toward the 10% goal prescribed by the rule. The commission is also adopting customer protection standards for the energy efficiency programs conducted under the rule.

The commission initiated the rulemaking proceeding on August 19, 1999 under Project Number 21074, *Energy Efficiency Programs*. The commission hosted nine workshops to elicit input from stakeholders on various aspects of the rulemaking. In addition, parties held informal meetings to resolve the issues. In September, the parties chose the Office of Public Utility Counsel, Texas Ratepayers Organization to Save Energy, Frontier Associates, and the commission staff for the rule writing team. The proposed rule was therefore the result of a collaborative effort by all interested parties. At the Open Meeting on October 21, 1999, the commission voted to publish a proposed rule for comments in the *Texas Register.*

On January 10, 2000, commission staff held a public hearing pursuant to §2000.029 of the Administrative Procedures Act (APA). Thirty-four parties attended the public hearing, of which ten provided comments that either addressed provisions set forth in the proposed sections, replied to written comments, or both. Parties represented at the public hearing were the American Council for an Energy Efficient Economy (ACEEE), Austin Energy, Cities within the TXU Electric and Central Power and Light Company service areas (Cities), Clark, Thomas, & Winters APC, Community Action Council of South Texas (CACST), East Texas Cooperatives, El Paso Electric, Greater East Texas Community Action Program (GETCAP), Johnson Controls, Inc., Oak Ridge National Laboratory (ORNL), Public Citizen Texas Office (Public Citizen), Quantum Consulting, New Braunfels Utilities, Office of the Attorney General of Texas (OAG), Office of Public Utility Counsel (OPC), Public Citizen, Public Utilities Board of Brownsville (PUB), RFI Consulting, Shell Energy Services Company, L.L.C. (Shell), Texas Air Conditioner Contractors Association, Texas Industrial Energy Customers (TIEC), Department of Housing and Community Affairs (TDHCA), Texas Ratepayers Organization to Save Energy (Texas ROSE), Vera Consulting, Worsham, Forsythe & Wooldridge, and a coalition of parties

consisting of Central and Southwest Corporation (CSW), Entergy Gulf States, Inc. (EGSI), Environmental Defense Fund (EDF), Frontier Associates, National Association of Energy Service Companies (NAESCO), Reliant Energy (Reliant), Schiller and Associates (Schiller), Southwestern Public Service Company (SPS), Texas Energy Service Companies (TESCO), and Texas Utilities Electric (TXU). To the extent that these comments differ from the submitted written comments, such comments are summarized herein.

Written comments were filed on December 2 and December 13, 1999, and January 13 and January 18, 2000. ACEEE, Cardinal IG (Cardinal), Cities, Customers Union Southwest Regional Office (Customers Union), CSW, EDF, EGSI, Enron, El Paso Electric Company (EPE), Enron, Frontier Associates L.L.C. (Frontier), NAESCO, Nucor Steel (Nucor), OAG, OPC, Planergy, PUB, Reliant, Schiller, Shell, SPS, Texas A&M University System Energy Systems Laboratory (ESL), TDHCA, TESCO, TIEC, Texas Legal Services Center (TLSC), Texas ROSE, Texas-New Mexico Power Company (TNMP), TXU, UCONS-Texas and L.L.C. (UCONS) filed written comments and reply comments. Unless indicated otherwise in the summary, OPC and Cities filed joint comments and are referred to as OPC/Cities. ACEEE, Customers Union, Public Citizen, TLSC and Texas ROSE also filed joint comments and are referred to as Joint Public Interest Groups (Joint Public Interest Groups).

In addition to regularly filed comments, OPC also filed a report prepared by J. Kennedy & Associates, Inc. entitled *DSM Programs in a Competitive Market*. Parties were given the opportunity to provide comments on this report outside the regularly scheduled comment period.

At the public hearing on January 10, 2000, a coalition of parties consisting of CSW, EGSI, EDF, Frontier, NAESCO, Reliant, Schiller, SPS, TESCO and TXU (Coalition) presented a coalition agreement regarding the energy efficiency rule. All parties within the coalition had already filed comments of a similar nature during the comment period. Due to the nature and extent of the Coalition agreement, the commission allowed parties outside the Coalition to respond. The majority of the respondents expressed dismay over the fact that the Coalition operated outside the process, did not include representatives of customers and non-affiliate, competitive retail electric providers in the discussions, and that the agreement violated many of the compromises reached during the consensus building process.

Comments on specific questions in the preamble of the proposed rule

In the preamble, the commission requested that interested parties address ten issues related to the implementation and final development of the proposed rule. The parties' responses to the issues are summarized below.

Issue Number 1: What should be the cap on the utility's administrative and measurement and verification costs?

Most utility respondents advocated no cap or a flexible cap. EGSI, Reliant, SPS, TNMP, and TXU stated that the rule should not impose a cap on a utility's administrative and M&V costs. These parties reasoned that these costs would depend on the utility's level of involvement, would vary significantly by program type, and would change with the maturity of the program. EGSI stated that any cap that is set on a general basis at this time would simply be arbitrary and could adversely impact both the utility and the customer. SPS and TXU recommended that the rule not include a firm cap on administrative and M&V costs, because at this early planning stage of a new, innovative program, it is difficult, if not impossible, to identify with any certainty the level of expenditures that will be necessary to meet the goal and comply with the rule. SPS and TXU further stated that rather than arbitrarily determining a firm cap before utilities have been able to evaluate the provisions adopted by the commission relating to administration and M&V, they proposed these costs should be required to be "reasonable". SPS and TXU proposed that those costs be justified in the utilities' April 2000 rate filing. According to SPS and TXU such flexibility is necessary and prudent to allow utilities to attain the energy efficiency goal in the most cost-effective manner. Reliant stated that the application of the cost-effectiveness test using utility-estimated administration and M&V costs would result in the appropriate overall program cost.

CSW, Shell, PUB, TESCO, NAESCO, Cardinal, ESL, OPC, and Joint Public Interest Groups indicated that there should be a cap. Shell, PUB, ESL, and Cardinal were unable to specify a level for the cap. Both Cardinal and Shell, however, were concerned that without a cap, the regulated utility would not have any incentive to hold down the cost, and escalating administrative and M&V costs will impede the competitive market. PUB stated that the cap should be flexible enough to allow the utility to recoup its costs plus a reasonable rate of return. ESL stated that the cost should be equivalent to what the utilities currently spend on metering the energy they sell to the customer. CSW proposed that the cap on the utility's administrative and M&V costs (exclusive of the costs of the statewide M&V auditor (independent M&V expert)) be 20% of total program costs initially. CSW further proposed that as the utility gains experience with the new programs, the cap might be adjusted as appropriate. TESCO proposed a 10% cap for mature programs but acknowledged that a higher percentage may be necessary during the years leading up to January 1, 2004 when the utilities are building their programs. NAESCO proposed that these costs should not exceed 5.0% of total program costs. OPC/Cities proposed a cap of 10-15%. Joint Public Interest Groups, based on the expenditure levels in New York, California, and the Northeast, and the reduction in utility's historical role in administering energy efficiency programs, stated that the cap should be 10%, with only 1.0% to 2.0% of that amount to be spent on the independent auditor (independent M&V expert). In reply comments, NAESCO raised its recommendation for the cap from 5.0% in its original response to 10%.

The Coalition stated that the rule should not include a cap on administrative costs. The Coalition believed that appropriate administrative budgets might differ among utilities due to the mix of programs offered by utilities, the maturity of their programs, the scale of their programs, and the characteristics of their service areas. The Coalition proposed that the administrative cost budgets should be included in the utility's energy efficiency plans and should be reviewed by the commission in connection with the review of the plans. The Coalition also proposed that the utilities be allowed to submit revisions to their administrative and M&V budgets. OPC, Cities, TIEC, Shell, and Enron filed joint reply comments (Joint Reply). Both Joint Public Interest Groups and the Joint Reply opposed the Coalition proposal. The Joint Reply stated that the proposal is completely at odds with the consensus agreement reached by the original parties, including members of the Coalition, during the energy efficiency workshops to support the caps. The Joint Reply also stated

that OPC, Cities, and TIEC would not have accepted the cost-effectiveness methodology in the proposed rule if it were not for the inclusion of incentive caps.

The commission believes that there should be a cap on administration and M&V costs. Without a cap, utilities will have little incentive to control the costs of administration and M&V. Although the program as a whole, including the costs of administration and M&V, must be cost-effective, more funds spent on administration and M&V means less funds available for actual energy efficiency measures. This will discourage long-term, comprehensive projects. Without a cap, if the costs of administration, inspections and M&V fluctuate among utilities and over time it will raise the cost of the program. These energy efficiency costs are included in the T&D rates. Therefore, the commission concludes that higher energy efficiency costs will result in higher T&D rates and impair competition.

The caps proposed by some of the parties range from 10% to 20%. The commission finds that the utility's role under this rule is narrower than its historical role in administering DSM programs. The utility's role in M&V is limited to on-site inspections. M&V will be conducted by the EESP, and shall be funded through the incentive payment. The EESP will therefore have an incentive to keep down the cost of M&V. The cost of the independent M&V expert is included in the utility's administrative cost. The commission finds that there are a number of both publicly and privately funded programs with similar administrative and M&V requirements on which to base a reasonable allowable cost level for administrative and M&V activities. The commission acknowledges, however, that there is a need for flexibility, as the costs for administration may vary by program type, and may be higher during the early years of program implementation. Therefore, the commission will set the administrative costs as a percentage of total program cost. The cap applies to all contracts in the aggregate, not to individual contracts. The commission seeks to reduce the need for regulatory oversight in reviewing individual program budgets and expenditures, and will, therefore, not request utilities to justify administrative budgets and expenditures at or below the applicable cap. The commission concludes that a cap of 10% until December 31, 2003 and 5.0% thereafter, minimizes administrative costs, while allowing some utility flexibility. The commission has revised §25.181(k) and (l) accordingly.

Issue Number 2: Energy efficiency programs will be funded through a charge in the T&D rates that will be adopted following the utilities' April, 2000 rate filing. Should the commission adopt a mechanism for timely cost recovery if the utility can demonstrate that it needs to spend more than what is approved in the rate order to meet the goal? Should utilities be allowed to rollover unspent funds from one year into the following program year? If so, under what circumstances?

EGSI, Reliant, TXU, SPS, PUB, and NAESCO favored a mechanism such as a timely cost recovery factor (TCRF) once a utility has demonstrated that, to meet the goal, it will need to spend more than what is approved in the rate order. CSW did not favor a TCRF, and instead proposed limited rate cases to true up energy efficiency program costs. Shell opposed a TCRF and any costs that may reduce the differential between the price-to-beat and the T&D rates, referred to as the headroom, and therefore stifle competition. OPC/Cities and TIEC opposed a TCRF because it would amount to piecemeal ratemaking, and it would take away any incentive to control costs. OPC/Cities and TIEC argued that utilities will have the opportunity to include energy efficiency expenditures in their rates at the time of the rate filing. Joint Public Interest Groups saw no justification for cost recovery beyond the standard rate-filing package. TNMP stated that a TCRF would not be needed if utilities were allowed to set energy efficiency funding at 100% of avoided costs for budgetary purposes. If 100% of avoided costs either failed to achieve or exceeded the energy efficiency goal, TNMP proposed to reexamine the standards. EDF did not favor automatic cost adjustment but instead proposed a system of rewards and penalties for performance.

In reply comments, EGSI rejected EDF's performance-based compensation proposal, arguing that utilities cannot be made responsible for the performance of the EESPs they hire to install the measures. EGSI also rejected TIEC and OPC/Cities' argument that the utilities will have an opportunity to include their costs in their T&D rates at the time of the rate filing, arguing that the rate filing will occur early on and the utilities won't be able to accurately project the energy efficiency program costs. EGSI suggested that a power cost recovery factor (PCRF) is the only way for EGSI to fund energy efficiency programs during the transition period since they do not have DSM expenditures included in their current rates. Shell agreed with OPC/Cities and TIEC and rejected the argument that the utilities won't know their cost at the time of the T&D rate filing, arguing that utilities have experience administering DSM programs that resulted from the integrated resource planning (IRP) process. OPC/Cities and TIEC added that allowing a flow-through of costs would serve to enrich the utilities in the absence of a complete review of utility costs and revenues, because the regulatory lag has historically allowed the utilities to retain excess earnings. OPC reiterated its objections and added that utilities have historically been able to utilize mechanisms to deal with the over- or under-recovery of funds from year to year.

The Coalition proposed to create a second set of books for DSM programs for the purpose of a periodic cost reconciliation and rate adjustment. The Coalition pointed out that PURA §36.204(1) allows for timely cost recovery, and that a number of other utility costs, like energy efficiency costs, will change on an annual basis and require rate adjustment. With a rate adjustment mechanism, the Coalition asserts, utility budgets could start out low as long as there is flexibility for adjustment if the energy efficiency goal is not met. This would avoid having to set rates too high initially, or having to undertake major rate cases later. The Coalition suggested an expedited approval process for such rate adjustment, and suggested using the Colorado Commission's procedure as a model, but did not explain what that procedure involves. In their joint response to the Coalition, OPC/Cities, TIEC, Shell, and Enron stated that there is nothing in the legislative history of SB 7 that supports the premise that energy efficiency qualifies for such extraordinary treatment. They reiterated that the proposal results in further stifling competition–exactly the antithesis of SB 7's goal of robust competitive opportunities for all customer classes. They stated that the Colorado method, whatever it is, has no support in the record of this proceeding. Joint Public Interest Groups also disagreed with the Coalition, saying that the funds necessary to meet the energy efficiency goal will be included in the rate-filing package and reviewed on a case-by-case basis. As far as the transition period, they added that most utilities already have an allowance in their rates for demand-side programs that may be sufficient for meeting the energy efficiency goal. If additional funding is required, they contended

it is the responsibility of the utility to make the funds available within its current rates.

EGSI, TXU, SPS, CSW, TEESP, and NAESCO favored the rollover of unspent funds collected in one year into the following program years if needed to implement and administer contracts. Joint Public Interest Groups agreed but argued that the rollover would require full justification. CSW and Shell stated that if a utility's spending exceeds its budget in any one year, unspent funds from another year should be used to compensate. Reliant and TNMP noted that there are a number of possible reasons for funds not having been spent and suggested that the issue should be reviewed on a utility by utility basis. OPC/Cities opposed the rollover of unspent funds that can be credited back to customers.

The commission finds that neither a timely cost recovery mechanism nor recurring limited rate cases to reconcile the costs of energy efficiency programs are warranted at this time. The commission is concerned that such mechanisms would let T&D rates creep up, thereby reducing the differential between the price-to-beat and the T&D rates. Reducing this differential would impair competition to serve residential and small commercial customers and provide less certainty to the market during the initial years of competition. A mechanism that guarantees the utility cost recovery for increases in energy-efficiency costs would also eliminate any incentive for utilities to control their costs. The commission is also cognizant of the "piecemeal rate-making" arguments advanced by the commenters that opposed these mechanisms. If energy efficiency program costs increase, these mechanisms could lead to inflated rates for T&D service.

The rule that the commission is adopting will give T&D utilities considerable certainty with respect to the budget for energy efficiency programs. The rule includes caps on the incentive payments for various groups of customers and caps on administrative and independent M&V expert costs. These caps should permit the utility to develop its energy efficiency budgets with considerable certainty, using the projected growth in demand and the caps for incentive payments, administrative costs, and independent M&V expert costs. During the workshops, the utilities demonstrated that they have adequate access to the expertise necessary to develop savings projections and energy-efficiency programs that are suitable for Texas. The utilities will be in a position to develop their budgets using such savings projections.

Under normal ratemaking procedures, a utility is not under an obligation to refund revenue that, for a specific item or in the aggregate, exceeds the approved revenue requirements. The commission has concluded, for reasons that are described above, not to adopt a special cost-recovery mechanism for energy efficiency costs. If no such mechanism is adopted, there will not be a mechanism for returning unspent funds to customers. The commission believes that expenses and revenues identified in a rate order for energy efficiency programs should be separately tracked. The commission also concludes that it is reasonable to allow a utility to roll over unspent funds from one year to the next under certain conditions. If a utility has proposed a change to its energy efficiency plan that requires an increase in costs, and the commission has approved the change, the utility can use unspent funds from a prior year to cover the additional approved costs. Additionally, the commission agrees that there may be legitimate reasons for a utility to spend less in a year than the commission has authorized for energy efficiency programs, such as the lag time in initiating new programs. Where the utility's expenditure for energy efficiency purposes exceeds 110% of the authorized funding level or is less than 90% of the authorized funding level in a year, the utility must include an explanation for this in its next energy efficiency report. Funds not spent within a given year should be spent on energy efficiency the following year, and the commission can consider utilities' requests to roll over unspent funds on a case by case basis in connection with the utilities' annual energy efficiency report filing. The commission adds new §25.181(h)(5) accordingly.

Issue Number 3: The energy efficiency programs will be subject to review by an independent auditor to verify the accuracy of the savings. What should be the consequences, if any, for the utility if verified savings prove to be less than the projected savings?

PUB, Cardinal, CSW, EGSI, EGSI, OPC-Cities, Reliant, Shell, SPS, TESCO, TNMP, Joint Public Interest Groups, and TXU commented that penalties should not be assessed unless the utility fails to properly implement and administer the contract. Several parties commented that remedial measures were appropriate to correct future discrepancies. CSW commented that if the utility properly performed its contract administration role and other functions, the only consequence for the utility should be to take any appropriate remedial steps in the selection and implementation of future contracts to ensure future projected savings are achieved. OPC/Cities added that if the commission determines the shortfall is a result of fraudulent behavior by the energy service provider or the utility, measures should be taken to punish the responsible parties to the extent permitted by current law. OPC/Cities further commented that if the inaccuracy of the savings results from misrepresentations made by the EESP, then the utility should have the option–with commission approval–to discontinue accepting contracts from the provider.

TNMP supported a cooperative investigation into program failings by the commission and the utility, but TNMP and SPS commented that it would be unfair to penalize utilities for market events that are outside their control. OPC/Cities also requested that the projection methodology be adjusted to correct any discrepancy between projected and verified savings and that the consequence of any shortfall should only affect future goals, and that the utility should not be forced to compensate for past savings that may have been over-estimated.

TESCO commented that it may be enough to simply require that starting January 1, 2004, the utility's goal for energy efficiency shall be cumulative; for example, if the utility achieves only 10 MW of savings and its goal is 12 MW, then its goal for the next year grows by 2 MW. CSW contended that if negative consequences were imposed against utilities that do not achieve the projected savings, then utilities would not undertake market transformation programs that pose benefits as well as risks related to M&V. Reliant commented that the utilities' risk should be commensurate with the opportunity for reward. Reliant commented that rewards should be available commensurate with the risk undertaken by the utilities if the utility exceeds its projected savings. Shell disagreed with Reliant, commenting that utilities should not be rewarded for exceeding the goal because it would encourage disproportionate spending by utilities on energy efficiency programs, further increasing the price to beat (the commission assumes Shell means reducing the headroom).

EGSI contended that the results from M&V should be used by the commission to fine-tune forecasted estimates of program savings. TNMP commented that if a discrepancy between projected and actual savings occurs because either the deemed savings amounts approved by the commission are erroneous, or the commission-approved standard offer contract is flawed, then the process by which the commission approved the deemed savings and M&V protocol should be corrected. EGSI suggested that adjustments be made in response to the annual reports required in the proposed rule.

NAESCO commented that the public has the right to expect that its rate dollars dedicated to energy efficiency will buy measurable, verifiable energy savings. However, NAESCO suggested that if a contract administrator delivers half of the expected savings, the commission should reduce the payments to the utility gradually during the transition period, rather than penalize the utility. Reliant disagreed with NAESCO's concept of pay-for-savings. TNMP commented that if an EESP fails to properly administer its M&V obligations under the contract, then provisions to prevent or correct the failure should be built into the standard offer contract, requiring EESPs to maintain a performance bond to compensate utilities for savings that are not realized. EDF commented that if savings are not achieved, the EESP should not receive incentive payments and the money can be diverted to other contracts. TESCO disagreed and stated that the utility must be required to spend all the money it collects for energy efficiency on energy efficiency programs.

EGSI, TXU, Reliant, and CSW commented that it is the EESP's responsibility to assure that the savings are achieved as promised. CSW commented that to rule otherwise would be unnecessarily punitive and would place the utility in the impossible role of being a 100% guarantor of the contracts. EGSI contended that under the terms of the proposed rule, a utility's role is limited in such a manner that it cannot be held accountable for projected savings.

EDF commented that the contract between the utility and the EESP should require the EESP to guarantee savings before being paid and that if contracts do not guarantee savings, then the utility should be liable for those programs and the expenditures should not be allowed in rates. TESCO also commented that the EESP is responsible for providing savings under whatever contractual and programmatic requirements are laid out by the utility administrator. However, TESCO clarified that if the utility's contractual requirements or enforcement is insufficient to assure such savings reliably, then the utility should make changes to correct such problems. TESCO contended that if the utility's programs are not leading to a level of savings commensurate with the utility's projected savings from their contracts, and funds are not being spent, the auditor (independent M&V expert) or the utility, with the input of the Working Group (energy efficiency implementation docket), should recommend and undertake other needed changes.

TNMP commented that because of the large potential for variance between projected and actual savings, the trigger for an investigation should be a substantial variance, at least 15%, for the entire sampled population of standard offer participants. SPS recommended that if verified savings are more than 10% below the savings claimed by the utility, then the utility should provide a written explanation for the discrepancy and the measures it will take to correct this problem.

NAESCO contended that the transition period will allow utilities to make adjustments in their management procedures to effectively deal with performance risk, or to petition the commission for relief from program administration responsibilities.

Several commenters noted that if projected savings were based on deemed savings previously determined and approved by the commission, no penalty should be assessed. Rather, they suggested that the deemed savings values be reviewed and possibly adjusted. Regarding deemed savings, CSW commented that those savings are determined in advance and need no further measurement and that due diligence on deemed savings should be conducted before utilities implement contracts using the values, not after.

Joint Public Interest Groups commented that it would support additional rulemaking concerning performance-based adjustments. EGSI disagreed with Joint Public Interest Groups that additional rulemaking should be done for performance based adjustments, claiming performance-based measures are inappropriate in this rulemaking.

Shell, Joint Public Interest Groups, and PUB commented that each case should be handled on a case-by-case basis under PURA Chapter 15, taking into consideration all circumstances and factual information. Shell also stressed that penalties were necessary only for failure to administer the contract properly, particularly since the utilities actively sought control of these contracts and should be held accountable. Reliant disagreed with Shell that incentives are needed through penalties to ensure goals are met, because the utility will not be able to actively manage the EESPs to see that savings are actually achieved. Joint Public Interest Groups added that the rule should specifically address enforcement provisions for energy efficiency performance.

Overall, the comments reflected a general consensus that the EESP is responsible for achieving the promised savings under the contract, and that the utility is responsible for proper administration of the contract. One of the critical functions of this rule is to provide the necessary framework to assure that the expectations of Texas customers to reduce energy costs and system demand are met. The commission finds that the revised rule sufficiently addresses the responsibility of both the EESP and the utility, and that since the commission will have reviewed and approved the utility's energy efficiency plan and the funds necessary to implement that plan, no consequences are necessary in the event the utility's projected savings are not achieved. The commission therefore deletes §25.181(m) relating to enforcement.

The commission however agrees with PUB, Cardinal, CSW, EGSI, EGSI, OPC/Cities, Reliant, Shell, SPS, TESCO, TNMP, Joint Public Interest Groups, and TXU that penalties should be assessed if the utility fails to properly implement and administer the program. However, the commission also acknowledges, as TNMP and SPS pointed out, that it would be unfair to penalize utilities for market events that are outside their control. In the event a utility consistently fails to properly administer its program, the commission may designate a different administrator.

The commission agrees with TESCO that if a utility's programs are not meeting the utility's projected savings, the independent M&V expert or the utility should recommend and undertake changes. The commission disagrees with CSW that utilities should not be held accountable for deemed savings once they are approved by the commission. Deemed savings should

be verified, reviewed, and adjusted as needed to provide the savings intended to be achieved.

The commission also finds merit in the comments of TNMP that if deemed savings approved by the commission are erroneous, or the commission-approved standard offer contract is flawed, then the process by which the deemed savings and M&V protocol were developed should be modified.

With respect to administrative penalties, the commission agrees with OPC/Cities that the utilities may face penalties at any time for violating a commission rule or order in administering its contracts with the EESPs. The commission agrees with Shell, Joint Public Interest Groups, and PUB that enforcement provisions under PURA Chapter 15 are the appropriate manner in which to evaluate and assess, if necessary, administrative penalties.

The commission concludes that if a pattern of poor performance emerges on the part of an EESP, such as failure to achieve projected savings under a standard offer contract, then the utility should address the problem, including disqualifying the EESP from further contracts under the energy efficiency program. The utility is ultimately responsible to customers, and thus, should develop mechanisms for ensuring performance from the EESP.

In the event the discrepancy between projected and actual savings is the result of protocols or methodology used in the M&V requirement or in the development of deemed savings, the independent M&V expert shall make recommendations in its initial report to address this matter. The independent M&V expert should identify problems early, thus addressing the concerns expressed about the utilities' responsibility for implementing a potentially imperfect commission-approved methodology.

The commission concludes that because the independent M&V expert will study utility and EESP programs and performance, and report to the commission, that it is not in the public interest to set a threshold for initiating an investigation of a utility's program. The level and depth of a review should be determined by the utility's performance as reflected in its energy efficiency annual report. This flexibility gives the utilities assurance that each program will be evaluated on its own merits.

The commission anticipates that the programs and methodologies may need adjustment as the market evolves and thus the rule provides for the utilities to request adjustments to their programs on their own initiative. As currently proposed, the rule does not require the utility to be a 100% guarantor for energy savings. Rather, utilities are responsible for developing a program that is consistent with this rule and for administering the standard offer and market transformation contracts. In administering these contracts, the utilities necessarily must evaluate the performance of the EESPs, to ensure that the programs achieve energy savings in a cost-effective manner.

The commission disagrees with EDF and NAESCO's recommendation that utilities should be paid only for the savings that are achieved and that unspent funds should be diverted to other programs. The commission finds this suggestion inconsistent with the utility's role under this rule and with general ratemaking procedures. The commission finds that pursuing performance-based adjustments should be made in a separate rulemaking and is not appropriate at this time. Similarly, rewards for exceeding projected savings are not anticipated in PURA. The commission agrees with TNMP that if an EESP fails to properly administer its M&V obligations under a contract, then provisions to prevent or correct the failure should be built into the standard offer contract. However, the commission disagrees that this should be prescribed in the rule. The energy efficiency implementation docket prescribed under subsection (m) may address this issue.

Issue Number 4: Contracts under the standard offer program will not be awarded through a competitive solicitation, but will be awarded in the order the project proposals are received. This mechanism potentially limits the ability for the utility to control the quality of participating contractors. Should the rule provide for minimum criteria for contractor participation?

CSW, EGSI, Reliant, TXU, PUB, Shell, TESCO, NAESCO, OPC/Cities, and the Joint Public Interest Groups agreed that there should be minimum criteria for contractor participation. Most parties recommended the following minimum criteria: 1) evidence of financial strength and capability (e.g., 10-K's for public companies and audited financial statements for private companies); 2) demonstration of professional experience; 3) demonstration of a solid work plan that covers the design, implementation, operation, and management of the project; 4) proof of all necessary insurance; and 5) a performance bond. EGSI noted that the "first come, first served" concept conflicts with the ability to control the quality of participating contractors. EGSI and SPS stated that the criteria should be spelled out in the program guidelines rather than the rule.

SPS did not specifically recommend criteria for contractor participation, but proposed the establishment of a statewide registration system for EESPs. NAESCO proposed that objective criteria might include use of the Department of Energy and Department of Defense qualification lists or the NAESCO accreditation list.

Enron and OPC noted that the criteria could be used to manipulate the process and set up barriers to participation by non-affiliate EESPs. TNMP was opposed to the establishment of contractor criteria for participation, because the market should set the criteria for participation through a competitive solicitation.

PURA §39.905 contemplates that the goal be achieved through standard offer contracts. Standard offer contracts are not compatible with a competitive solicitation. The commission does not agree that under a standard offer system, the market is a sufficient mechanism to control the quality of contractors, particularly in the short term. The commission finds that minimum criteria for contractor participation are necessary to ensure reliable service, and assures customers a minimum level and quality of service that should increase customer participation. Ultimately, the success of the program in achieving the 10% savings goal depends upon the capability of the EESPs. The commission acknowledges that criteria for contractor participation may be subject to manipulation to favor a utility's affiliate or create barriers for new EESPs. The commission therefore finds that the rule should specify criteria to ensure a fair process for all participants. The code of conduct adopted by the commission and the adoption of the business separation plans by utilities should also help assure that the criteria are fairly applied. The commission finds that the criteria proposed by the commenters are fair and reasonable and adopts: 1) all applicable licenses required under state law and local building codes; 2) evidence of all building permits required by a governing jurisdiction; 3) evidence of all necessary insurance; and 4) evidence of good

credit rating. The changes have been made under §25.181(i) (previously §25.181(h)).

The commission does not find it necessary to require that contractors be accredited by the state or through NAESCO as a condition for participating in the program. Such a requirement might unduly limit the number of eligible contractors and impair competition in the energy efficiency market envisioned in this rule.

Issue Number 5: Under the standard offer program (SOP), contracts will be awarded in the order that they are received. How should the rule encourage broad participation by all eligible contractors?

EGSI, NAESCO, Reliant, PUB, and TXU generally did not have additional comments for the rule to encourage participation, but stated that utilities will recognize their responsibilities but need some flexibility. They also suggested that market forces would ensure maximum participation. EGSI commented that the commission should not insert itself into the market such that it controls contractor participation beyond what is necessary to assure market neutrality and non-discrimination. EGSI stated that a utility should determine the best manner in which contractor encouragement should be accomplished because the utilities will also be required to work within the limitations of §25.272 (relating to affiliate code of conduct rules). NAESCO commented that the utilities will recognize their responsibility to market their contracts as a necessary part of achieving their energy efficiency goals. Reliant and TXU commented that the proposed rule language requires the utility to conduct informational activities designed to explain the standard offer programs and market transformation programs to EESPs and vendors and requires that all customer classes have access to a proportional or equitable share of the incentive funds. Reliant commented that standard offer contracts will be developed to reach each customer class and therefore will also reach a wide range of contractors. PUB commented that the market would ensure maximum feasible participation by all eligible contractors, so there is no need for additional benefits to contractors.

CSW commented, consistent with its arguments that the rule is too prescriptive, that the rule should not encourage broad participation by eligible contractors. CSW commented that easily accessible information should be all that is required and requiring anything more than properly disseminating information would simply impose regulations in an unregulated energy efficiency market.

Enron and Joint Public Interest Groups commented that the rule needs to have more safeguards. Enron commented that standard offer programs should be market-based and that the rule invites abuse and manipulation because it does not outline how the request for bids is to be announced. Enron suggested a competitive bid process whereby all energy efficiency service providers are simultaneously notified of the request for bids and given a deadline by which to respond. Enron further suggested that the rule should incorporate specific qualifying criteria detailing what constitutes contract awards so that preference is not given by a utility to any one energy efficiency service provider. Joint Public Interest Groups commented that they would like to see a more formal requirement that includes multiple avenues for providing information about the program to encourage contractor participation. Joint Public Interest Groups commented that formal notice, coordination with contractor associations, and training for prospective contractors on the rules of the standard offer program are necessary. Joint Public Interest Groups argued that the training should also include information on how to participate in the programs and should ideally be conducted jointly by the utility and trade associations. Joint Public Interest Groups argued that the utility should be required to provide a detailed proposal in its energy efficiency filing regarding outreach to generate interest in its programs by energy service companies and other entities it will rely on to implement the contract successfully.

TESCO commented that broader participation will be assured by providing sufficient incentive for participation of customers and providers, and keeping program participation simple. TESCO argued that the utilities should provide workshops periodically for contractors, and even do some outreach to contractors to be sure they have access to information about programs.

TNMP, OPC/Cities, and SPS commented that the current limitation preventing an energy efficiency service provider from receiving more than 20% of available standard offer contract funds should encourage broad participation and circumvent the dominance of a few contractors. TNMP commented that efforts to broaden dispersion of funds could direct funds to inefficient EESPs. SPS commented that the design and marketing of the program would have a considerable impact on participation rates. SPS stated that burdensome M&V requirements, onerous contractor participation requirements, long delays in the distribution of incentive funds, and lengthy application guidelines will limit participation by smaller contractors. SPS, however, argued that the foregoing are largely "program design" issues that should not be addressed in the rule.

The commission notes that some parties may misunderstand the legislative requirement for standard offer programs. Under a standard offer program, utilities offer a standard monetary incentive for kWs and kWhs saved by any eligible measure the contractor chooses to install. EESPs will compete with each other for the business of an electric customer that has an energy efficiency need. The legislature adopted the requirement of standard offer programs and the commission does not have broad latitude to restructure the program adopted by the legislature. The commission agrees with Enron and Joint Public Interest Groups that there must be notification of the standard offer contract opportunities and has modified the rule to incorporate such a requirement. The rule directs utilities to conduct informational activities directed toward potential EESPs designed to explain the standard offer and market transformation programs in §25.181(h)(1)(A). These activities are to be funded out of the utility's administrative budget, and should be explained in the utility's proposed energy efficiency plan, which must be approved by the commission. The commission concludes that it is not necessary to further prescribe the level, types, or methods of information activities. The limitation of 20% of the funds available to any one energy service provider for standard offer contracts should ensure maximum contractor participation. However, the 20% limit should not be applicable to market transformation programs due to their unique nature, and §25.181(h)(3) is revised accordingly.

Issue Number 6: As of January 1, 2002, very low-income customers will receive targeted energy efficiency services through the System Benefit Fund. The language in PURA §39.903(f)(2) (relating to the System Benefit Fund) does not require that the program be cost-effective, nor does it require verification of en-

ergy savings. Should these savings be tracked and counted towards the goal in PURA §39.905?

CSW, EGSI, Reliant, SPS, TNMP, PUB, Shell, NAESCO, TIEC, and OPC/Cities responded that the savings should be tracked and counted toward the goal in PURA 39.905.CSW stated that neither PURA §39.903(f)(2) nor §39.905 explicitly state that the System Benefit Fund energy efficiency program should be excluded from the PURA §39.905 energy efficiency goals. CSW argued that it is reasonable to assume that the Legislature intended that, wherever possible, measurable energy efficiency savings derived from the programs funded through the System Benefit Fund should be counted. In addition, CSW argued that subjecting System Benefit Fund energy efficiency to the cost-effectiveness standard in PURA §39.905 is a reasonable interpretation of PURA §39.903(f)(2) and §39.905 because it merely applies a general economic efficiency standard to a program under the System Benefit Fund. NAESCO and OPC/Cities stated that these savings should be counted in order to achieve the goal at the lowest reasonable cost. Shell and TIEC stated that counting these resources would also ensure that there would be no resource overlap. EGSI, SPS, TNMP, ESL, and OPC/Cities contend that the TDHCA already monitors and measures the energy savings through the Princeton Scorekeeping Method (PRISM) and it would not create an undue burden to track the savings for the purposes of the energy efficiency goal. SPS pointed out that since the programs are consistent from year to year, these savings could be tracked through deemed saving calculations.

TXU, TESCO, TDHCA, and the Joint Public Interest Groups commented that the savings should not be measured and tracked for the purposes of PURA §39.905. TESCO stated that this would be contrary to the intent of the legislation, for PURA §39.905 clearly requires utility administrators to acquire "additional cost-effective energy efficiency equivalent to at least 10% of the electric utility's annual growth in demand." The word "additional", according to TESCO, was intended to mean in addition to whatever else the law may require, as well as in addition to whatever else was already being acquired by customers without this initiative. TXU, Joint Public Interest Groups, and TDHCA (the administering agency for weatherization under the System Benefit Fund) maintained that such a task would not be cost-effective. These parties stated that the programs strike a delicate balance between monitoring activities and measure installation, while maintaining the cost-effectiveness of the overall program. Both Joint Public Interest Groups and TDHCA stated that while TDHCA does monitor energy savings on a statewide basis, doing so on a utility-by-utility basis would increase the cost of administration. Moreover, TDHCA comments that the programs are designed to reduce energy costs, not capacity costs, and while these savings are very meaningful to the program participants, the actual energy savings are not great and the capacity savings are minimal. TXU, Joint Public Interest Groups, and TDHCA agreed that it therefore would not be cost-effective to track these savings and imposing such a requirement would jeopardize the overall cost-effectiveness of the program.

In reply comments, OPC and EGSI agreed with SPS that utility-specific extrapolations can be made, based on statewide data, especially if deemed saving calculations are applied. OPC also questioned why parties would allow utilities to count the savings achieved under current low-income energy efficiency contracts, but are opposed to counting the savings achieved under the System Benefit Fund. Joint Public Interest Groups countered that the Legislature recognizes energy assistance, including weatherization, as part of the safety net that must be offered to assure affordable service to low-income customers. Therefore Joint Public Interest Groups believes that the System Benefit Fund recognizes that the low-income programs are different from other demand-side management programs and should not be subject to the same standards as other demand-side programs.

During the APA hearing, GETCAP, a local weatherization provider, emphasized that the low-income program is already overburdened by regulations and is already monitored more intensely than any other program. GETCAP expressed the concern that additional requirements would harm the program's ability to deliver the services.

The commission believes that the energy efficiency goal should be achieved at the lowest possible cost in order to preserve the competitive headroom. Until December 31, 2001, utilities will be allowed to count any additional savings achieved under all current contracts that meet the requirements of §25.343, relating to Competitive Energy Services. The primary purpose of the current low-income programs is to reduce the energy consumption and energy costs of low-income customers. The programs are, therefore, designed to reduce energy, not capacity, and the capacity savings may, in fact, be minimal. However, to the extent that the programs do reduce capacity, these savings should be counted towards the goal.

As of January 1, 2002, PURA §39.903(f)(2) allows for funds collected under the System Benefit Fund to be used to provide weatherization services to low-income customers in coordination with the TDHCA Weatherization Assistance Program. PURA §39.905 calls for energy efficiency savings equivalent to at least 10% of a utility's demand growth through market-based standard offer programs and limited, targeted market transformation programs. At this time, the TDHCA weatherization program installs only energy efficiency measures that produce kWh savings benefits greater than the cost of the measure. The design for the programs under the System Benefit Fund should maintain a cost-effectiveness standard that will encourage energy savings and maintain the current level of quality of service. This cost-effectiveness standard may be a different standard from the cost-effectiveness standard in this rule. In addition, the programs to be offered under the System Benefit Fund should not substantially affect the current service delivery and contracting structure. The commission, therefore, finds the program under the System Benefit Fund as it pertains to the contracts between TDHCA and local weatherization providers qualifies as a standard offer contract, and that the savings under the System Benefit Fund should be counted towards the energy efficiency goal under PURA §39.905. The commission has revised the definition of standard offer contract under subsection (c) to reflect that the TDHCA weatherization program will be considered a standard offer contract for the purposes of this section.

Issue Number 7: The goal of the market transformation program is the increased adoption of energy efficiency technologies, services, and practices. Should utilities be allowed to continue to count the savings after the market has been transformed? How should market transformation be evaluated and should the rule address evaluation of market transformation programs?

Cardinal and Joint Public Interest Groups strongly supported market transformation programs and commented on various differing requirements for these types of programs. Cardinal commented that savings from market transformation programs may continue after the market has been transformed and that such savings should be deemed in advance and credit given in each year that the contract is properly implemented. Cardinal commented that specific M&V should not be required for market transformation programs and that such programs should be encouraged as a counterpart to a standard offer program for the same type of technology. Joint Public Interest Groups commented that organizations implementing market transformation programs must first establish goals and objectives for each market being transformed, and then develop a baseline characterization of that market. The baseline characterization typically includes projected energy use in the absence of a program and characteristics of the market, which include market structure, market actors, key strategies to influence market actors, etc. Joint Public Interest Groups recommend that the rule require that a market transformation program plan should include the goals and objectives of the program, estimated energy savings, and measurement and evaluation metrics and methods. The plan should be submitted with the energy efficiency plan filing. Joint Public Interest Groups further commented that if market transformation program goals are met before a program sunsets, utilities should be allowed to count the additional savings that accrue between the time the goal is achieved and the end of the program.

CSW, EGSI, Reliant, TNMP, and PUB commented that utilities should generally be allowed to continue to count the savings beyond the end of the program. CSW commented that utilities are just learning how market transformation programs operate and how they are evaluated. CSW commented that the rule should not address how market transformation programs should be evaluated, but rather utilities should have the flexibility to learn about market transformation programs and try new programs. EGSI commented that if savings from a market transformation program have been used to satisfy PURA §39.905 goals, there should not be an attempt to retroactively "take-away" those savings. EGSI argued that this would create an administrative nightmare and impose an unreasonable requirement. Reliant commented that the impacts of market transformation programs might take years to achieve, with considerable investments in the early years. In its view, long-term savings are necessary for these programs to be cost-effective. Reliant further commented that it might be premature to specifically address the evaluation of market transformation programs in the rule because at this time even basic determinations such as baseline efficiencies have not been established. Reliant further commented that such issues might be appropriate for the Working Group (energy efficiency implementation docket) to address. TNMP commented that utilities should be allowed to continue counting savings for the life of all incremental measures installed. TNMP commented that the method for determining incremental measures should begin with the hypotheses proposed by the market transformation bidder who illustrates the normal market transformation curve of the proposed technology, then justifies a new market transformation curve that results as a consequence of the proposed program. TNMP commented that the value of the benefits could include the cumulative present value energy savings for all incremental kWh savings produced.

NAESCO, TXU, and OPC/Cities commented that utilities should not be allowed to continue to count the savings beyond the end of the program. NAESCO commented that there is no reason to hold market transformation programs to a lower standard of performance than the standard offer programs. NAESCO commented that utilities should get credit only for the specific energy savings that its programs produce and not the general "halo effect" of changes in the marketplace. NAESCO noted that giving utilities credit for more savings than the specific savings that can be measured from their programs should be avoided because determination of such additional savings involves a level of market research and analysis that is well beyond the technical and economic resources of the programs envisioned by the proposed rule. TXU commented that the prospects for market transformation programs in this new energy efficiency market is uncertain at best. TXU argued that there is no firm understanding of how and when to count savings from market transformation programs, so the most conservative approach is not to allow utilities to count savings after the market has been transformed, because once the market has been transformed, the objective of the market transformation program has been accomplished. TXU further commented that the Working Group (energy efficiency implementation docket) should address evaluation of market transformation programs, not the rule, because the programs will vary greatly in their substance and methodology, which makes the evaluation process complex and in need of flexibility. OPC/Cities commented that utilities should only continue to count the savings if they modify the programs in such a way to generate an increased degree of market transformation or if the market is transformed to a higher efficiency after the original target has been met.

Joint Public Interest Groups, SPS, and TESCO commented that market transformation programs must be evaluated on a case-by-case basis. Joint Public Interest Groups commented that because markets and intervention strategies for different products and services vary substantially, it is critical that the information provided in the energy efficiency plan specifically address energy savings and how they will be credited toward the goal. SPS commented that the broad and diverse spectrum of market transformation efforts requires a different evaluation approach and different means of quantifying impacts. SPS commented that providers who wish to propose market transformation programs should be required to include an M&V approach and some means of quantifying the impacts of their program. TESCO commented that although utilities should be encouraged to pilot different market transformation programs, commission approval should be required before savings associated with a particular program are allowed to count toward the utility's goal. TESCO commented that generally, each market transformation program will be different, and each should be implemented under an overall plan that identifies its particular target audience or technology, the mechanism to overcome market barriers, savings anticipated, how the savings will be monitored or verified, and the time period over which program costs and savings will be measured.

The commission concludes that market transformation programs need special consideration in their design and M&V. The commission also agrees that the expertise of independent bidders regarding market transformation programs should be utilized in developing program proposals and that the rule should not be too prescriptive regarding program details. The commission believes that the only way to measure savings is if a baseline that is relevant in time and geographic region is first established, and that it is appropriate to require such a baseline

in market transformation program proposals. A proposal must also include criteria for determining that the market has been transformed and when savings cease to be counted. A market transformation program proposal must also include projected savings throughout its implementation until the goal is reached, and a mechanism for assessing the program's success. The commission will allow utilities to count a program's savings towards the mandated reductions in energy consumption for the relevant time period, if the savings can be verified. The commission reaffirms that the ultimate goal of market transformation programs is behavioral changes that result in energy and capacity savings. A follow-up study may be necessary to evaluate the actual savings achieved. Accordingly, the commission modifies the rule under §25.181(j) to reflect the changes.

Issue Number 8: Should the rule be prescriptive in setting goals or participation levels for individual customer classes? If so, should these goals be expressed in terms of the share of energy savings or in the share of incentive funds allocated to each customer class?

CSW, EGSI, Reliant, SPS, TNMP, TXU, PUB, and Nucor responded that the rule should not be prescriptive in setting participation goals for customer classes. They further stated that setting specific goals by customer class would be arbitrary and could increase the cost of achieving the goal. According to these parties, participation by customer class should be determined by the competitive market place and be driven by achieving the 10% savings goal at the lowest possible cost. SPS and Reliant did, however, recognize that some classes of customers or market segments might be difficult to reach because no energy efficiency provider will seek to serve them. Nucor argued that PURA §36.003 forbids applying rates among customer classes in an insufficient, inequitable, or inconsistent manner and forbids the establishment of unreasonable differences concerning rates between classes of service. Therefore, Nucor argued that setting goals for participation levels is inconsistent with Texas law.

TESCO and NAESCO stated that some level of incentive funding should be reserved for the hard-to-reach customer, such as residential customers. OPC/Cities also recognized the importance of program penetration across all customer classes. All three parties cautioned that the rule should remain flexible enough for the programs to respond to the marketplace. Joint Public Interest Groups and EDF stated that the rule should be prescriptive in setting participation goals. EDF believed that an allocation among customer classes is appropriate and should be established in the rule because PURA §39.905 was established to account for market failure in the provision of energy efficiency services. EDF also argued that the degree of market failure is far greater for residential customers than industrial customers. Joint Public Interest Groups agreed with EDF. Joint Public Interest Groups proposed that, initially, the incentive funds be allocated based on each sector's contribution to revenues as reflected in the Statewide Integrated Resource Plan. If the commission adopts participation goals, TXU and OPC/Cities agreed that the goal should be set in terms of share of the funds, rather than share of energy savings per customer class. Only PUB proposed setting the goal in terms of the energy savings.

In its reply comments, NAESO commented that no party has offered factual proof that the proportional allocation of funds by customer class makes the energy efficiency goals more achievable.

Frontier agreed with Nucor that it is a basic rate-making principle that cross-subsidies among rate classes should be minimized. Consequently, Frontier agreed that each customer class should receive incentive payments in proportion to the percentage of funds contributed by that class for energy efficiency programs.

Both NAESCO and TESCO expressed concern over breaking up standard offer programs into smaller programs targeted at customer classes. NAESCO argued that broader programs allow for greater flexibility and increased creativity, and recognize the geographical disparity of available energy efficiency resources.

The Coalition commented that the rule should require utilities to demonstrate through their Energy Efficiency Plans how they will ensure that all customers in all customer classes have access to energy efficiency funds, but it disagreed that allocation by classes is appropriate.

PURA §39.905 states that *all* customers, in *all* customer classes, are to have a choice of and access to energy efficiency alternatives that allow *each* customer to reduce energy consumption and energy costs. Therefore the commission finds that that the rule should deliver equity of energy services among customer classes, but maintain maximum flexibility for the utilities to meet the goal in a cost-effective manner. The commission finds that a specific energy efficiency requirement should only be required for the hard-to-reach customers. At this time, the definition of hard-to-reach customers is limited to customers who have an annual household income at or below 200% of the federal poverty guidelines. The rule does not require strict individual customer income verification. Utilities may use other methods as long as they reasonably assure that participants are income eligible. Such methods may include self-certification for individual customers or sponsoring projects where over 75% of the customers residing in a multi-family complex are income-eligible. Should the annual energy efficiency reports show that other groups of customers, such as tenants, are not served, the commission may expand the definition to include these underserved customers at that time. Access to energy efficiency services by other customer classes is encouraged through varying incentive levels. However, the rule does not require that each utility implement separate standard offer or market transformation programs for each customer class. Utilities may design programs that serve multiple classes of customers, as long as the program design removes the barriers to energy efficiency services for individual customer classes. The commission has revised §25.181(g)(2) accordingly.

Issue Number 9: The rule requires that residential and small commercial customers have access to a list of participating energy efficiency services providers for the purpose of soliciting multiple bids for services. How should such a list be made available?

TESCO was strongly opposed to the creation of such a list, because it would imply utility endorsement of a particular contractor and might violate §25.272 (relating to the Affiliate Code of Conduct). TXU commented that the utility would be in the best position to compile the list, but expressed concern that making the list available to the customer would require a customer contact that would violate §25.272. CSW, EGSI and Shell commented that such a list would be an unnecessary intrusion into the market because market participants will publicize the program. CSW and TNMP commented that customers may access the information through the Yellow

Pages. Reliant stated that it would make the list available in any manner the commission deems appropriate. SPS and Shell commented that the commission's customer education campaign should incorporate information on energy efficiency opportunities. TXU, PUB, Shell, and OPC/Cities stated that the commission should make the list available. In addition, OPC volunteered to make the list available to customers. OPC/Cities, Cardinal, and Joint Public Interest Groups suggested that the list be made available through retail electric providers (REPs). Cardinal stated that in addition to the REPs, the utility should also make the information available.

In its reply comments, TESCO stated that retail competition is what the law relies upon to deliver the efficiency services to customers. NAESCO agreed with TESCO that the EESP couldn't be expected to provide a potential customer with a list of its competitors.

Joint Public Interest Groups, in its reply comments, recognized the opportunity for potential abuse of §25.272 (relating to the Affiliate Code of Conduct) in the distribution of a list. It believed that the rule could be designed to provide assurances that abuses will not occur. Joint Public Interest Groups proposed that the listed information should be limited to the name, address, and phone number of each contractor that meets minimum requirements for participation. Joint Public Interest Groups proposed that the list also contain appropriate disclosures to avoid liability of the party providing the list. Joint Public Interest Groups argued that providing easy access to a list will encourage customers to seek multiple bids and compare product services and prices and make economic choices.

The commission agrees that customers should have easy access to a list of participating providers. The list will allow customers to solicit multiple bids from EESPs and shop around for the best deal. It will also encourage competition among providers and result in more of the incentives being passed on to the customer. The commission agrees that it would be unrealistic to require EESPs to share a list of its competitors with customers. It would not be a violation of §25.272 (relating to the Affiliate Code of Conduct) for a utility to distribute a list compiled by the commission or OPC. The utility should inform the EESPs wishing to participate in the program that they should contact the commission to have their names placed on the list compiled by the commission. The commission has deleted the requirement from §25.181(n) (relating to customer protection) and revises §25.181(h)(1) to reflect this change.

Issue Number 10: There is the potential under the standard offer programs for residential and small commercial customers to fall victim to unreliable or fraudulent companies. How should the rule address customer protection in that area?

CSW, EGSI, Reliant, SPS, TNMP, TXU, PUB, Shell, TESCO, NAESCO, ESL, OPC/Cities, and Joint Public Interest Groups responded to the issue. These comments are addressed below under the discussion of §25.181(n) (previously §25.181(l)).

Miscellaneous:

OPC filed comments suggesting introducing a "compliance allowance" trading mechanism. OPC suggested that utilities that develop highly effective programs should be allowed to increase their savings beyond the goal requirement, and sell the excess savings to utilities that do not achieve their savings goal. According to OPC, this would help both the customers of utilities supplying allowances as well as those purchasing allowances.

The suggestion by OPC was presented fairly late in the rulemaking process and has not been properly explored by the parties. The commission may explore OPC's concept of a "compliance allowance" trading mechanism as a result of the evaluation performed by the independent M&V expert in 2003.

Specific Sections of the Rule

(a) Purpose.

Schiller commented that the general purpose in the proposed rule provides a clear directive in the allocation of budgets among customer classes. SPS commented that although the rule requires that standard offer programs be offered, the purpose states that standard offer programs and/or market transformation programs may be offered. SPS recommended that the rule be reworded for consistency with the purpose.

As discussed under Preamble Issue Number 8, the commission finds that §25.181(a) does not provide a clear directive to allocate budgets to individual customer classes. The purpose of the rule as stated in §25.181(a) properly reflects the intent of PURA §39.905; however, the commission revises §25.181(a) to clarify that utilities may offer either standard offer programs or market transformation programs, or both.

(b) Application.

Shell commented that the commission should clarify that the rule applies to both electric utilities and to their successor T&D utilities. EPE proposed to revise the language in §25.181(b) regarding utilities subject to PURA §39.102(c), to make it consistent with similar language adopted in §25.211(a) relating to Interconnection of On-Site Distributed Generation (DG).

The commission disagrees with Shell's comment concerning the definition of electric utility. When competition begins, an electric utility will be a regulated transmission and distribution utility. However, the revision suggested by EPE does not materially change the intent or meaning of §25.181(b) and will contribute to the overall consistency between the rulemakings implementing SB 7. Therefore, the commission revises §25.181(b) accordingly.

(c) Definitions

EGSI, Nucor, Planergy, Schiller, SPS, TESCO, UCONS, TNMP, Joint Public Interest Groups, TXU, and Frontier filed comments on §25.181(c) regarding definitions. Frontier suggested generally that the terms "program," "contract," and "customer class" are used inconsistently. Frontier also commented that the terms "energy efficiency," "cost-effectiveness," "large commercial," "small commercial," and "peak demand" are poorly defined, and that some terms are defined, yet never used in the rule, or are inconsistent with their use in the rule. Joint Public Interest Groups also noted that some defined terms were not used in the rule.

The commission has revised or removed the relevant definitions to correct the problems noted by Joint Public Interest Groups and Frontier.

Demand side management (DSM)

Nucor wanted to clarify that load management, including interruptible service and curtailable rate programs, qualifies as an energy efficiency measure, and suggested changing the defini-

tion for "demand side management" to "activities that affect the magnitude or timing of customer electrical usage or demand or both."

The commission concludes that the proposed definition for "DSM" adequately reflects load management. The definition of "DSM" is included insofar as "DSM" programs currently approved in rates may qualify for achieving the energy efficiency goal and, therefore, rejects Nucor's recommended modification.

Energy efficiency

Several parties commented that the definition of "energy efficiency" should be changed. Nucor recommended that the definition be changed to "programs that are aimed at reducing the intensity of electric energy usage equipment or processes," to be sure that the definition includes interruptible and curtailable rates and other load control and load management programs. Planergy and SPS also commented that the definition should be modified to encompass load management, since the text of the rule recognizes load management as a qualifying energy efficiency measure. SPS commented that the definition was ambiguous and did not appear to capture the meaning of the term as it is used in the rule. SPS questioned why "devices" must be "customer owned."

SPS commented that "total system cost" was undefined; TNMP commented that since energy efficiency has nothing to do with "total system cost," this phrase should be omitted. TXU commented that it is unclear which "system" is being referred to in this definition; "system" could refer to the unbundled T&D company, the formerly integrated utility, or the customer's energy system. TXU added that, as the proposed rule expressly requires energy efficiency programs to be cost-effective, it is unnecessary to reiterate the cost-effectiveness concept in this definition. Accordingly, TXU proposed that the cost-effectiveness concept be removed from the definition, or in the alternative, that "system" be more specifically defined.

SPS commented that energy efficiency could encompass the efficient use of energy resources other than electricity. SPS and TNMP also commented that energy efficiency is not necessarily a "program," and that a separate definition is already included in the proposed rule to address "energy efficiency programs."

TNMP recommended replacing the definition of "energy efficiency" with "A reduction in required energy or capital resources necessary to achieve an intended unit of work." TNMP argued that because a unit of work encompasses productivity, comfort, and convenience, these qualities could be omitted, thereby simplifying the definition. This change clearly permits load management options to achieve the legislative goal. Finally, TNMP commented that the current definition muddles economic efficiency, efficacy, and energy efficiency.

For the most part, the commission does not agree that the role of load management requires additional clarification in the definition of energy efficiency. The proposed definition is comprehensive and adequately defines the complex meaning of energy efficiency as contemplated in PURA §39.905. The commission finds, however, that the terms "intensity" and "total system cost" are not clear. The commission revises the definition in §25.181(c) accordingly to remove these terms.

Energy efficiency incentive programs

TXU commented that the term "energy efficiency incentive programs" is never used in the rule and is unnecessary, because it is merely a general term that could encompass more specifically defined standard offer programs and market transformation programs. TXU recommended that this definition be eliminated, and that the rule should refer specifically to "standard offer programs" and/or "market transformation programs" as appropriate. Nucor also noted problems with this definition.

The commission agrees with TXU that this definition is unnecessary and has eliminated it from the rule.

Energy efficiency measures

Nucor commented that this definition should be revised to include load management.

The commission finds that the proposed definition properly describes energy efficiency measures. Load management is separately defined and, therefore, the commission declines to revise the definition of energy efficiency measures.

Energy efficiency project

Nucor and TESCO commented that this definition should be revised to include load management. Specifically, TESCO commented that the term does not include demand reductions, even though the rule apparently anticipates load management and load control contributing some portion of savings. TESCO suggested the commission replace energy efficiency wherever needed throughout the rule by efficiency and load management, and further claimed that modification of "energy efficiency project" related definitions to include "consumption and/or peak demand savings and a reduction in costs" might repair this oversight more simply. TESCO also stated that if the commission's intent is only to allow load management measures that also save energy, then different revisions are required than if the commission intends purely load shifting or load control measures to be permitted.

TESCO commented that the language of the rule confuses the idea of, or the terms for, "energy efficiency project," "standard offer contract," and "standard offer program." TESCO stated that energy projects are composed of one or more energy measures for a single customer; a standard offer contract is the agreement that a utility and energy service provider; and a standard offer program is a utility's entire administrative structure or process for making standard offer contracts available to service providers, including reviewing proposed projects and savings reports, and inspecting installations. TESCO also commented that while it is true that a model "standard offer contract" is the centerpiece of such a program, when discussing the model "contract" or the utility's administration of a standard offering generally, using the word "program" would relieve some of the confusion.

TXU commented that the proposed definition of energy efficiency project requires a reduction in energy consumption and in individual customer costs in order to have a project qualify as energy efficiency. TXU expressed concern that the requirement that customer costs be reduced is unenforceable and unnecessary because SB 7 does not include such a requirement. TXU added that this additional qualification would be difficult, if not impossible, to document because there are innumerable variables that could account for fluctuations in customer energy costs. TXU also expressed concern that the proposed definition fails to allow for demand-reduction projects, which were clearly intended to be part of the energy efficiency program envisioned by SB 7. TXU suggested that the definition be revised to in-

clude reference to a reduction in customers' demand or energy consumption, and the reference to costs be deleted.

The commission disagrees with the commenters that the definition should be revised to include load management. However, the commission agrees with TESCO that the terms energy efficiency project, standard offer contract, and market transformation contract need to be clearly and consistently used in the rule. The commission concludes that the definition is sufficient as proposed; however, the definition of standard offer contract has been revised to reflect that the standard offer program is the structure under which the utility administers standard offer contracts and funds an independent M&V expert. The commission also revises the proposed rule to eliminate any inconsistencies in the use of the terms of "program" and "contract." The commission disagrees with TXU that customer costs should be deleted from the definition for energy efficiency project, because PURA §39.905(b) explicitly states that projects should allow customers to reduce energy costs.

Energy efficiency service provider

Schiller and TXU commented that the current definition limits the definition of an EESP to those who actually install measures or perform other energy efficiency services at a customer site, which will disallow many other types of providers through which programs could deliver significant, cost-effective savings. Schiller, therefore, recommended that the definition be broadened to allow any type of provider to qualify to receive incentive payments. TXU recommended that the definition include all persons who will potentially provide energy efficiency measures or market transformation programs.

TESCO commented that the definition should be clarified to include retail service providers. TESCO also commented that modifying other definitions to include energy efficiency and load management would expand the definition of EESP to include a company, or do-it-yourself customer who provides load control or other demand reductions.

The commission concludes that the proposed definition of EESP includes a REP. The commission finds that the definition of EESP may also include customers who install energy efficiency measures, and therefore revises the definition and the rule under subsection (k) to reflect that customers taking advantage of a standard offer contract may use independent third-party inspectors to comply with the rule. The commission concludes that defining EESPs in terms of the installation of energy efficiency measures is reasonable, to ensure significant reductions in demand that can only be achieved consistently through the use of long-lived measures. To allow the definition to include *anyone* who could merely sell an energy efficiency product or service does not ensure the permanency of the measures. Moreover, it would be difficult to measure and verify the savings, if any, realized through the sale of energy efficient products. The commission concludes that revising the definition of EESP in the manner suggested by Schiller, TESCO, and TXU would not be in the public interest because energy and capacity savings could not be achieved on a reliable basis. However, the commission agrees that limiting the installation of measures or services to a customer site would hinder implementation of load management and market transformation projects and has deleted the requirement from the definition.

Growth in demand

SPS and TNMP commented that the definition should be clarified that load involved in wholesale transactions is excluded from the calculation.

The commission agrees with SPS and revises the definition of growth in demand.

Hard-to-reach customers

TESCO commented that the broad definition of hard-to-reach customers should be revised, consistent with the consensus reached in earlier drafts to include lower-income, residential and commercial tenants, and new homebuyers.

The commission finds that the definition of hard-to-reach customers is too broad, and therefore limits the definition to include customers who are at or below 200% of the federal poverty guidelines. The commission has revised the definition accordingly.

Incentive payment

TNMP commented that aside from the definition, nothing in the rule suggests that end-use customers will receive incentive payments, except in their role as EESPs. TNMP noted that incentive payments would only be made to EESPs, or REPs, and recommended revising the definition to "Payments made to EESPs in exchange for deemed or verified electricity savings."

The commission disagrees with TNMP. The definition clearly states that incentive payments are a funding mechanism. The mechanics of incentive payments under the standard offer contract are more appropriately dealt with in the implementation portions of the rule. The commission concludes that it is unnecessary to revise the definition.

Inspection

TXU commented that the proposed definition requires utilities not only to verify installation of projects installed by EESPs, but also to evaluate and certify that the providers used proper workmanship. While TXU did not object to verifying that projects it paid for are actually installed, TXU expressed concern with the burden of workmanship assessment that this definition creates because "proper workmanship" is an undefined and ambiguous concept. Furthermore, TXU stated that it did not have the expertise necessary to evaluate proper workmanship of energy efficiency measures and believes that this is a matter that should be handled between the customer and the provider. CSW, SPS, TNMP, TESCO, Reliant, Shell, and Enron agreed with TXU that it is an inappropriate task for a utility to verify "proper workmanship." SPS, TESCO, and TNMP agreed that it is ambiguous. Shell and Enron expressed concern that the utility could use this oversight to engage in anti-competitive behavior and is thus an inappropriate role for utilities.

Schiller commented that the definition for inspections should be modified to include all types of possible inspections, and should not indicate that administrators are responsible for workmanship. Schiller maintains that in the deregulated market the intent is to place customer protection and quality assurance requirements with the EESPs and their customers, and to place the utilities in this role indicates the potential for unfair market competition and increased administrative costs. EGSI agreed with CSW, Schiller, TESCO, and TXU.

The definition as proposed emphasizes a policy of ensuring that the various subcontractors who actually install the measures for end-use customers do so in a workmanlike manner. The com-

mission concludes that using substandard materials and cost-cutting methods would undermine energy savings, significantly shorten the life and usefulness of installed measures, and undermine the value of the products and services to customers. Measures that are installed improperly and do not achieve the promised savings under the contract should not receive incentive payments. The commission replaces "proper workmanship" with "installed and capable of performing its intended function." The commission concludes that the utilities should have the burden of ensuring measures have been "installed and capable of performing their intended function." Many end-use customers are not sophisticated with respect to construction and appliance installation and may not know that a product has been improperly installed for some time after installation, if ever. Customer protection standards set out in §25.181(n) are intended to safeguard the end-use customer against poor workmanship and abusive practices, and provide information to permit them to make intelligent decisions with respect to energy efficiency services.

Large commercial customers and small commercial customers

SPS commented that these definitions should be refined or deleted because an industrial, municipal, or wholesale customer would be categorized as a "large commercial customer" under these definitions. TESCO commented that large commercial customers should be defined to include businesses in the aggregate, so that large customers such as Wal-Mart would qualify. TXU commented that while it could be taken for granted that the definition refers to "commercial" customers only, it would be wise to add the term within the definition so that an argument could not be made that the term includes all customers, regardless of class, with a maximum demand that exceeds 300 kW.

SPS commented that this definition should be refined to exclude residential customers or deleted. TESCO commented that the definition should be amended to include aggregated customers, similar to their comments regarding large commercial customers.

The commission agrees that the proposed definitions should be revised to clarify which customers are included in this class. The revised definitions clarify that only retail commercial customers are included, and that load is aggregated. However, the commission finds that demand level for small commercial customers should be lowered to 100 kW. The definitions have been revised accordingly.

Low-income customers

TESCO commented that the definition was unnecessarily confusing, given the treatment of "low-income electric customer" in PURA §39.903(l). Furthermore, TESCO pointed out that the proposed rule redefines "low-income" for the purposes of this rule only, and then calls "low-income" customers as defined by PURA §39.903(l) as "very low-income." TESCO suggested that the term "lower income" or some new term should be coined to designate working poor customers not covered by the definition.

TNMP commented that the definition of a low-income customer was established by the legislation and is defined as an electric customer whose household income is not more than 125% of the federal poverty guidelines. TNMP contended that there is no provision in SB 7 for creation of a new class of low-income customers whose household income is more than 125% of federal poverty guidelines, or for redefining the legislature's target sector as very low-income customers. TNMP claims that SB 7 prohibits establishing different sub-classifications, except to the extent that different sub-classifications exhibit unique load profiles for a particular end use, such as office lighting versus residential lighting. TNMP also claims that the legislation's requirement that the incentives be non-discriminatory precludes singling out "hard-to-reach" customers or any group simply according to how they may respond to what would otherwise be market-based programs. TNMP recommends that all references to very low-income customers be revised to reflect the legislature's definition of the low-income class of customers and that all references to the new low-income customer class be eliminated.

TXU added that not only is it improper to change the definition of the low-income customer class and create two categories of low-income customers, it is also unadvisable to do so because the "low-income customer" class will create additional burdens on utilities that SB 7 clearly did not intend, as evidenced by its single definition of "low-income customers." Furthermore, TXU commented that the additional class will increase administrative costs because the creation of an additional category of low-income customers means that a utility would have to design special programs to be offered to that new "class" of customers and would have the continuing burden of ensuring that the new class of customers receive their proportional and equitable share of the incentive funds spent on energy efficiency programs. TXU strongly urged the commission to revise the proposed rules to include only one class of low-income customers and to define that class according to the guidance given by the definition of low-income customers in SB 7.

Very low-income customers

TXU commented that, consistent with its comments regarding low-income customers, this definition should be eliminated and that the class it includes actually be redefined as low-income customers. TESCO commented that very low-income customers should be simply "low-income customers" to be consistent with PURA §39.903(l). TNMP commented that this is an artificial customer class that serves no purpose within the context of the energy efficiency rule. TNMP recommended that all reference to very low-income customers be modified to refer to low-income, and that the references to the newly created "low-income" class be stricken from the rule.

The Coalition commented that a new consensus had been reached on nine topics, the definition and inclusion of low income and very low-income customers. The Coalition commented that although the rule should require utilities to demonstrate through their Energy Efficiency Plans how they will ensure that all customers in all customer classes have access to energy efficiency funds, there is no need to define "new" customer classes in the rule. The group did not oppose the rule's highlighting "hard-to-reach" customers to encourage the utilities to include special populations in the program design process, but recommended the elimination of the proposed "redefinition" of "low-income" and "very low-income."

OPC, Cities, Enron, and Shell (Joint Reply) made joint reply comments to the Coalition's oral comments, stating that SB 7 only requires that customer classes have a choice and access to energy efficiency options, not funds. Joint Reply contended that by making the rule stricter than PURA directs, the overall process becomes less efficient and favors the EESPs because more money will be spent to comply with the rule, harming customers. Moreover, the Joint Reply contended, the

inefficiency will promote the interests of entrenched suppliers, raising the costs of programs, and possibly decreasing the competitive headroom.

Joint Public Interest Groups replied that energy efficiency programs must provide a fair share of the benefits to residential and low-income customers and tenants. Joint Public Interest Groups commented that the rule should encourage residential standard offer programs to be offered as pilot projects because residential standard offers have met with limited contractor participation and limited success in other parts of the country. Joint Public Interest Groups also commented that the System Benefit Fund under PURA §39.903 recognizes that the programs serving very low-income customers are different than other demand-side programs and should not be subject to the same standards as other demand-side programs. Joint Public Interest Groups commented that a substantial portion of residential customers have no energy efficiency programs available because they are income-ineligible for very low income programs but are too poor to have disposable income for energy efficiency investments. Joint Public Interest Groups further stated that to be fair, there should be a program to provide energy efficiency benefits to those in the 125% to 200% of poverty income range, which includes more than 1.8 million customers or 30% of the Texas population.

At the APA hearing, ORNL presented an analysis of the characteristics and barriers faced by low and very low-income customers. ORNL studied data related to customers at 60% of the median federal income (MFI), which in Texas is approximately the equivalent of 150% to 180% of the federal poverty guidelines. According to the ORNL study, low-income customers at 60% of MFI still spend a greater percentage of their income on energy than middle to upper income customers do. These customers, ORNL argued, face many of the same barriers that prevent these customers from participating in residential energy efficiency programs as customers below 125% of the federal poverty income guidelines do. Public Citizen, CCST, and GETCAP supported the ORNL study citing many instances in which they must turn low-income families away because their income narrowly exceeds the eligibility guidelines of the weatherization programs.

The commission eliminates the distinction between "low-income" and "very low-income" as offered in the published rule. The commission agrees that these income distinctions are too prescriptive and burdensome within the context of this rule. However, the commission finds that customers at or below 200% of the federal poverty guidelines face market barriers that prevent them from participating in the energy efficiency programs. The commission concludes that customers at or below 200% of the federal poverty shall be targeted as hard-to-reach customers.

Market transformation program

UCONS commented that the definition of market transformation has been misused and confused, and to be certain underserved markets are served, the term should be defined to include any new DSM program that can remove or reduce these barriers successfully.

The commission finds that the proposed definition adequately addresses the removal of market barriers and declines to revise the definition.

Peak demand, peak demand reduction and peak period

TXU commented that the proposed definition of peak demand is insufficient because it does not adequately state how peak demand will be measured. TXU stated that the definition defines peak demand as "electrical demand at the time of highest demand on the system," however the "time" of highest demand in the system could be measured in numerous different ways. TXU proposed that peak demand be precisely defined as the average electrical demand on the system between noon and 8:00 p.m. during peak periods because customer usage patterns traditionally show that this is the time when peak demand occurs.

TESCO commented that because the parties have agreed to move toward an energy- and capacity-based incentive payment, it is not necessary for this rule to define peak period. TESCO suggested the definition of "peak demand" would alleviate the confusion some utilities may have regarding the issue of the period during which peak reductions must be in place to count toward their efficiency goal. TESCO further noted that the off-peak period definition is important because it will define the energy value of savings.

The commission finds that the peak demand and peak period should be more specifically defined, and revises the definitions accordingly; the commission also adds a new definition for peak demand reduction.

Spot market benchmark price

TESCO commented that the definition should be modified to specifically identify the source of data to be relied upon for the spot market benchmark price, and recommended using Megawatt Daily until January 1, 2002, and data from the Independent System Operator for 2002 and later years. TXU commented that the definition should be eliminated because the term is not used in the rule.

The commission agrees with TXU and deletes this definition from the rule.

Standard offer contract

TESCO commented that the language of the proposed rule confuses the terms for "energy efficiency project", "standard offer contract," and "standard offer program," and that a standard offer contract is the agreement that a EESP signs with the utility to deliver savings in return for payment. A standard offer program is a utility's entire administrative structure or process for making such models, or standard, contracts available to service providers, as well as, for reviewing proposed projects and inspecting completed work and savings reports. TESCO further clarified, that although it is true that a model "standard offer contract" is the centerpiece of such a program, when discussing the model "contract" or the utility's administration of a standard offering generally, using the word "program" would relieve some of the confusion. TESCO therefore recommended that the definition for standard offer contract should be clarified or amended to recognize it is not the business of the EESP to carry out a standard offer program, but only to comply with the requirements of its specific contractual agreement with the customer and the administering utility.

The commission agrees that the definition for standard offer contract is too broad and revises the definition accordingly.

(d) Cost-effectiveness standard

EGSI, TXU, and TESCO *suggest* eliminating the ten-year maximum under the cost-effectiveness standard.

The commission finds that payments should be limited to ten years of savings. The ten-year limit is consistent with the CPL standard offer contract recently approved by the commission and with consensus during the workshops. The commission declines to adopt the suggested change.

EGSI suggested changing the language to reflect that project costs should include the cost of other energy sources in the case of fuel switching.

The commission finds that, although other energy sources are consumed when fuel switching occurs, electricity is saved. The commission declines to adopt the suggested change.

Reliant stated that the customer's incentive level is too high. It feared the lost revenue effect will increase rates and favored an overall limit on program costs. TIEC, OPC/Cities, Enron, and Shell raised concern about the impact on rates. In reply comments, TESCO stated that, to be cost-effective, efficiency measures should cost customers less than a new power plant. It also stated that the cost of the energy efficiency program will be too small to affect the "headroom" for concerned competitors like Enron and Shell.

The commission finds that it is sufficient to limit the cost of implementing the energy efficiency program by putting caps on incentives. The commission declines to make the suggested change.

Joint Public Interest Groups believed that paying off-peak spot energy prices for energy saved at peak is lower than a fair market price. Joint Public Interest Groups suggested using the average annual market benchmark prices for firm energy and capacity as an alternative. Reliant suggested tying payments to demand reduction and not energy savings. In reply comments, TESCO disagreed with Reliant's proposal that there should be payment for peak savings but not energy savings. TESCO noted that the issue was debated and the rule reflects a compromise, and it would not be fair to pay the same incentive for measures that have no energy savings and those that do. Reliant also proposed to set the value of saved energy on the basis of the spot price of energy at off-peak hours during the off-peak period. TESCO disagreed that the off-peak hours of the off-peak period reflect real energy prices, and supported the spot off-peak energy daytime prices currently included in the draft rule. TESCO suggested that the specific reference for spot market prices should be included in the rule to avoid confusion and promote consistency. CSW proposed a fixed capacity avoided cost of $570/kW, and a fixed energy avoided cost of $0.188/kWh in 1999 dollars.

EGSI, EDF, and Joint Public Interest Groups commented that avoided costs related to T&D should be included in the cost-effectiveness calculation. EDF argued that it would base the avoided cost on a statewide embedded cost and include transition charges. EGSI favored including reserve margins and ancillary services. Joint Public Interest Groups would include line losses of 15%, avoided reserve margins of 15%, T&D avoided costs of 20%-30%, and an environmental adder of 20%. Shell Energy stated that avoided costs should not be based on avoided capacity.

The commission finds that to streamline the April 1, 2000 cost unbundling proceedings, it is preferable to establish an avoided cost proxy in the rule. The estimated construction cost of a new gas turbine is $400/kW. Taking into account a 30-year life, 10% discount rate and a 3.0% inflation rate, the commission therefore sets the annualized capacity cost at $66/kW. The commission further finds that the avoided cost for energy should be based on the recent off-peak value of 2.5 cents/kWh. The commission finds that line losses of 7.0% (based on an approximate average for Texas utilities) should be included in the calculation of avoided energy and capacity costs and that reserve margins of 12% should be included in the calculation of avoided capacity costs for energy savings measured at the customer's meter. Other ancillary services and T&D avoided costs should not be included. The commission therefore concludes that the "cost-effectiveness" cap for the purposes of this statute shall be a proxy of total avoided capacity cost of $78.5/kW (($66)(1+7%+12%)) and a total avoided energy cost of 2.68 cents/kWh saved ((2.5 cents)(1+7%)). The commission finds that an environmental adder of 20% should be included only in non-attainment areas where targeted energy efficiency programs would enhance air quality or electric reliability of services. The environmental adder reflects the commission's concerns about maintaining reliable electric service as new air emission standards are adopted. The 20% adder should be used only to acquire additional energy efficiency that would not be cost-effective without the adder, and should only apply to all program and standard offers. The 20% adder is to be calculated as an increment over the incentive levels established in subsection (g)(2)(F). The commission has revised §25.181(d) accordingly.

TNMP, CSW, and TIEC objected to a cost-effectiveness standard that is higher than 100% (as for low-income customers). However, TIEC would not strike it from the rule provided two safeguards were added. Joint Public Interest Groups supported 125% of avoided costs for hard-to-reach customers.

The commission finds that a payment equal to 125% of avoided costs is not justified at this time. The commission has eliminated the provision from the rule.

(e) Annual growth in demand and energy efficiency goal.

Reliant stated that the rule does not clarify how peak demand is to be determined. Reliant suggested that the maximum demand reduction of an energy efficiency project should count toward the 10% goal provided it occurs within the defined peak period of May 1 through September 30.

The commission finds that the rule should clarify how the maximum demand reduction is to be counted, and so defines "peak demand reduction." The definition of peak demand has been clarified to indicate that peak demand is the maximum demand measured in 15-minute intervals, that occurs on a utility system.

EDF and Joint Public Interest Groups wanted energy and demand components in the goal for energy efficiency. Joint Public Interest Groups supported a 10% reduction goal for both energy and peak demand. In reply comments, EGSI referred to the language in PURA directing a 10% reduction in demand. OPC/Cities recognized that the methodology stated in the rule represents a compromise achieved during the rulemaking process. Nevertheless, they opposed the use of five-year historical data to forecast growth in demand because there will be a high likelihood that the growth in demand will be overstated.

The commission finds that a 10% demand reduction goal is consistent with the statute and represents a consensus reached during the workshops. However, the commission recognizes that unforeseen, dramatic fluctuations in demand

growth during one year may understate or overstate demand growth in subsequent years. The commission finds that the utility may request a good-cause exception from the commission to use an alternate calculation method under these exceptional circumstances.

TNMP argued against setting arbitrary interim goals for achieving the energy efficiency goal. It argued that the legislature specified that the goal be achieved through market-based programs–so the market should be relied on for distributing incentives and attaining goals in the most efficient manner possible.

The commission finds that an interim goal of 5.0% reduction in demand growth by January 1, 2003 is reasonable and necessary to ensure progress toward the legislatively mandated goal of 10% reduction in demand growth by January 1, 2004.

EGSI suggested the utility should submit its projected growth in demand as part of its annual energy efficiency report.

The commission finds that the reports should be consolidated. The annual growth in demand projection will be part of the annual energy efficiency report due April 1 of each year. The commission has revised §25.181(g) accordingly.

(f) Basic program elements

CSW commented that all references under §25.181(f) to kW *and* kWh saved should be kW *and/or* kWh saved.

The commission agrees with the change and has made revisions throughout the rule accordingly.

Nucor commented that proposed §25.181(f) should be revised to delete unnecessary language regarding energy efficiency because that term is defined in §25.181(c). TESCO and the Coalition commented that §25.181(f) should be amended to note that both energy consumption and reductions of demand are sought. TESCO further commented that §25.181(f) should be expanded to require utilities to spend any funds granted within their rates for efficiency programs at present to continue to spend such funds on efficiency in the transition period.

The commission disagrees with Nucor's proposed change, because energy efficiency programs are not defined. The commission agrees with TESCO and the Coalition that both reductions in energy consumption and reductions in demand are sought; however, this is not required. Payments are made separately for energy and demand savings. The commission further includes language similar to TESCO's proposal regarding the expenditure of funds currently in utilities' rates.

EGSI, Reliant, TESCO, and TNMP commented that different segments in proposed §25.181(f) needed modification. EGSI commented that §25.181(f) should be clarified by adding "administered by the utility" after programs. Reliant commented that §25.181(f) should be clarified in accordance with its stated position regarding §25.181(d)(2) because paying for kWh savings to reach a kW-based goal can unnecessarily inflate the cost of the overall program. Reliant further commented that an overall cap on dollars per kW of demand reduction should be considered. TESCO commented that §25.181(f) should be amended to clarify that any program which includes an incentive component *shall* separately pay out incentives for both kW and kWh saved, as appropriate. TNMP commented that the second sentence of §25.181(f) should be changed to focus on efficacy and economic use of resources in preference to arbitrarily establishing incentive structures and cost-effectiveness criteria. TNMP contended that establishing varying incentive levels is not market neutral, is discriminatory, and is in violation of PURA §39.905(a)(1).

The commission declines to incorporate EGSI's proposed change because the rule addresses only programs administered by the utility. The commission has addressed the changes suggested by Reliant in connection with §25.181(d). The commission finds that the rule adequately addresses TESCO's concern that incentive payments are made for kWs and kWhs saved. The commission disagrees with TNMP that varying incentive levels are discriminatory and in violation of PURA. Based on the discussion of Preamble Issue Number 8, TNMP's proposed changes are not adopted.

TXU and Joint Public Interest Groups commented that proposed §25.181(f) needs modification to clarify its application to market transformation programs. TXU commented that §25.181(f) requires that *all* programs offer incentive payments for kW and kWh saved, and because "programs" is not a defined term, it is unclear whether such programs are intended to include market transformation programs. TXU disagreed that incentives should be paid for all market transformation programs in order for their savings to count towards the energy efficiency goal, arguing that this might place a restriction on reaching the energy efficiency goal cost-effectively and might unnecessarily block good projects from being offered to customers. TXU argued that the incentive requirement should authorize, but not require, incentive payments. Joint Public Interest Groups commented that §25.181(f) should be modified to state that market transformation programs shall offer incentives or other benefits as approved by the commission in the utility's energy efficiency plan, instead of incentive payments for kW and kWh saved as required for standard offer programs. Joint Public Interest Groups argued that market transformation programs may include incentive payments for marketing, education, training, financing, and many other services and benefits to increase customer uptake of energy-efficient technologies and practices. However, Joint Public Interest Groups argued that under the current proposed language a program, which has no direct kW or kWh incentive, may not qualify even if it is a more cost-effective option.

The commission agrees with TXU and Joint Public Interest Groups that incentives for market transformation programs should be structured differently from standard offer programs and that special provisions are needed for market transformation programs to be effective. Accordingly, the commission modifies §25.181(f)(2).

TNMP and TXU commented that the reference to customer protection provisions in proposed §25.181(f) should be stricken. TNMP commented that the competitive market, combined with existing customer protection provisions in law, provides adequate protections without placing utilities in the position of establishing contractual requirements that ultimately require the utility to act as an ombudsman. TXU commented that customer protection is already legally provided through such avenues as contract law and the Deceptive Trade Practices Act. TXU argued that incorporating an inclusive list of customer protections in the rule could be interpreted as creating a special standard for energy efficiency customers, thus removing them from the protections of tested, potentially broader established protections.

The commission declines to delete the reference to customer protection provisions for the reasons discussed in connection with §25.181(n).

EGSI, Nucor, Cardinal, and Joint Public Interest Groups commented on various parts of proposed §25.181(f) regarding inspections and M&V. EGSI commented that §25.181(f) should be modified to reflect that inspections are needed to ensure that energy savings are achieved, but the M&V will be used only to improve future energy savings estimates rather than to ensure that energy savings are achieved. Nucor commented that §25.181(f) should be revised to add "as necessary" to the inspection, measurement, and verification requirement, because unnecessary inspections simply add to the cost of the program. Nucor argued that the necessary level of M&V could be determined for each project when the commission reviews the utilities' plans. Nucor further recommended replacing "energy savings" with "project/program goals" because it is a more specific reference. Cardinal and Joint Public Interest Groups commented that §25.181(f) should be modified to allow flexibility for market transformation programs. Cardinal commented that market transformation programs and programs utilizing deemed savings should be subject only to verification that the program was properly implemented and, in the case of standard offer programs utilizing deemed savings, that the actual measure was installed. Joint Public Interest Groups commented that market transformation programs should be evaluated according to the specific evaluation methods approved in a utility's energy efficiency plan or within statewide pre-approved market transformation programs.

The commission clarifies that inspections will be conducted by the utility and are limited to a statistically significant sample. The commission agrees with EGSI that inspections are needed to ensure the savings are achieved. The commission further clarifies that M&V is carried out by the EESP. The commission agrees with Cardinal and Joint Public Interest Groups and changes §25.181(f)(4) to allow appropriate flexibility for market transformation programs.

TXU commented on the scope of the proposed Working Group (energy efficiency implementation docket) referenced under §25.181(f) (now subsection (m)), recommending that the proposed rule be revised to allow, not require, the commission to consider and act on the recommendations of the Working Group (energy efficiency implementation docket).

The commission agrees with TXU that it should not be compelled to act on any and every recommendation of the energy efficiency implementation docket and adopts appropriate modifications to that end. The commission also concludes that it is more efficient to create an energy efficiency implementation docket to carry out the responsibilities previously proposed for a working group.

(g) Schedule and required filings

CSW commented that throughout §25.181(g) the rule references "energy *and* demand" and it should reference "energy *and/or* demand" and "kWs *and/or* kWh."

The commission agrees with the change and has made revisions throughout the rule accordingly.

CSW, TXU, EGSI, and TESCO generally commented that there should not be mandatory goals prescribed in the rule and noted concerns over recovery of expenditures associated with interim goals. CSW commented that utilities should be afforded the flexibility to optimize their programs. TXU argued that SB 7 does not authorize this compulsory requirement and if not removed entirely, the goals should not be mandatory. TESCO commented that expenditures above the amount currently in a utility's rates expended on efficiency programs in order to meet interim goals should be recoverable in post-January 2002 rates.

Shell supported the interim goal requirement and noted that numerous utilities have energy efficiency expenses in rates. Shell commented that the commission and other parties have recognized that meaningful energy efficiency improvements will take time, and utilities may not reach the statutory goal if they wait until 2002 to begin these programs. Shell further commented that language referring to interim goals being consistent with approved funding should be deleted because it implies that a utility without energy efficiency expenses in its base rates need not devote any resources to this mandate. In reply comments, Shell argued that although SB 7 may not expressly require interim goals, the power clearly exists by necessary implication to secure attainment of the overall statutory goal, and therefore lies within the commission's discretion.

Additional arguments by parties regarding the issue of timely cost recovery are addressed in the discussion of Preamble Issue Number 2 and those arguments are not reiterated here.

The commission finds that interim goals are voluntary until January 2002, and that new rates will be approved by that date. In 2003 the mandatory goal is only half of what the commission must ensure will be met the following year. The commission agrees with Shell that it has the authority to set interim goals to ensure that utilities meet their legislative mandates, and has revised the rule to clarify that utilities shall have energy efficiency funds in their rates by January 1, 2002. However, utilities that do not have money in their base rates today for energy efficiency or DSM are encouraged, but not obligated to expend the funds for that purpose. Therefore, the commission declines to revise the language regarding interim goals. For organizational purposes §25.181(g)(1) (relating to interim goals) has been moved to §25.181(e). Expenditure levels and funding mechanisms are discussed in greater detail under §25.181(h)(5) and (g)(3).

CSW and SPS commented that proposed §25.181(g)(2)(A) (relating to the schedule) requires utilities to file goal targets by January 15, 2000, which is before the final rule will be adopted. SPS commented that it believes that the April 1, 2000 filing should be used for 2000, and that a January 15th annual date will work starting in 2001. TXU commented that proposed §25.181(g)(2)(A) should be revised to specifically require reporting of projected energy and demand savings. TESCO and Shell commented that proposed §25.181(g)(2)(A) should clarify whether the "projected annual growth in demand" represents the five-year historic demand growth rate identified in proposed §25.181(e)(1). Shell commented that, assuming the utility does not revise its next year's goal, the odd result could occur that a utility met all its yearly goals but missed its overall goal. Shell commented that in proposed §25.181(g)(2)(A), the commission should describe the methodology that the utility must use to convert from kWs to kWhs. Shell recommended a 35% conversion factor for the first two years, and thereafter apply a factor based on actual experience, as used in Project Number 20944, *Renewable Energy Mandate*. TESCO commented that proposed §25.181(g)(2)(D) should be modified to note that programs should be adopted by 2002 that are accessible to all customer classes.

The commission agrees with CSW and SPS regarding the possibility for confusion regarding the required filing schedule and revises the rule accordingly under §25.181(g)(1). The commission agrees with TESCO and Shell that annual growth in demand should be calculated using a five-year historical average and finds that this is adequately addressed under §25.181(e). The commission disagrees with Shell's comments that the rule should prescribe the methodology for converting kW to kWhs. The conversion factor for renewable energy programs is not applicable to energy efficiency programs. In energy efficiency programs the kW and kWh savings vary by type of measure. In the case of load management, the conversion factor would be zero. The commission declines to incorporate TESCO's proposed change to §25.181(g) regarding all customer classes because this is addressed elsewhere in the rule and would not add any meaning if inserted in this subsection.

CSW commented that throughout proposed §25.181(g) references to standard offer contracts *and* market transformation programs should be revised to refer to standard offer contracts *or* market transformation programs.

The commission agrees with CSW that PURA §39.905 allows standard offer programs or market transformation programs and modifies the language throughout this rule where applicable. The language is modified to use the words "contract," "project," and "program" correctly throughout this section.

Joint Public Interest Groups commented that certain aspects of the proposed §25.181(g) should be amended to: 1) specify the types of informational activities utilities must plan to encourage participation by prospective energy service providers as discussed in Preamble Issue Number 5; 2) define how the share of incentive funds allocated to various customer classes should be determined; and, 3) require the utility to fully describe and provide a detailed plan for market transformation programs.

The commission agrees with Joint Public Interest Groups with regard to informational activities and adds language in §25.181(h)(1). Allocation of incentive funds by customer class is addressed under Preamble Issue Number 8. The market transformation program provisions have been revised under §25.181(j).

TNMP, Nucor, and Cardinal suggested language changes to proposed §25.181(g), regarding existing contract obligations. TNMP commented that §25.181(g) should refer to validated energy and demand savings instead of verified savings. TNMP argued that use of the term "verified" excludes energy and demand savings produced by energy efficiency service providers under the deemed savings provisions of the rule. TNMP commented that because the commission will validate deemed savings prior to adoption, there is no reason to re-verify these savings. Nucor commented that energy efficiency measures that are extended or expanded (not only installed) should be allowed to count towards the goal. Nucor noted that nothing in SB 7 limited energy efficiency to new programs and that the continuation of existing programs should be counted towards the statutory goal. Nucor further commented that load management programs initiated or expanded after the original contractual obligations have expired should count toward the statutory goal. Cardinal commented that language for market transformation projects should be included to allow estimated savings, if approved by the commission before commencement of the project, to count towards the amount of energy and demand savings actually achieved each year.

The commission agrees with TNMP regarding reporting "validated" savings so utilities can count deemed savings, and has modified §25.181(g)(4) and (l). The commission disagrees with Nucor that projects that are renewed, extended, or expanded after the date of this rule should count towards the energy efficiency goal. PURA §39.905 explicitly states that utilities must acquire *additional* energy efficiency savings. The commission agrees with Cardinal and incorporates appropriate modifications for market transformation programs under new §25.181(j).

Shell commented that the commission should change proposed §25.181(g) to require the utility to spend amounts included in current rates for both DSM and energy efficiency, to the extent that any rate orders may distinguish these categories. Reliant commented that the expenditures associated with the new programs may lag implementation by 12 to 18 months or more due to the time required to verify savings.

The commission agrees with Shell that both DSM and energy efficiency activities should be included. The commission has revised §25.181(g)(3) to address this concern. The commission finds that customers should continue to receive the benefits flowing from any DSM or energy efficiency programs that are already in utilities' budgets. The rule directs utilities to report on funds expended and funds committed on energy efficiency projects, so it adequately addresses Reliant's concern.

TESCO commented that the proposed duration of standard offer contracts and market transformation programs should be amended to include some direction to utilities to include information about the nature of the efficiency programs and whether they plan to implement new programs or continue programs approved by the commission. TESCO commented that this would make this section consistent with the rule's intent that utilities be encouraged to use pre-approved programs that are similar statewide.

The commission agrees with TESCO's proposed changes and adopts the appropriate language to broaden the scope of §25.181(g)(2)(D) (previously §25.181(g)(3)(E)).

EGSI, CSW, and TXU commented regarding the references to customer classes in proposed §25.181(g). EGSI commented that the references should be removed because the changing industry will be changing the definitions for customer classes and that the utility's customer classes may not be the same customer classes served by the REP. CSW proposed deleting the specifications of low and very low-income groups from the residential class. TXU commented that it cannot describe the size of customer classes because it does not know, nor does it have a way to know, the income level of its customers or the ownership status of its customers.

NAESCO, Schiller, TXU, TNM, TESCO, and Shell disagreed with the requirement in proposed §25.181(g) that all customer classes must have access to a "proportional or equitable share" of the incentive funds. NAESCO commented that utilities should be given reasonable flexibility in allocating program funds and determinations regarding sharing of program funds by customer classes are more appropriately considered and resolved by the Working Group (energy efficiency implementation docket). TXU commented that the term "proportional and equitable" is vague and this requirement goes far beyond the intentions of PURA §39.905(2) that only requires that every customer have

a choice of and access to energy efficiency alternatives. TNMP commented that the rule inappropriately amends the legislation to establish new criteria for the distribution of incentive funds, adopting either a proportionality or equity standard. TESCO commented that a utility should not have to assure that incentive funds are actually spent on any one customer segment in any one year, especially given the variety of customer classes identified in this paragraph. Shell commented that the term is vague and parties could reasonably dispute what constitutes a proportional or equitable share. Shell commented that reaching the percentage energy efficiency goal on a cost-effective basis constitutes the rule's main purpose and that equity and proportionality concepts should not impair the cost-effectiveness requirement. Shell further argued that the commission should add "consistently with the section's overall goals" at the end of the subsection.

TIEC, Joint Public Interest Groups, Frontier, and SPS commented on the collection for the funding addressed in proposed §25.181(g). TIEC argued that if the spending on energy efficiency is to be proportional or equitable among classes, then so should the allocation and collection of the funding. TIEC argued that because the funding of this program will be done through a charge in regulated T&D rates, the costs associated with this program should be allocated according to cost causation principles typically used in setting rates and that the funds spent in a particular class should be collected from that class. Joint Public Interest Groups commented that the allocation of incentive funds to customer classes should be based on each class' contribution to revenues and that the allocation method be reviewed on an annual or bi-annual basis to review its success in achieving energy savings in each class. Joint Public Interest Groups noted the following allocation of incentive funds based on data in the 1998 Statewide IRP filing: 47% residential, 32% commercial, and 21% industrial. Joint Public Interest Groups further recommend revisiting the method of allocation every few years in light of the savings achieved through programs to each customer class. Frontier replied that the proposed requirement of proportional or equitable shares contradicts the inclusion of proposed incentive caps and that each customer class should receive incentive payments in proportion to the percentage of funds contributed by that class for energy efficiency programs. SPS commented that SB 7 established a System Benefit Fund to assist low-income families in meeting their energy needs. SPS argued that in determining whether the distribution of energy efficiency incentives is "proportional or equitable," the funds distributed through the System Benefit Fund should be considered.

The Coalition stated that the rule should require utilities to demonstrate through their energy efficiency plans how they will ensure that all customers in all customer classes shall have access to energy efficiency funds. In reply comments, OPC, Cities, TIEC, Shell, and Enron (Joint Reply) argued that the Coalition misstates the law because SB 7 does not require equal access to energy efficiency *funds*, but rather, equal access to energy efficiency options. The Joint Reply argued that an inefficient process naturally favors the EESPs, because the more money that is spent to comply with the rule, the more they will benefit. The Joint Reply further argued that additional funding promotes the interests of entrenched suppliers by raising the costs of programs and possibly decreasing headroom. Joint Public Interest Groups replied that energy efficiency programs must provide a fair share of benefits to residential and low-income customers and tenants. They proposed that the rule should encourage that residential standard offer programs be offered as pilot projects, because residential standard offers in other parts of the country have been met with limited contractor participation and limited success. Joint Public Interest Groups commented that incentive funds should be allocated according to the share of revenues contributed by each customer class. Joint Public Interest Groups argued that the System Benefit Fund language of PURA recognizes that the programs serving very low-income customers are different than other demand-side programs and should not be subject to the same standards as other demand-side programs.

For the reasons presented in the discussion of Preamble Issue Number 8, the commission concludes that the rule should only specify a share of energy efficiency savings achieved through contracts for hard-to-reach customers. As discussed under Preamble Issue Number 6, the programs under the System Benefit Fund, the arrangement between TDHCA and the weatherization providers can be considered a standard offer contract, and the savings achieved through the System Benefit Fund may be counted towards the energy efficiency goal.

EGSI commented that the reference in proposed §25.181(g) to a "ceiling established under §25.181(d)" is unclear because §25.181(d) does not appear to establish a ceiling. EGSI stated that if the reference is to the difference between benefits and costs, this should be explicitly stated.

The commission disagrees with EGSI and finds that §25.181(d) does establish a ceiling.

Numerous parties objected to the proposed incentive caps expressed as percentages of the cost-effectiveness limit in proposed §25.181(g). The parties generally believe the caps are arbitrary and that they will hinder market response and threaten the ability of programs to meet the legislative goal. SPS, Schiller, TXU, Reliant, TNMP, Nucor, and SPS objected in total to the incentive payment cap language in §25.181(g). Schiller argued that utilities need flexibility to meet the goals and that incentive payment caps will significantly limit market response to the programs. Schiller argued that the two reasons for having the cap, to minimize overall program costs and ensure that incentives do not cover the entire cost of cost-effective energy retrofits, could be handled by budget limits set in the utilities' T&D rate filings and different rule language. TXU, Planergy, Nucor, Frontier, and Joint Public Interest Groups commented that the arbitrary incentive level caps are unnecessary, needlessly rigid, and insufficient to encourage a level of energy efficiency projects that will enable utilities to satisfy the energy efficiency goal. TXU agreed that cost issues could be resolved in the energy efficiency plans in the April 2000 rate filing, which could include thought-out, custom-designed incentive levels. TXU commented that the energy efficiency market would not accept the proposed incentive level caps, including both EESP and their customers, at a level that will meet the energy efficiency goal. TNMP commented that the caps are in conflict with PURA §39.905(a)(1) by creating discriminatory incentive levels for different customer classes. Nucor commented this section treats customer classes differently in violation of PURA §§36.003(b) and (c)(3). SPS commented that the different ceiling incentive levels plainly discriminate against certain customer classes and are in direct conflict with the requirement in §25.181(g) that "all customer classes must have access to a proportional or equitable share of incentive funds." SPS further commented that §25.181(g) conflicts with §25.181(d) (relating to the cost-effectiveness standard). TXU stated in reply comments that

there are a number of negative implications from incentive level caps. They stated that it will result in overpayment for some savings and underpayment (or no payment if the incentive is too low to create market response) for others. Reliant argued in reply comments that equal incentive caps can only be workable as part of the definition of cost-effective; that for example, cost-effective could be defined as 50% of the calculated level for all classes.

OPC/Cities and TIEC commented that the ceilings for the incentive levels may be too high in certain categories. TIEC commented that the incentive payments should be capped, although the cap should be equal across customer classes, with the exception of the non-firm class. TIEC replied that it couldn't say with certainty what the cap should be, but would suggest that the issue should be studied to determine the proper cap for each customer class. TIEC also commented that the combined costs of the incentive payment, the M&V and administration should never equal more than the avoided cost as established in the rule. TIEC argued that this principle was agreed to in negotiations and reflected in §25.181(d)(1) of the rule. TIEC argued that given that M&V costs might be as high as 15% and administrative costs might be as high as 5.0%, then no incentive payment should ever be higher than 80% so that the *total* is equal to or less than 100% of avoided costs.

CSW, Joint Public Interest Groups, NAESCO, and TESCO objected to the proposed incentive levels in §25.181(g), and offered alternative levels. CSW and NAESCO proposed a 100% incentive level for each customer class, in order to attract energy service providers to participate in standard offer programs. NAESCO contended that the commission should only consider reductions in incentive payments after careful study by professionals with the qualifications and experience to make such recommendations and that the Working Group (energy efficiency implementation docket) should be given the responsibility to consider refinements in incentive payments once actual program experience can be evaluated. TESCO agreed with these arguments and also argued that residential customers may need relatively more incentive or entail relatively more administrative costs than other classes. TESCO recommended that programs designed to address each class of customer be allowed to vary to determine what levels of incentive work best. TESCO commented that spending caps might be better addressed, especially for standard offer contracts, by requiring that no more than 50% of the cost of a large commercial or industrial project be paid for with incentive funds, not more than 80% of residential and small commercial projects, and not more than 100% of projects for any hard-to-reach customer. Joint Public Interest Groups stated that utilities must pursue the most cost-effective options and not be forced to overpay for measures that would likely occur in the absence of the program. Joint Public Interest Groups commented that market transformation programs that leverage existing national and state activities and focus incentives upstream can be used to achieve maximum savings with minimal costs.

Planergy commented that the assumption that it is not necessary to provide customers with incentives for load management actions because they already have incentives to engage in such actions is untrue in today's market. Planergy commented that customers are generally assessed demand charges on the basis of their highest demand during a monthly period and the hour of the customer's highest demand is not necessarily coincident with the utility system's peak. Planergy argued that if a utility customer takes actions to reduce its demand at the time of the utility's system peak, the customer is unlikely to be rewarded for such actions in the absence of a load management program or a real-time pricing program. Planergy also commented that limits on load management may compromise reliability because the reliability councils serving the Panhandle, El Paso, and East Texas are lagging far behind ERCOT in the establishment of rules that would permit demand-side resources to compete in markets for generation and ancillary services. Frontier stated in reply comments that it supported Planergy's comments especially where a power region is not able to properly value load management and provide appropriate market-based incentives.

TIEC and Reliant supported incentive payments for load management programs in proposed §25.181(g). TIEC argued that load management programs are a cost-effective way of reaching a significant (but not overly large) portion of the overall goal. TIEC argued that at a minimum, these worthwhile programs should be incentivized at a level no less than the costs of administering them. Reliant stated in reply comments that it is generally accepted that load management is a cost-effective option and, within limits, is properly eligible for inclusion in the program. However, Reliant replied that many believe that the 5.0% incentive cap, as currently structured in the proposed rule, will effectively eliminate load management as an option. TIEC argued that although the statute speaks in terms of both energy and demand, it unambiguously sets the goal of the program as one that reduces demand.

NAESCO stated in reply comments relating to proposed §25.181(g) that no party has offered factual proof that the proportional allocation of funds by customer class makes the energy efficiency goals more achievable. NAESCO argued that the theoretical underpinnings of the proportional customer class allocation argument put forth by Texas ROSE, ACEEE, and others–that it is better for residential customers to spend more public funds on residential customers–may not be as obvious as it initially seems. NAESCO listed the preliminary findings of research by the Sierra Club in California that suggests that the public value of load reduction programs is substantially more than previously thought and that the value to the public far exceeds the average price of power or the avoided costs because in the competitive environment, savings are not the result of high prices, but instead result from a combination of large loads and the sensitivity of prices to load. NAESCO replied that commission should also be concerned whether breaking up standard offer programs into smaller programs targeted at customer niches will help or hinder utilities in meeting their energy efficiency goal. NAESCO noted that broader programs allow for greater flexibility and increased creativity and recognize the geographical disparity of available energy efficiency resources.

OPC stated in reply comments that it supports incentive caps. OPC argued that incentive levels need not be tied to avoided energy or capacity costs and that it prefers incentives set at a level that compensates for market failure resulting in under-acquisition of energy efficiency. OPC replied that the avoided cost methodology for setting incentive levels is acceptable as a compromise, if caps are placed on incentive percentages. OPC replied that it opposes the alternative suggested by TESCO that the rule should cap incentives as a percentage of project costs because raising the caps will only increase the costs of the program. OPC replied that the unduly high incentive levels cited by TESCO in California conditioned the market

such that when incentive levels decreased, participation rates dropped dramatically. OPC cited Austin as an example where potential participants were conditioned to expect high incentive levels. OPC argued that the commission should avoid setting incentive levels too high in the beginning of the compliance period and if necessary, the commission could later raise incentive levels as future conditions warrant. OPC provided a report by Kennedy & Associates that concluded that the present caps are high and should be reduced further to ensure that the goal is achieved at the lowest cost. The Kennedy report states that standard offers for energy efficiency programs should not exceed 35% of avoided cost and standard offers for load management should not exceed 13% of avoided cost. The report asserts that the data shows that there is no need to differentiate incentive levels for customer classes, including residential customers. In reply comments, Enron, Shell, TIEC, and the Cities supported the Report's findings. The Joint Public Interest Groups, Good Company, TXU, TNMP, SPS, CSW, Planergy and Frontier filed comments disputing the Kennedy report findings and questioned the accuracy and consistency of the data and argued that the analysis does not differentiate between program types. The parties further questioned the methodology of the cost calculations. In addition, the Joint Public Interest Groups commented that the cost caps proposed by the report are counterproductive to the goals of the rule and the participation of residential customers in particular.

In addition to the above independently filed comments, the Coalition commented that incentive caps should be eliminated and that the allocation of incentive funds among customer classes should be according to the share of revenues contributed by each customer class. In reply comments, OPC, Cities, TIEC, Shell, and Enron (Joint Reply) argued that the deletion of incentive caps is completely at odds with the consensus agreement reached by parties, including members of the Coalition, during the energy efficiency workshops. Without incentive caps, OPC, Cities, and TIEC would not accept the cost-effectiveness methodology in the rule. The Joint Reply noted that the caps were an integral part to achieving consensus on the cost-effectiveness standards in the rule. Joint Public Interest Groups replied that residential customers face greater barriers to energy efficiency investments than large customers do, and should, therefore, receive a greater share of the funds. Joint Public Interest Groups also argued that those measures that are relatively short-lived and pay back rapidly (e.g., lighting) should be offered a lower incentive than those measures that are more complex, are more permanent, take longer to pay back, or are more comprehensive.

The commission applauds OPC's effort to provide objective information concerning the appropriate level for incentive caps. The commission is, however, concerned about the consistency of the underlying cost information that was the basis for the analysis in the report. The data source used to compile the report relies on voluntary reporting by utilities and does not provide details on the format or information that is included in the data reported by the utilities. In addition, the data source does not differentiate among program types, resulting in an analysis based on divergent programs, ranging from low-interest loan programs to full retrofit programs, that are primarily programs implemented by utilities, rather than market-based standard offer programs. The commission also concludes that the other parties have not presented any data to support the argument for increasing the caps for incentive payments to 100% of the avoided cost for all customer classes. Incentive caps are necessary to support the goals of providing programs for all customer classes and ensuring that programs are cost-effective. Different incentive caps for different customer classes reflect the commission's view that smaller incentives will be adequate to obtain savings from customers who are large consumers of electricity, while larger incentives will be necessary for small customers. The differentials in the incentive levels are not unduly discriminatory because they are necessary to achieve the statutory goals of ensuring that these programs are available to all customer classes and are cost-effective without compromising the competitive headroom. Moreover, despite the weaknesses in the OPC analysis, the report does convincingly show that the caps may be lowered from the caps presented in the proposed rule, and still encourage a competitive market in the energy efficiency industry. The commission therefore finds that the caps should be set 100% for hard-to-reach customers, 50% for residential and small commercial customers, 35% for large commercial and industrial customers and 15% for load management programs. The commission notes that utilities have the opportunity to petition the commission to adopt different ceilings for incentive levels. The commission revises §25.181(g)(2)(F) (previously §25.181(g)(3)(G)) accordingly.

CSW, Shell, and TNMP offered changes to proposed §25.181(g) regarding the annual budget to be contained in the energy efficiency plan. CSW proposed changing the language to reflect that the utility could use standard offer programs or market transformation programs. Shell commented that the commission should clarify that even if a utility's annual budget changes, rates set to recover these expenses will not change. Shell addressed this issue in more detail in Preamble Issue Number 2. Shell commented that if the commission allows flow-through cost recovery, the utility should propose not only the annual budget, but also the appropriate rate charge. TNMP commented that the specific reference to hard-to-reach customers should be deleted. TNMP argued that the legislature's requirement that incentives be nondiscriminatory eliminates the need to detail incentives, except to the extent as may practically be required to monitor progress towards the efficiency goal and to prevent exceeding annual budgets.

The commission agrees with the commenters that additional language is necessary to clarify that approval of the projects, with appropriate budgets, will occur as a result of the April 1, 2000 filings. The commission has added language to §25.181(g)(1). The commission declines to delete the reference to "hard-to-reach" customers. These are customers that are difficult to reach through traditional energy efficiency programs, and it will probably require higher incentives to make the energy efficiency programs available to them. §The commission adds three provisions to the energy efficiency plan in response to these comments. The first requires the utilities to discuss the types of informational activities they will use to encourage participation in standard offer programs or market transformation programs by prospective EESPs. The second requires the utilities to state the manner in which they will provide notice for standard offer contracts. The third requires the utilities to state the manner in which they will post the notice for solicitation of market transformation projects, and any other facts which may be considered when evaluating a market transformation project. These additions are made in accordance with suggestions of the parties discussed under Preamble Issue Numbers 5 and 7. The rule is revised to incorporate CSW's suggested change, relating to the use of standard offer and market transformation

contacts. The commission has revised §25.181(h) and added subsection (i) to reflect these changes.

Under proposed §25.181(g), SPS, CSW, TNMP, and TESCO objected to the "material change" provision concerning revisions to the energy efficiency plan. SPS commented that it is far too ambiguous. CSW proposed revising the standards regarding material changes to reflect a change in funding by more than 10% instead of over 5.0% for individual contracts to increase the utility's flexibility in order to meet their goals. TNMP commented that a material change should be if the utility expects to fall short of, or exceed, its annual goal for peak demand reduction or its annual budget by more than 10%. TNMP argued that so long as programs are market-based and the incentive programs are nondiscriminatory, whatever happens in the market will be consistent with the legislature's intent, and there is no need to continually file at the commission for exceptions. TNMP argued that utilities could be reasonably expected to encourage a small number of EESPs to each contract for as much as 20% of the funding in order to avoid a constant stream of revisions to their energy efficiency plan. TXU replied that it generally agrees with TESCO and CSW that the rule needs to be revised to allow the utility to adjust its funding for incentives between programs in order to meet customer demand and meet its energy efficiency goal. TXU replied that it believes the proposed rule is too restrictive in limiting a utility's flexibility to make the changes necessary to meet its energy efficiency goal. Reliant commented that §25.181(g) needed to be expanded to include specific provisions regarding the commission's approval process for both the energy efficiency plan and any proposed revisions. Reliant argued for the need for the timely recovery of additional costs that may be incurred in implementing such revisions. Reliant argued that the commission was given a significant responsibility by the legislature in SB 7 and it must provide oversight and adopt rules and procedures to ensure that the goal is achieved by January 1, 2004. Reliant commented that the rule must provide the utilities every opportunity to accomplish the demand reduction goal and highlighted the fact that programs will require incentives and will be expensive. Reliant argued that if a utility must file a rate case or divert funds from another area, programs will be delayed and the energy efficiency goal will be jeopardized. Reliant recommended revising §25.181(g) to provide for commission approval of energy efficiency plans prior to implementation, and timely recovery of expenses incurred to achieve the goal.

The commission adds new subsection (g)(3), relating to the process for approval of standard offer contracts, deemed savings values, and measurement and verification plans. The commission clarifies that the process is intended to provide a *minimal* regulatory oversight and approval over the individual performance contracts between the utility and the energy efficiency service provider.

The commission finds that the proposed rule's criteria for material changes are too detailed. It has revised §25.181(g)(4)(I) to reflect that only a decrease of more than 10% in total program costs constitutes a material change. The commission declines to adopt Reliant's suggestion to prescribe the process by which the commission will approve a material change.

EGSI commented that the submission of annual energy efficiency reports requirement should be modified for a utility which does not currently have energy efficiency costs in current rates, and does not implement its energy efficiency plan until 2002, and would therefore not have any savings to report until March 1, 2003.

The commission declines to incorporate EGSI's recommended change, because the commission needs to know whether a utility is implementing energy efficiency programs. In the event a utility does not implement programs during the transition period, the annual energy efficiency report would show only data regarding growth in demand.

Joint Public Interest Groups commented on proposed §25.181(g)(4) that the reporting requirements fail to properly recognize the differences between standard offer and market transformation programs and that too much emphasis is placed on peak demand and not enough emphasis on energy savings. Joint Public Interest Groups recommend structuring the reporting requirements to track both energy and demand savings and all annual savings including customer bills reductions. Joint Public Interest Groups further commented that the requirements in the description of ongoing and completed energy efficiency projects are too specific, particularly, listing the numbers of customers served by each project would impose undue burden on the implementers of retail- or distributor-oriented market transformation programs.

The commission agrees that special consideration must be given for the unique circumstances surrounding market transformation programs and revises §25.181(h) and added subsection (i) to reflect these changes.

Reliant commented that the comparisons in the annual report of projected savings and verified savings for each contract from the previous year, as well as statements showing funds expended and funds committed but not spent, may not be meaningful. Reliant commented that, for example, there may be contracts entered into during the previous year for which funds have not been expended, either because the installation of all measures has not been completed or because installed measures have not been in place long enough to allow savings to be verified. Reliant argued that this section assumes that projects can be planned, installed, verified, and paid all in the course of a year and this may not be the case.

The commission agrees with Reliant and modifies the language to lessen timing problems under §25.181(g) and (l) (previously subsection (j)) accordingly.

Reliant, TXU, and TESCO commented that the reporting requirements under proposed §25.181(g)(4) inappropriately calls for a comparison of deemed savings and verified achieved saving as verified by the independent auditor (independent M&V expert). Reliant argued that the state auditor (independent M&V expert) should not verify deemed savings. Reliant commented that, by definition, deemed savings may be used instead of savings determined through M&V activities. TXU argued that an independent verification of savings is necessary. In the alternative, TXU proposed a revision to include verification as a separate duty in the independent auditor (independent M&V expert) subsection of the rule, instead of as a required part of the March 1 annual energy efficiency reports. TXU noted that it does not disagree with including in the annual energy efficiency reports a comparison of deemed savings and achieved savings that it verifies, but it does not believe that an "audit of the audit" performed by an independent auditor (independent M&V expert) is necessary or cost-effective. TXU and TESCO objected to having to include a comparison made by an independent auditor (independent M&V expert) in its annual energy

efficiency report because it cannot control whether the audit will be performed timely such that the results will be available for inclusion in the energy efficiency report. TXU and TESCO argued that the rule should only require a comparison of deemed savings and utility-verified achieved savings, rather than a comparison that has been verified by the independent auditor (independent M&V expert). In the alternative, they recommended that the verification requirement be moved to the section of the rule prescribing the responsibilities of the independent auditor (independent M&V expert).

The commission adopts language to clarify the timing and reporting of funds and energy savings under §25.181(g) and (l) (previously subsection (j)) accordingly. The independent M&V expert is addressed in the discussion under §25.181(l).

TESCO commented that the reporting requirements under proposed §25.181(g)(4) uses the term "independent M&V," when it appears to mean "M&V" because there is no requirement for an independent M&V contractor. TESCO further commented that because utilities are to bear a share of the cost of the independent auditor (independent M&V expert) and their portion of M&V expenses, the cost of the auditor (independent M&V expert) can be added to the calculation if this is what the commission intended. TESCO commented that §25.181(g)(4) should be modified to avoid burdensome costs in report preparation and record keeping. TESCO commented that the annual report should be aggregated data, perhaps by customer class or by program, and the state auditor's (independent M&V expert) report should validate the data that makes up the aggregated data in the annual report of the utility administrators, because any more detail drives administrative costs up unnecessarily.

The commission agrees with TESCO and clarifies the language under §25.181(g). The commission disagrees with TESCO that the annual report should use aggregated data, because the commission expects administrators to assess individual contracts or projects, and there should be little incremental burden to include that information in the report.

TXU and CSW commented on the annual energy efficiency report under proposed §25.181(g)(4), requiring utilities to submit "project expenditures" in their annual energy efficiency reports. TXU commented that it does not believe that information regarding all project expenditures is necessary to adequately determine compliance with the rule, but rather, the cost-effectiveness standard considers only costs associated with incentives, program administration, and M&V. TXU further commented that a requirement to produce all such information is likely to discourage participation from EESPs who see this requirement as extremely burdensome and potentially invasive of confidential information. CSW commented that §25.181(g)(4) should be clarified to include the amount of project expenditures by the utility.

The commission disagrees with TXU and finds that project expenditures are an important and necessary component of the report, and finds that the rule clearly provides that the expenditures refer to expenditures by the utility, and therefore, declines to revise the rule.

(h) Utility administration, and standard offer and market transformation programs

This subsection has been broken out into three subsections: (h) Utility administration; (i) Standard offer programs; and, (j) Market transformation programs. All commission findings and conclusions regarding former subsection (h) reflect the new subsections.

Several parties commented that throughout proposed §25.181(h), use of the words "contract," "project," and "program" create confusion. TNMP argued that all references to "contract" should be directed at the relationship between utilities and the EESPs or REPs. CSW commented that throughout proposed §25.181(h) "standard offer programs and market transformation programs" should be changed to "standard offer programs or market transformation programs" to more accurately track the language of PURA §39.905. CSW commented that throughout this subsection, "energy and demand" should be changed to "energy and/or demand."

The commission agrees the words "contract," "project," and "program" were interchanged throughout this section, and modifies the language throughout the rule to clarify these terms. The commission further agrees that PURA §39.905 allows for standard offer contracts or market transformation programs, or both, and modifies the language throughout the rule to clarify that utilities can choose either or both. The commission agrees with CSW and has revised the rule to reflect that energy and/or demand saving are allowed.

EGSI commented that proposed §25.181(h) regarding utility administration, should include language to clearly specify the ability of a utility to recover costs in accordance with its comments in response to Preamble Issue Number 2.

The commission declines to modify the proposed rule language for the reasons set forth in the discussion under Preamble Issue Number 2.

Enron commented that the language in proposed §25.181(h) which calls for utility inspection and compensation to the EESP contingent on the utility inspection may serve as a disincentive for standard offer contracts. Enron commented that this gives the utilities the power to delay compensation and that compensation should not be tied to any form of inspection. Enron commented that independent third parties should perform the inspections and that a sound, enforceable contract will mitigate the commission's concerns and the market will serve as a primary enforcement for compliance.

The commission disagrees with Enron and finds that limited inspections are necessary to ensure that the energy savings are achieved. This issue is further discussed under §25.181(i).

Reliant, SPS, TXU, TNMP, and Shell objected to the "proper workmanship" requirement in proposed §25.181(h).

For the reasons discussed under §25.181(c)(15), regarding inspections, the commission agrees with the parties that the term "proper workmanship" is vague and replaces it with "installed and capable of performing its intended function." As discussed in §25.181(c)(15) and (k), the commission finds that inspections are necessary for the utilities to ensure that measures are installed in this manner. Some level of inspection, including inspection of installation work, is essential to ensuring that contractors achieve energy and demand savings.

TESCO commented that because individual programs may vary greatly, the language of proposed §25.181(h) should be modified to take into account that inspections may or may not be required by a particular standard offer program or market transformation program, and may or may not be appropriate prior to a payment. TESCO commented that assuring that

customers and ratepayers receive what they pay for should be part of the individual program design and not part of the rule. EGSI commented that §25.181(h) should be modified to include language to allow some contact between the utility and the customer in connection with inspections so that such contacts are not deemed to violate §25.272 of this title (relating to the Affiliate Code of Conduct).

The commission agrees that the level of inspection may vary between market transformation projects and modifies §25.181(j) and (k) to account for these differences. The commission finds that some level of inspection required for standard offer programs is necessary to ensure that the goals of the program are met. The commission also agrees with EGSI and modifies the language to account for PURA §39.157 and §25.272, (relating to the Affiliate Code of Conduct) under §25.181(h)(1)(C).

Joint Public Interest Groups commented that proposed §25.181(h) should be modified to give flexibility to market transformation programs, specifically to only require inspections if mandated in approved market transformation programs instead of as a standard course of action before payments are made. Joint Public Interest Groups argued that utilities should be required to develop a monitoring and evaluation plan, to competitively bid out the evaluation, and to review and approve the resulting evaluation report.

The commission notes that a savings monitoring mechanism should be incorporated in the market transformation programs. The commission has adopted requirements in this rule that market transformation programs must include a baseline study, a timeline and goals, and that progress must be reported in the annual energy efficiency report under §25.181(g) and (j). The commission does not, however, find it necessary that the evaluation be conducted by an independent third party, because the market transformation programs will be subject to review by the independent M&V expert (formerly the independent auditor).

TXU, SPS, and TESCO commented that proposed §25.181(h) is overly expansive in its prohibition on utilities providing energy efficiency services. TXU argued that the proposed section should only prohibit utilities from providing *competitive* energy efficiency services. SPS and TESCO commented that there should be an exception for competitive energy services for which the utility has successfully petitioned the commission for permission to conduct.

Section 25.343 of this title (relating to Competitive Energy Services) allows the utility to petition the commission to allow it to provide a competitive energy service. Accordingly, the commission revises §25.181(h)(2) for consistency with §25.343.

Cardinal commented that proposed §25.181(h) is too limiting, especially with respect to market transformation programs. Cardinal noted that in California's market transformation programs, the utilities were actively involved, and even instrumental, in the program.

The commission declines the suggestion by Cardinal related to utility participation, because the Texas statute mandates that utilities not be involved in the competitive energy efficiency programs.

TESCO and TNMP commented that proposed §25.181(h), regarding reallocation of funding if a provider does not complete a project as contracted, should not include the same customer class restriction on the reallocation of funds. TESCO commented that it preferred for program changes to be made as part of the annual review process, if necessary, when programs need to be redesigned to reach certain markets. TNMP argued that the distribution of funds according to customer class should be determined by the market as required by the legislation.

The commission finds that the revised reporting requirements and revision criteria under §25.181(g) provide adequate oversight regarding proper expenditures. The commission has eliminated the referenced provision.

Schiller, SPS, TXU, TESCO, TNMP, Cardinal, and Joint Public Interest Groups all objected to the limit in proposed §25.181(h) that applies a 20% cap on the total incentive payments available to a single contractor for a particular standard offer or market transformation contract, with the majority focusing on its particular inappropriateness for market transformation programs. Schiller commented that it could be a problem in markets or geographic areas where there are a limited number of providers or for programs with limited budgets. TXU commented that the inappropriate result of this participation cap is that all market transformation programs must be implemented by at least five entities. TXU commented that some market transformation programs target specific technologies or installation practices, with the goal of increasing their use or installation and it would be imprudent to have multiple providers each offering a competitive program to increase the use of the same technology. TNMP suggested revising the rule to refer to budgets, as opposed to payments, to prevent utilities from becoming subject to an after-the-fact violation of the rule that is completely out of the utility's control. TNMP commented that the language proposed in the rule presupposes that utilities will themselves design and solicit market transformation programs, and that a minimum of five bidders will have the capability to competitively bid a viable response. TNMP argued that a market-based approach to market transformation programs would leave design in the hands of prospective bidders and not require successful bidders to share allocated funds at a 20/80 rate and such a requirement is a disincentive to prospective bidders. Cardinal commented it will be extremely difficult for a prospective bidder to somehow craft the proposal to account for the fact that they can accept no more than 20% of the funding for a market transformation contract.

The commission declines to modify the 20% cap for standard offer contracts because this cap provides a mechanism to stimulate market competition as discussed under Preamble Issue Number 5. The commission further notes that the utility may petition the commission for a waiver of this limitation if the utility determines that it is necessary. The commission agrees that the 20% limitation may not be appropriate for market transformation programs and has revised the language under §25.181(h)(3) accordingly.

NAESCO commented that proposed §25.181(h) should replace "standard offer contract" with "standard offer program" with regard to the percentage limitation of incentive payments available to an individual EESP.

The commission disagrees with NAESCO. The 20% limitation should encourage participation by multiple EESPs under individual contracts to assure that customers have a choice of multiple EESPs. The commission declines to make this change.

Reliant, TESCO, SPS, and TXU proposed various language clarifications to proposed §25.181(h). Reliant commented there is no process or timeline for approving programs or how they will be made available to utilities in time to be incorporated into the energy efficiency plan filings due by April 2000. TESCO rec-

ommended removing language suggesting that multiple niche standard offers would be appropriate. TESCO commented that industrial interruptible contracts have no business in the energy efficiency programs envisioned by SB 7. Although it believes that some load management capacity is beneficial to customers and all ratepayers, TESCO argued that the energy efficiency considered in this rule should increase the efficiency of use or improve the load profile on a continuing basis. SPS commented that it is unclear what a customer class is in §25.181(h). TXU commented that statewide standard offer contracts might not be effective because they would remove important, regional differences in standard offer programs and ignore customers' unique needs and preferences. TXU further commented that language should be included in the "first-come, first-serve" method in §25.181(h) to clarify that it applies only to the extent that the utility has budgeted for the standard offer program.

The commission declines to make modifications as suggested by Reliant concerning the process and timeline of the filings, for the reasons discussed under §25.181(g). The commission declines to make the modifications suggested by TESCO, because the rule allows for 15% load management, and interruptible contracts are a form of load management. In response to TXU, the commission finds that statewide standard offer contracts may be effective and declines to modify this provision. The rule does not require that contracts be awarded if a utility has exhausted the budget for a standard offer program. This issue is addressed under §25.181(g).

TNMP commented that proposed §25.181(h) should be modified to delete the provision that different standard offer contracts may be developed to address hard-to-reach customers, because the legislature did not provide for favoring any particular group of customer, but instead required that incentives be nondiscriminatory. TESCO commented that it should be very rare that niche market standard offers be created. It preferred that supplemental efforts to reach the "hard-to-reach customers" be considered through market transformation programs.

The commission does not require that different standard offer contracts be developed for different customer classes. The rule requires that standard offer contracts be developed that eliminate the market barriers that prevent customer classes from participating in standard offer contracts. The commission finds that hard-to-reach customers necessitate special attention. The commission declines to make the change suggested by TNMP and TESCO.

TESCO and TNMP argued that the proposed §25.181(h) should be modified to reflect the requirement that all measures must produce both capacity and energy savings and are therefore always going to be eligible for both capacity and energy avoided cost-based incentives. TNMP commented that the subject of this subsection is to describe how standard offer programs work, i.e., that they include a standardized contract template with common terms and conditions applicable to all participating EESPs and retail electric providers. TNMP commented that changes to the level of incentives, subject to the cost-effectiveness cap, should be market-based, reflecting how the market responds to the amount of incentives offered. TNMP further commented that the incentives should not vary by customer class since it conflicts with the legislation.

The rule does not require that all measures produce both capacity and energy savings. EESPs will be compensated separately for the capacity and energy savings, and measures that do not achieve capacity savings will not receive incentives for capacity savings. The commission, therefore, declines to make the revision suggested by TESCO and TNMP. The commission also declines to make the changes noted by TNMP regarding incentive levels in accordance with the discussion under §25.181(g)(2)(F).

Schiller and TXU commented that the rule should allow incentive payments to vary within a customer class and between technologies because differential pricing by technology type will improve the cost-effectiveness of programs. Schiller and TXU further argued that failure to allow for customization of incentive payments according to different technologies would discourage the installation of certain technologies. NAESCO commented that the commission should clearly establish the requirement for neutrality regarding technologies, equipment, and fuels. NAESO recommended that the commission should stress the importance of comprehensive treatment of buildings employing multiple technologies to ensure that optimal energy savings are achieved. TNMP argued that market-neutral is market-neutral, and if standard offer programs are to allow switching away from electricity, they should allow switching to an electric technology from an alternate fuel. In its view the rule should not single out natural gas as the only alternate fuel deserving of protection.

The commission agrees that the rule should be technology neutral, but declines to adopt the suggested language regarding fuel switching. The commission finds that switching from electricity is consistent with the legislative goal to reduce consumption of electricity while improving efficiency.

OPC/Cities disagreed with the requirement that all standard offer contracts must result in a reduction in energy consumption and reductions in energy costs for end use customers. OPC/Cities noted that an end use customer may switch from an electric appliance to a gas appliance that saves energy, but if gas prices increase after the switch such that the energy savings are not sufficient to cover the increase in price, it may result in higher energy costs. OPC/Cities submitted that as long as the initial analysis showed both energy and cost savings, unexpected fluctuations in fuel prices should not disqualify a project.

The commission agrees with OPC/Cities that if the initial analysis shows both energy and cost savings, unexpected fluctuations in fuel prices should not disqualify a project. Standard offer projects should be designed to reduce energy consumption and energy costs for the end use customer, in accordance with the legislative requirement. This is what the rule requires, so the commission declines to modify the language.

TNMP commented that the rule should include the requirement that all measures must result in a reduction in peak demand because the legislation clearly indicates that energy efficiency is to produce savings in demand growth. TNMP argued that because the legislation established the measure of energy efficiency according to load growth, the emphasis of this subsection should be on demand reduction, not energy reduction. In reply comments, Shell commented that the commission should reject the utilities' and industrial customers' comments emphasizing the focus be on peak demand. Shell agreed with OPC's and Joint Public Interest Groups' comments that the commission should focus on energy savings because demand reductions do little to reduce total energy consumption. Shell argued that the commission should limit demand reduction programs and

not expand the percentage savings beyond 15% and should not subsidize interruptible customers by encouraging utilities to transfer money to them in the guise of energy efficiency programs. Shell argued that although interruptibility may offer social benefits, energy efficiency is not one of them. Shell noted that the commission has encouraged eliminating or reducing interruptible rate classes, and the Legislature imposed a 150% stranded cost allocation to interruptible classes, so the commission should not take the opposite position and subsidize those customers through devoting energy efficiency payments to them.

PURA §39.905 requires a reduction in energy for the end use customer, but expresses the goal in terms of a demand reduction. The commission notes that as a compromise position, the parties agreed to allow load management to comprise 15% of the energy efficiency measures, and that load management focuses on peak demand. Accordingly, the commission declines to modify the language.

Joint Public Interest Groups commented that they oppose prescribing ceilings on incentive payments and limiting lighting to 65% of the savings of each project because these approaches are arbitrary and will result in economic inefficiencies. Instead, Joint Public Interest Groups suggested that the incentive funds be allocated by customer class and that within a customer class, differential incentives be used to encourage the acquisition of cost-effective energy savings with multiple end-uses. Schiller, TNMP, and NAESCO also objected to the limit on 65% of savings from lighting measures. Schiller commented that it accepts the overall goal of encouraging comprehensive projects; however, that the cap on lighting savings at the project level will restrict many projects that cost-effectively contribute towards meeting the energy efficiency goal. TNMP commented that the cap is in conflict with PURA §39.905(a)(1) and (3) that requires incentives to be nondiscriminatory and programs to be market-based. TNMP further commented that although PURA §39.905(b) requires the commission to provide oversight and adopt rules and procedures to ensure that the goal is met, the legislation does not provide for policy-setting by the commission with respect to the energy efficiency goal. NAESCO commented that although it agrees that 100% lighting programs are not desirable, it is concerned that there may be circumstances where the proposed language would impair program development. NAESCO believed that a better approach would be to let the Working Group (energy efficiency implementation docket) resolve the problem.

The commission finds that the 65% limitation on lighting was a compromise made by the parties during the workshops held during the development of this rule. The commission determines that this is a reasonable means for encouraging comprehensive energy efficiency projects; accordingly, the commission declines to modify this section.

Joint Public Interest Groups, Nucor, TIEC, EGSI, and TESCO commented on the limitation that savings achieved through load management programs, including interruptible rates, may not exceed 15% of the total savings. Joint Public Interest Groups commented that although they support a compromise position allowing load management to count for up to 15% of total demand savings, they are opposed to allowing interruptible loads to count toward the energy efficiency goal. Nucor suggested that the limitation should be deleted, because it is an unreasonable restraint. Nucor argued that there is nothing in PURA §39.905 that would restrict the use of these programs and these programs are very cost-effective. In the alternative, Nucor argued that the level of savings achievable through load management programs should be raised to a more substantial percentage. TIEC noted that the 15% cap on load management reflects a consensus on one of the most debated issues in the negotiations. TIEC argued that interruptible power reduces energy consumption during critical on-peak times and reduces energy costs of both the individual customer and the system. TESCO commented that industrial interruptible contracts have no business in the energy efficiency programs envisioned by SB 7. EGSI replied to TESCO that it believes that interruptible rates should be allowed to count toward energy efficiency goals because SB 7 also contemplated the legitimacy of load management as an effective means of reducing peak energy demand and impacting customer costs.

The commission finds that allowing load management to comprise 15% of total demand savings is an acceptable compromise position and that interruptible service is appropriately a part of load management. Interruptible service is likely to be provided by competitors in the market and it does not provide lasting efficiency benefits; therefore, the 15% cap is reasonable, and the commission declines to modify this section.

EGSI, TXU, SPS, Schiller, NAESCO, ESL, and Nucor suggested removing the ten-year useful life standard. EGSI commented that the ten-year useful life requirement might eliminate valid energy efficiency programs such as compact florescent lighting and other new technologies that might become available. Schiller argued that more flexible language should be used that would allow incentive payments to be based on a reasonable estimate of the useful life of a project, not to exceed ten years. Schiller commented that the inclusion of a wide variety of measures would be necessary in order for the utilities to meet the overall goal. SPS argued that the ten-year life for market transformation programs might be problematic. NAESCO commented that the language should be deleted, or at minimum, additional language should be added that allows reasonable assumptions in the calculations of useful lives so that standard maintenance such as bulb replacement and proper preventive maintenance do not become barriers that limit qualifying efficiency measures. ESL commented that this provision would also require all utilities to track all projects for ten years to ascertain if measures are still installed and working. ESL commented that in addition to fluorescent lamps, water heaters, air-conditioners, a percentage of refrigerators, and other equipment will fail before ten years.

The commission disagrees with the parties and finds that the requirement for a useful life of ten years is necessary to ensure quality programs. The ten-year life requirement was by consensus agreement. It is also a requirement under the commission approved CPL standard offer program. The commission declines to change the requirement. The commission does not agree with ESL's interpretation that the rule requires that a project be tracked for ten years, or its implication that the rule precludes program participants from making reasonable assumptions about the useful life of energy efficiency measures.

SPS commented that the rule should clarify that only customers taking T&D services from a utility can participate in its energy efficiency programs. SPS commented that it is concerned about limiting program participation to T&D customers in multiple-certificated service areas. SPS argued that the utility is not obligated to provide DSM incentives for customers who do not receive T&D service from the utility. Shell commented that it

should be clarified to state that it does not reduce or replace any obligations under §25.272 (relating to the Affiliate Code of Conduct).

The commission agrees with SPS and incorporates language under §25.181(i)(2)(J) so that only customers taking T&D services from a utility can participate in its energy efficiency programs. This is necessary to ensure that proper customers receive the intended benefits.

TNMP and NAESCO objected to the environmental impact provisions in proposed §25.181(h). TNMP stated that measures with deemed savings should be exempt from the environmental impact provisions. TNMP argued that if a project proposal is required to include this information the administering utility should act on it; however, the rule only prohibits incentive funds for projects that have a negative environmental or health impact. TNMP argued that such measures are extremely vague and subject to interpretation. With respect to deemed savings, TNMP argued that it expects that the commission will have considered environmental and health impacts for those common and well-understood measures included in the deemed savings program component. TNMP argued that residential contractors could rely on the deemed savings components to simplify their participation. NAESCO commented that this section could be construed as requiring an Environmental Impact Statement and if such a statement were required, it would be so costly to implement that it would discourage participation. NAESCO argued that it cannot identify any discernible benefit associated with this requirement and that energy efficiency measures are benign with regard to environmental impact and certainly should have less impact on the environment than the generation alternative.

The commission determines that it is necessary for projects to identify potential environmental or health impacts associated with the measures installed. The intent is to protect customers from potential health and safety hazards associated with the installation of certain measures. The commission anticipates that utility inspections to verify that the measures are installed and capable of performing their intended function will also reduce the risk to the customer. The commission notes that this is not a requirement for a full-scale Environmental Impact Statement, as such is not required in the rule. Accordingly, the commission declines to modify the language in §25.181(h)(4)(C).

Shell commented that under the proposed §25.181(h), in addition to stating whether any environmental or health impacts exist, the applicant should also state whether it has requested permits from any other regulatory agencies and whether any such permits are required. Shell noted that the commission has imposed a similar requirement for certificate of convenience and necessity applications, requiring the applicant to identify all necessary regulatory approvals and to state whether it has obtained those permits. Shell argued that doing so would give the utility some ability to evaluate the seriousness of potential risks.

The commission accepts the suggestion made by Shell. The requirement has been incorporated under §25.181(i)(2)(M).

ESL commented that the rule will be difficult to enforce unless the commission adopts strict requirements about the M&V plan such as are contained in the TECC/SECO "Texas Guidelines for Energy Performance Based Contracts."

The commission may consider these standards in the energy efficiency implementation docket.

Shell commented that the requirement that projects result in "reliable" energy and demand savings does not add the intended meaning and some parties could confuse the term with its use to describe system reliability. Shell infers that it instead means that projects should lead to consistent and predictable savings.

The commission agrees with Shell and changes the wording from "reliable" to "consistent and predictable" under §25.181(i)(2)(G).

TNMP commented that the proposed rule should be modified so that the standard offer contract templates state the minimum criteria for contractor participation to assure compliance with state and federal codes, licensing, and customer protection requirements. TNMP further recommended that these standard terms and conditions prohibit incentive payments if it is determined that an EESP has failed to comply with the applicable codes, licensing requirements, truth-in-lending statutes or other applicable law, regulation, or ordinance. TNMP commented that with this change, the customer protection provisions could be eliminated, removing a significant administrative burden. EGSI commented that the customer protection references in proposed §25.181(h) should only direct the attention to upcoming customer protection rules and the specific customer protections should be removed from this section. TXU commented that proposed §25.181(h) provides that standard offer contracts must state the minimum criteria for contractor participation and must include the customer protection contract provisions required in the rule. TXU agreed that standard offer contracts should include minimum requirements for contractors recommending the following criteria: 1) evidence of financial strength and capability (10-K's for public companies and audited financial statements for private companies); 2) demonstrated professional experience of the Project Sponsor; 3) demonstration of a solid work plan that covers the design, implementation, operation, and management of the project; 4) proof of insurance; and 5) a performance bond.

The commission, as discussed under Preamble Issue Number 4, has added criteria for contractor participation and has revised §25.181(i) accordingly. The commission finds that the customer protection provisions in §25.181(n) remain necessary.

TESCO commented that the complaint process should be modified to provide clarification. TNMP commented that standard offer contracts provide a complaint process that allows the EESP to file a complaint against a utility and that references to customer complaints should be deleted. TNMP commented that by providing a customer complaint channel, such a provision would also imply a complaint resolution mechanism. TNMP argued that it is not in a position to act in such a capacity, particularly since it could require the utility to step into the area of providing underlying competitive services in the form of technical assistance.

The commission determines that the customer must be able to file a complaint against the EESP. Any contractual complaints of an EESP against the utility may be filed with the commission. The filing of a complaint by a customer does not mean that the utility must resolve the complaint, but it should use the complaint history in determining a contractor's eligibility to continue to participate in the standard offer or market transformation programs. This is an important component in

creating a successful energy efficiency program. Accordingly, the commission declines to modify this subsection.

Several parties commented that more flexibility was needed regarding market transformation programs and this issue is also addressed in Preamble Issue Number 7. SPS commented that EESPs would not participate in a competitive solicitation for market transformation contracts if they have to agree to accept only 20% of the funding from the contract. TESCO commented that this section should clarify that utilities must be responsible for design of programs they administer, but should work with the other interested parties through the Working Group (energy efficiency implementation docket). TESCO argued that the rule should prescribe a workable process for discovering, developing, and adopting or endorsing market-transformation programs. TESCO commented that this section should be revised to reflect that utilities may pilot market transformation programs and are encouraged to work with any party to discover new potential programs, but pilot programs cannot count savings toward the utility's goal until approved for full implementation by the commission. It further commented that the Working Group (energy efficiency implementation docket) should solicit annually ideas for new market-transformation programs and recommend to the commission those that should be approved under this section, and the commission should consider whether to endorse such programs so that utilities may adopt them as tools toward their efficiency goals. TNMP commented that an additional criterion should be added to document the forecast market trend (including energy and demand) and the market-transformation market trend in order to establish how, and to what extent, energy and demand savings will be achieved. TXU commented that market transformation programs should not be required to be competitively bid. Joint Public Interest Groups concurred that market transformation programs should not be competitively solicited during the transition period to allow utilities maximum flexibility to develop programs in a timely fashion. Joint Public Interest Groups commented that each market transformation program should include a program plan developed by the Working Group (energy efficiency implementation docket), by an individual utility, or by a contractor responding to a request for proposals. Joint Public Interest Groups proposed that market transformation programs outline the program goals, market barriers the program aims to address, key intervention strategies, estimated costs and savings, deemed savings estimates (where appropriate), evaluation metrics, and a measurement and evaluation plan. Joint Public Interest Groups further commented that the rule should encourage testing of market transformation programs during the transition period, by encouraging each utility to pilot at least one market transformation program. Joint Public Interest Groups and Frontier commented that a 20% cap on total incentive payments for a given service provider is not appropriate for market transformation program providers. Joint Public Interest Groups commented that free-ridership should be limited through the design of individual programs and reasonable projections of baseline market activity in the absence of the program. TXU replied that it agrees with TESCO's argument that any entity that develops a special targeted, market transformation program should be able to negotiate adoption of the program without a solicitation. Frontier noted that in other states, payments to implementers of market transformation programs are normally made as milestones are completed, not as savings are verified.

In addition to the above independently filed comments, the Coalition argued that market transformation programs should not be offered through solicitations. In response, OPC, Cities, TIEC, Shell, and Enron (Joint Reply) filed joint comments stating that the rule needs to be amended to facilitate the development of market transformation programs. The Joint Reply commented that market transformation programs must be better defined and more clearly established in the rule. The Joint Reply argued that market transformation projects are typically implemented by a contractor solicited through a request for proposals, that the contractor delivers a program, and that a third-party program evaluator documents the implementation contractor's progress in achieving goals laid out in the program plan.

As noted in response to Preamble Issue Number 7, the commission agrees with the parties that market transformation programs need special consideration in their design, measurement, verification and savings credits. The expertise of independent bidders regarding market transformation programs should be utilized in program proposals, and the rule should not attempt to be too prescriptive regarding program details. The commission believes that the only way to measure savings is if a baseline is first established, and that it is appropriate to require such a baseline to be relevant in time and geographic region in market transformation program proposals. A proposal must also include a timeline with a date on which the market will be considered transformed and savings cease to be counted. The timeline shall also include projected savings throughout the timeline until the ultimate goal is reached. The commission will allow utilities to count interim energy savings along the timeline goals towards the mandated reductions in energy consumption. The ultimate goal of market transformation programs is behavioral changes that are accompanied by a predicted amount of kW and kWh saved. The commission further finds that a follow-up study is necessary to evaluate the actual savings received. Many of the other comments would be too prescriptive in establishing the terms and conditions for such programs. The commission modifies §25.181(j) to reflect the changes discussed above.

Schiller, TXU, NAESCO, TESCO, EGSI, and Reliant objected to the requirements regarding free-ridership restrictions under proposed §25.181(h). Several parties suggested deleting this section because it is impossible to determine on an individual project basis what would have been done in the absence of the program, and such requirement will increase administrative costs. Schiller proposed that the language should reflect that administrators should include program design features that discourage incentives being paid for projects that would have been installed in the absence of the program. TXU argued that this section over-corrects the problem by completely eliminating measures that might arguably contain some element of free-ridership. TXU recommended that the provision either be totally eliminated, or in the alternative, that the free-rider issue be moved from this prohibition section to the preceding rule section that addresses goals of energy efficiency program design. NAESCO agreed that incentives should only be paid where the incentive induces a customer to acquire an energy efficiency measure that he or she would not otherwise acquire, but NAESCO commented that "free-riders" couldn't be completely eliminated without incurring very high administrative costs. NAESCO believed that many, if not most, free-riders can be eliminated through program design. Reliant commented that a project to install measures that are already widely recognized as the industry standard should be used as the example. TESCO commented that the wording regarding free-ridership would

prevent any utility from obtaining its efficiency goal. TESCO commented this is particularly problematic, in that it eliminates any measure or project that involves measures acceptable to most customers.

The commission finds that the language precluding incentives for energy savings that would have occurred in the absence of the proposed project is a necessary safeguard. Contracts must be designed to achieve savings that would not reasonably be likely to occur without the contracts. Accordingly, the commission declines to modify the language under §25.181(h)(4)(B).

TESCO commented that references to environmental impact in proposed §25.181(h) should be reworded so that it is reasonable to enforce, because it is not always possible to know in advance whether a project may somehow lead to some negative environmental or health impacts. TESCO argued that the language should be clarified to address any known or obvious environmental impacts, because there are already sufficient laws dealing with asbestos, ballast, and transformer chemicals. TNMP commented that all reference to environmental impact should be removed, because a utility is not in a position to determine whether a project will result in negative environmental or health impacts, or to establish whether there is a likelihood that materials or equipment will be disposed of improperly.

The commission finds that the language precluding incentives for projects that result in negative environmental or health impacts is a necessary safeguard for customers. Accordingly, the commission declines to modify §25.181(h)(4)(C).

TESCO, TNMP, and CSW commented that the language under proposed §25.181(h), regarding the commission's consideration of the relative cost-effectiveness of a program, should be modified or deleted. TNMP commented that it should be modified to allow the commission to first consider the relative cost-effectiveness of a program and its contribution in meeting the legislative mandate when deciding whether to approve a program because the cost-effective achievement of the energy efficiency goal was the primary charge given the commission within PURA §39.905. CSW suggested deleting this language because it is unnecessary.

The commission finds that it is reasonable to consider the relative cost-effectiveness of a program and its contribution in meeting the legislative mandate when deciding whether to approve a program. However, the commission agrees this need not be prescribed in the rule and has eliminated the language.

(k) Inspection, measurement and verification.

EGSI and the Coalition requested that the purpose of M&V be limited to improving future estimates and program delivery. CSW, TNMP, Enron, and NAESCO stated that the M&V of energy savings should not be prescribed in the rule, but should be incorporated in the individual standard offer contract designs.

The commission finds that limiting the purpose of M&V to improving future estimates leaves the program open to abuse. Where companies are contracting to provide energy efficiency measures that reduce energy consumption or demand, or both, there must be systematic evaluation of whether they deliver what they have agreed to.

NAESCO and ESL recommended that the rule adopt the USDOE IPMVP as the standard M&V protocol. ESL also recommends the adoption of ASHRAE Guideline 14 to be published in the spring of 2000.

The commission may consider these standards in the energy efficiency implementation docket.

Joint Public Interest Groups argued that the requirements under proposed §25.181(i) could not be applied to MTPs and that MTPs require different evaluation methods. Joint Public Interest Groups proposed that market transformation programs be developed in coordination with the utility or Working Group (energy efficiency implementation docket). The Joint Public Interest Groups further suggested that the program design outline the key market barriers that the program aims to address, the goals of the market transformation program, key intervention strategies, evaluation metrics, and a measurement and evaluation plan. Joint Public Interest Groups further suggested that these plans should be developed on a case-by-case basis and included or referenced in the utility's energy efficiency plan.

The commission agrees with the proposed changes and revises §25.181(j) and (k) accordingly.

CSW and NAESCO supported the requirement that makes the EESP responsible for M&V of energy savings. Schiller and UCONS stated that placing the responsibility of M&V onto the EESP may be appropriate for large companies, but may form a barrier to smaller companies who lack the expertise. UCONS stated that this would be particularly the case for residential programs where M&V costs are prohibitive. UCONS recommended heavy reliance on deemed savings. Schiller commented that some parties may suggest that the level of M&V rigor be reduced to account for this issue, but offered a solution to maintaining a consistent level of M&V rigor. Schiller proposed allowing the M&V to be conducted by an independent, third-party with the proper expertise.

The commission finds that requiring the EESP to conduct its own M&V may create a barrier to smaller companies who lack the expertise. It has therefore revised §25.181(k)(1) to reflect that the M&V may be conducted by an independent third-party when necessary.

Enron stated that an independent, third-party should be required to perform inspections, because utilities may manipulate inspection to favor their affiliate EESPs and create barriers to non-affiliate EESPs participation.

Under §25.181(h)(4) an EESP or its affiliates may not receive more than 20% of the incentive payment under the standard offer program. This provision will require the utility to use non-affiliated EESPs for at least 80% of each contract, and it is in the utility's interest that they are successful. This provision should protect non-affiliate EESPs from "unfair" inspections. The commission also finds §25.181(k)(1) states that the utility is responsible for performing inspections, but may contract this activity out to an independent third party. The commission declines to revise the language.

EGSI, Reliant, and TXU argued that the requirement of inspection to ensure that all measures installed are operating properly under proposed §25.181(i) places an undue burden on the utility, because the requirement is subjective and potentially unenforceable. Reliant and TXU argued that this is an issue between the provider and the customer. The Coalition also objected to the term "proper workmanship" as ambiguous and subjective, and expressed concern that this may expose the utility

to legal liability. At the APA hearing, GETCAP, CACST, Texas ROSE, and TDHCA commented that TDHCA as the administering agency for the federal Weatherization Assistance Program, inspects at least 10% of weatherized units, and that the inspection does include an evaluation of workmanship. Joint Public Interest Groups commented that withholding payment pending inspection is the only way for the utility and the customer to ensure that the project is properly installed. Once payment has been made the utility and the customer lose the leverage for corrective action.

This issue is discussed under §25.181(c)(15), regarding inspection. There the commission concluded that the standard of performance should be that measures be "installed and capable of performing its intended function." Ascertaining that measures have been installed in this manner is absolutely critical to achieving the energy efficiency goal. Residential and small commercial customers often lack the expertise to determine whether the measures have been installed in this manner. Proper installation of measures directly affects the energy savings potential of these measures. For example, faulty installation of a heating, ventilation, air conditioning system or insulation may actually increase energy consumption. Improper installation of certain measures also affect indoor air quality and may have an adverse health and safety impacts on the resident. Moreover, the program places heavy reliance on deemed savings, rather than verification of actual savings. Deemed saving estimates for installed measures can only be accurate if these measures are properly installed in a manner capable of performing their intended function. The commission also finds that the inspection requirement was a consensus agreement among the parties to allow for deemed savings rather than verified savings. Finally, proper installation is necessary to maintain customer confidence in the programs. However, to reduce the cost burden of inspections, the commission limits inspections to a statistical sample of residential and small commercial installations, and the size of the sample may reduce over time if a contractor under a particular contract has consistently yielded satisfactory inspection results and revises §25.181(i) accordingly.

EGSI and TXU also requested a revision in proposed §25.181(i) so that inspections would occur within 30 days of notification of installation.

The commission agrees with this change and revises §25.181(k)(4).

TESCO and Joint Public Interest Groups recommended overall revision of proposed §25.181(i) to eliminate redundancy and conflicting language.

The commission has reviewed and eliminated redundant and conflicting language from the rule.

(l) Independent measurement & verification expert (formerly the independent auditor)

TXU suggested that the section regarding independent auditor (independent M&V expert) be eliminated. EGSI and Shell disagreed with TXU. CSW, SPS, TXU, TESCO, NAESCO, and Joint Public Interest Groups commented that the role of the independent auditor (independent M&V expert) as envisioned in the rule is too broad. TXU, in reply comments, stated that if the commission chooses to maintain the independent auditor (independent M&V expert), its activities should be limited to review of the utilities' energy efficiency reports. Joint Public Interest Groups stated that the role of the independent auditor (independent M&V expert) should consist of a limited number of spot checks within a program or utility. CSW, SPS, TXU, TESCO, and NAESCO argued that the role of the independent auditor (independent M&V expert) should be limited to evaluation of overall program performance and administration and to make recommendations from a process evaluation perspective. The Coalition proposed that the independent auditor's (independent M&V expert) role be limited to a performance audit, review of M&V plans and reports, select field trials, investigations or inspections, and a report of its findings, conclusions, and recommendations to the commission and to the Working Group (energy efficiency implementation docket) on an annual basis. Joint Public Interest Groups responded that the function of the independent auditor (independent M&V expert) should be to conduct spot checks on a sample of installations and a macro overview of the program.

Reliant, TNMP, and TXU argued that having the independent auditor (independent M&V expert) verify savings, particularly deemed savings, when utilities will follow an M&V protocol, would be duplicative. Cardinal suggested that verification of deemed savings by the auditor (independent M&V expert) should be limited to proper installation and project implementation under the MTP. EGSI, in its reply comments, agreed with the proposed change by Cardinal. Shell commented that utilities would possess an inherent motive to overstate program successes and costs. The specter of independent audits, according to Shell, will help ensure that utilities scrupulously maintain accuracy. TXU contended that the utilities can follow the approved protocol, while Shell argued that someone has to ensure that they actually do so.

CSW, EGSI, Reliant, TXU, Shell, TESCO, NAESCO, OPC/Cities, and Joint Public Interest Groups raised concerns over the cost allowance for the independent auditor (independent M&V expert). These parties stated that if the scope of activities of the independent auditor (independent M&V expert) is reduced, so would be the cost. TXU proposed a cost allowance of 1.0%; NAESCO proposed a cost allowance of 0.5%; and OPC/Cities proposed a cost allowance of 2.5%. Shell commented that in requiring all utilities to share the independent auditor's (independent M&V expert) funding requirements, the commission should specify the methodology by which it will determine each utility's responsibility. There are two possible methods: each utility could contribute according to its statewide load ratio share, or as a percentage of the auditor's (independent M&V expert) cost causation. Shell proposed a combination of both methods. Allocating responsibility based on the work that the individual utility creates would recognize the utility's quality control and reward it for establishing reliable and easily audited systems. The auditor (independent M&V expert) should spend relatively more time reviewing and correcting records of utilities that inadequately manage their programs, and relatively less time with those utilities that have implemented effective administrative procedures.

The rule allows the EESP to conduct its own M&V and allows for heavy reliance on deemed savings, rather than verified savings. Deemed savings often overstate energy savings and are particularly vulnerable to problems such as improper installation and climatic variation. For this reason, the parties reached a compromise in which the EESP could conduct its own M&V and projects could rely on deemed savings as long as the savings are subject to verification by the independent

M&V expert. The commission finds that verification by the independent M&V expert does not constitute a duplication of effort. Verification of savings will discourage overstatement of savings, allow for proper adjustments of deemed savings values, and ensure that the energy goal is met.

The commission agrees that the allocation of 5.0% of the total budget to the cost of the independent M&V expert would divert too much funding from actual projects. Therefore, the commission assigns the cost of the independent M&V expert to the administrative allowance. In addition, the commission finds that the independent M&V expert review will initially be a one-time review during 2003, to evaluate the program results of 2002. The need for evaluation by the independent M&V expert in subsequent years shall be based on the results of the 2003 evaluation. The primary role of the M&V expert will be to verify savings, and the rule is revised to reflect that the expert will perform a *limited* process evaluation. A limited process evaluation is intended as a broad overview of the program, and this purpose is secondary to the savings verification. This will reduce the expense of a full process evaluation. The rule has been revised to reflect the primary purpose of the independent M&V expert. In addition, to clarify the role of the independent M&V expert, the term has been changed from independent auditor to independent M&V expert. The commission also finds that cost allocation for the independent M&V expert should be proportional to the size of the program. The commission has revised §25.181(l) accordingly.

CSW, Reliant, TXU, and TESCO objected to the requirement that allows only energy and demand savings verified by the independent auditor (independent M&V expert) to be counted towards the 10% goal. Reliant, TESCO, and TXU question whether the auditor (independent M&V expert) would be able to verify savings in a timely manner.

The commission agrees that the verification by the independent auditor would preclude utilities from reporting their energy savings in a timely manner. The commission concludes that energy savings reports should be adjusted based on the findings of the independent M&V expert. The language in the rule has been revised accordingly.

(m) Energy efficiency implementation docket (previously the Energy Efficiency Working Group)

CSW, NAESCO, Reliant, Joint Public Interest Groups, Schiller, TXU, and Frontier commented on the structure and duties of the Working Group (energy efficiency implementation docket). EGSI commented that although the Working Group (energy efficiency implementation docket) has been assigned the task of assisting in the development of guidelines under which a utility shall develop its April 1, 2000 energy efficiency plan filing, no schedule was provided in the rule, and this may lead to the utility being unable to obtain needed information for its filing without recourse.

Commenters generally agreed that the group was necessary to accomplish the energy efficiency goals, and they offered various comments on the overall structure and function of the group. Frontier generally stated that the role of the Working Group (energy efficiency implementation docket) should be better defined, but offered no specific suggestions. NAESCO commented that the rule should delegate more of the responsibilities for program design to the Working Group (energy efficiency implementation docket) because the stakeholders, who will make up the Working Group (energy efficiency implementation docket), have more experience in this area. In particular, NAESCO recommended that the M&V requirements and level of inspection, resolution of proportional and equitable sharing of program funds by customer classes, review of incentive payment structure, and the level of lighting that should comprise comprehensive measures should be addressed by the Working Group (energy efficiency implementation docket), and not be spelled out in the rule. Reliant also commented that the criteria and standards for participating in the standard offer program should be within the aegis of the Working Group (energy efficiency implementation docket). Joint Public Interest Groups recommended that information about best practices in market transformation programs in other states be provided in the energy efficiency filing for review and approval by the commission.

Reliant commented that the rule should specify that the minimum criteria regarding licensing, relevant experience, financial strength and reliability, technical qualifications, and management oversight for contractor participation should be established by the utility administrator with input from the Working Group (energy efficiency implementation docket). Reliant also commented that the evaluation of market transformation programs might be appropriate for the Working Group (energy efficiency implementation docket) to address as market transformation programs develop.

TESCO commented that the participating utilities must be active, cooperative members of the Working Group (energy efficiency implementation docket) to ensure the success of the Working Group (energy efficiency implementation docket). TESCO also expressed concern that the role of the Working Group (energy efficiency implementation docket) in trying to identify potential market transformation programs should be clarified to protect proprietary ideas from possible improper use by the state or potential competitors. TESCO contended that the Working Group (energy efficiency implementation docket) or utilities should solicit market-transformation programs from providers, but should offer the winning program ideas out for bid to other providers.

TXU commented that the Working Group (energy efficiency implementation docket) of persons interested in energy efficiency programs could provide valuable insight and assistance to the energy efficiency program. CSW also supported an open and collaborative process; however, CSW and TXU commented that the rule appears to give the Working Group (energy efficiency implementation docket) too much responsibility for technical issues for a voluntary group. CSW further commented that the potential activities listed under the Working Group (energy efficiency implementation docket) are too detailed, and should be strictly limited to reviewing utility administration plans and recommending program improvements. Therefore, CSW proposed deleting all responsibilities of the Working Group (energy efficiency implementation docket). TXU expressed concerns that the proposed rule gives the Working Group (energy efficiency implementation docket) improper authority over certain decisions, especially considering that members of the Working Group (energy efficiency implementation docket) will be interested persons. TXU also recommended that the Working Group (energy efficiency implementation docket) not be given the authority to recommend the independent auditor (independent M&V expert), because it carries large financial implications and potential liability for the voluntary members who are also stakeholders. Schiller suggested that the commission carefully review the roles of each party to ensure that they align with

their role in the marketplace and the balance between assignment of responsibility and authority, particularly with regard to the Working Group (energy efficiency implementation docket). Schiller also commented that the Working Group (energy efficiency implementation docket) is granted some responsibility but no set membership, compensation mechanism, governance, or accountability.

The commission notes that the stakeholders acknowledged in the workshops that the commission staff cannot accomplish the list of duties in §25.181(m) without the voluntary support and input from the stakeholders, particularly in view of the complex technical task of implementing PURA §39.905 in the short time mandated by the statute, and invites active participation from all parties. To maintain the necessary staff management within the overall agency docket structure, the commission finds that it is more appropriate to establish an energy efficiency implementation docket to carry out the responsibilities listed in §25.181(m).

The commission agrees with Reliant that the evaluation of market transformation programs may be an appropriate function of the energy efficiency implementation docket, and revises §25.181(m)(2) accordingly. The commission further agrees with TESCO that there is a potential chilling effect on the market transformation program development should proprietary ideas be made available to competitors through the solicitation process. The commission finds that the revised language in §25.181(m), which provides for confidential filings, sufficiently protects the proprietary market transformation programs that may be filed in the implementation docket. The commission agrees with TESCO that §25.181(m) should be revised to replace "avoided cost" with "cost-effectiveness."

(n) Customer protection

CSW, SPS, TNMP, and TXU commented that there is already a wide body of law to protect customers from fraudulent practices, such as the Texas Deceptive Trade Practices Act. In addition, TXU stated that such a restatement could create a different standard of relief for energy efficiency customers, which would be less tested and possibly narrower than existing protections. EGSI and Reliant commented that a separate rulemaking will address customer protection. Although TESCO and NAESCO advocated for the removal of the entire section, they specifically requested that certain paragraphs be removed or modified.

EGSI and TXU stated that placing the burden of customer protection on the utility places the utility in an improper contractual relationship with customers. They further stated that if the commission maintains the customer protection provisions, the language should be changed to reflect that these protections would be placed in the contract between the EESP and the customer, rather than between the utility and the EESP. In addition, EGSI stated that the courts are the proper forum for redress.

PUB, Reliant, and OPC/Cities suggested that the providers should be required to register with the commission. NAESCO suggested that the rule should establish qualifications of EESPs. PUB suggested that the commission should assess penalties against fraudulent companies. OPC/Cities would have the commission remove a company's registration if there is a record of verified fraud.

TNMP, TESCO, NAESCO, and ESL all to a certain extent would rely on the market to ensure customer protection. TESCO, NAESCO, and ESL argued that payments made in exchange for energy savings ensure adequate protection and minimize fraud. ESL further stated that quality of service should include indoor air quality, adequate lighting, and equipment maintainability, and that increased maintenance cost should be deducted from energy savings.

Joint Public Interest Groups stated that the customer protection provisions in the rule as proposed are necessary to protect customers and should be adopted by the commission, but that a number of other protections are necessary as part of the standard offer contract between utilities and EESPs.

The OAG generally supported the concept of regulations which delineate the customer protections available in the area of purchases of goods and services related to residential energy efficiency improvements. While the OAG accepted the proposition that there are laws that protect customers in this area, it argued that these laws operate primarily as customer remedies, rather than prospectively, as the proposed regulations do. The OAG reasoned that putting everyone on notice as to their rights and responsibilities at the outset of the transaction sets the ground rules for the market in this area and allows customers to make more informed decisions as to which products and services they should purchase. The OAG did not believe that this regulation can or will interfere with its authority to enforce existing statutory protections and may, in fact, assist in enforcement by increasing the awareness of those protections on the part of both customers and EESPs.

The OAG did not believe the rule imposes a significant regulatory burden on the utility or the service provider, or that it requires the utility to interact with the customer directly. The OAG stated that the utility is merely required to include certain provisions in its contracts with service providers that will make the disclosures a contractual obligation of those providers. In short, according to OAG, these provisions will be beneficial because they will assist the commission in establishing marketplace rules and in preventing abusive practices, rather than correcting them.

The Coalition stated that the energy efficiency programs, as envisioned by the proposed rule, would provide a number of customer safeguards that have not historically been present in this market. The Coalition argued that utilities will assure that participating EESPs possess all legally required licenses and permits. The Coalition further stated that the inspection, and M&V that the rule requires provide assurance that customers will indeed reap the energy savings promised, and may expose systemic problems in technologies and providers. The Coalition also stated that these protections, over and above those already afforded customers in the retail energy services market under existing law, are sufficient and that utilities are not in the position to offer such protections.

Public Citizen expressed alarm at the APA hearing at the proposal of the Coalition to eliminate the customer protection provisions in the rule. Public Citizen explained that residential customers often lack the expertise to sort through the promises and promotions made by manufacturers, and expressed concern that this will be the case in the energy efficiency market. Public Citizen suggested that customers will rely on the REPs and utilities to determine which EESP is giving accurate information. Public Citizen argued that it is therefore critical that utilities be given the tools and responsibility to help customers to evaluate proposals in a neutral fashion. Joint Public Interest Groups noted that information provided by the OAG indicates that nearly half of the complaints received by the OAG cannot be

mediated or resolved. In addition, Joint Public Interest Groups illustrated the need for customer protection with the HL&P vs. Kimball Hill case (Docket Number 19005, *Complaint of Janette Arceneaux, et al., Against Houston Lighting and Power Company* and Docket Number 20115, *Complaint of Janette Arceneau, et al., Against Houston Lighting and Power Company Regarding Good Cents Home Program*) in which 243 homeowners and customers of HL&P (now Reliant Energy) brought suit against the company. The customers alleged that a utility-backed program delivered poor performance and faulty workmanship. OPC, Cities, TIEC, Shell, and Enron (Joint Reply) provided joint reply comments. The Joint Reply contended that the Coalition comments eliminate any vestige of customer protection, but insert protection for the financial interests of the utilities and the EESPs.

Overall the commission finds that customer protection is a key component to a fully functioning market. Customers who are informed and are protected against fraudulent practices will have greater confidence in the market and this will encourage competition. The commission also finds that the increase in customer complaints in the telephone industry after deregulation clearly indicates a need for customer safeguards. The requirements in the rule are not inconsistent with customer protection provisions for industries related to interest rates, credit cards, automobiles, home construction, pest control, nutrition, appliance energy usage and healthcare that require disclosures to the customers. These disclosure requirements and customer protection provisions came about because government recognized that the market alone would not make critical information readily available to the customers. These protections have allowed customers to make informed choices and discourage providers from engaging in fraudulent practices. The commission agrees with the OAG that these customer protections are largely preventive in nature. They do not supercede other rights available to customers, nor do they place utilities in an inappropriate relationship with the customers, as suggested by some parties. Accordingly, the commission declines to eliminate this section.

ESL stated that a 12-month warranty requirement is inconsistent with other language in the rule that requires a minimum of a ten-year useful life.

The commission finds that a 12-month warranty requirement is unnecessary because a 12-month warranty period is standard practice in the energy efficiency industry, and concludes that this provision should be eliminated.

NAESCO requested that the requirement of proposed §25.181(n)(9) that an "All Bills Paid" affidavit be provided to customers be eliminated unless it can be shown to be a standard form used throughout Texas. NAESCO cautioned that the creation of a new or unknown legal requirement would cause serious confusion, significant concern, and unquestionable delay in program implementation.

The commission finds that the provision merely protects the customer from any claims from subcontractors when the customer has paid the contractor in full for work performed. This should not delay program implementation. The commission declines to delete the language.

NAESCO and TESCO stated that the incentive disclosure requirement of proposed §25.181(n)(12) is not appropriate. NAESCO argued that this paragraph involves the disclosure of confidential, competitive pricing arrangements and potentially even proprietary information. According to NAESCO, the way EESPs calculate and present proposals to customers, which include incentives, vary widely and may or may not specifically identify incentives received by the EESP. In addition, NAESCO stated that the marketing approach used by EESPs to their customers might be proprietary. There is no legitimate reason for the commission to impose requirements in this area. NAESCO argued that the commission's concern should focus on assuring that customers receive the energy efficiency measures that customers contract for and that the utility realizes the energy savings it pays for. TESCO objected to the paragraph because the actual incentive payment may be less than the anticipated payment, based on the results of the inspection, and M&V.

EESPs will receive incentives from the utility in exchange for energy savings. These incentives are consistent and will not vary among contractors within a given customer class. The incentive structure is transparent in that there are no confidential pricing arrangements between the EESPs and the utility. The commission finds that the notice concerning incentives does not require disclosure of how much the EESP expects to receive for a particular installation. Having the EESP disclose the standard incentive amount to the customer will encourage contractors to pass the benefits along to the customer. Disclosure that this is a ratepayer-funded program will encourage customers to participate in the program. The commission concludes that this will also allow the customer to comparison shop for energy efficiency services and encourage competition. The commission declines to delete the language.

Joint Public Interest Groups proposed that EESPs who provide financing for services should be prohibited from transferring the note during the period in which any warranties are in force. Joint Public Interest Groups argued that this would protect the customer from the situation in which the customer has a warranty claim but the note has been sold to a third party against whom the warranty is unenforceable.

The commission finds that the disclosure that a customer's sales agreement may be sold provides adequate protection. The commission declines to adopt the suggestion.

Joint Public Interest Groups proposed that EESPs should be required to provide customers with all written disclosures that are required under federal and state law regarding home construction contracts and customer credit transactions, if the customer intends to finance any services. Joint Public Interest Groups cites §53.255 of the Texas Property Code as an example of how a contractor is supposed to make a number of specific disclosures to the homeowner before a residential construction contract secured by a lien against the homestead is executed. These disclosures explain the homeowner's rights and responsibilities with regards to the transaction under Texas law. Joint Public Interest Groups argued that creating a contractual responsibility for EESPs to make all applicable legal disclosures will go a long way towards ensuring that customers are adequately informed about these transactions and their legal rights regarding them. Towards that end, Joint Public Interest Groups proposed that EESPs should be required to provide all potential customers with a utility approved information packet that includes a list of all organizations that provide energy efficiency services; copies of brochures produced by the Attorney General on home repairs and contract cancellation rights; and, other "customer tip sheets" designed by the utility to inform customers about appliance consumption, energy efficiency measures, etc., and that such information

must be fuel-neutral. TESCO requested the removal of the requirement relating to the distribution of a list of participating providers.

The commission acknowledges the benefits to providing a customer with the information listed above. However, as discussed under Preamble Issue Number 9, the EESP or the utility may not be the ideal parties to provide such information. In the discussion under Preamble Issue Number 9, the commission finds that the list should be made available through the commission and the utility. The commission notes that OPC may also make the list available. The list can be made part of a larger information package that includes the information listed above. The contents of the information package may be developed in coordination with the energy efficiency implementation docket. The commission has revised the language to §25.181(h) and (m) and deleted the requirement from the customer protection provisions.

Joint Public Interest Groups proposed that there should be a provision requiring that advertisements or other communications by EESPs inform customers that the EESP is not part of, nor endorsed by the utility or the Public Utility Commission of Texas. Joint Public Interest Groups suggested this should prevent EESPs from relying on a perceived affiliation or endorsement as a means of procuring business from customers.

The commission agrees that the proposed language will protect the commission, the utility, and the customer. The commission has added this provision to §25.181(n).

Joint Public Interest Groups proposed that marketing programs and materials targeted at residential customers should be reviewed by utilities to assure that false or misleading claims of "utility savings" are not being made by service providers. Joint Public Interest Groups warns that without some review of claims regarding utility savings there will be a real temptation for service providers to overstate energy savings of various measures in order to procure more business.

The commission finds that the current customer protection provisions, in conjunction with the inspection requirements in §25.181(i) will provide an appropriate level of protection against false claims of "utility savings." The commission declines to add the language.

Joint Public Interest Groups proposed that where energy efficiency services are billed for through the utility, utilities should be prohibited from terminating electric service for nonpayment of that portion of the bill that is for energy efficiency services.

Under customer choice, the REP will not have an obligation to serve, and the customer may switch providers at will. In addition, §25.181(i)(2)(H) prohibits the utility from engaging in certain tying arrangements. Accordingly, the commission declines to adopt the suggestion.

Finally, Joint Public Interest Groups proposed that no payments from either the customer or the utility should be required (except for a deposit not to exceed 25%) until the customer and the utility have each inspected the work and determined that it has been satisfactorily completed.

The commission finds that §25.181(k)(3) and (4) ensures that the EESP will not receive final compensation until the customer signs off that the work has been completed and the utility has conducted any required inspection. The commission also finds that prescribing allowable deposit levels unduly interferes in the relationship between the EESP and the customer, and may form a barrier for small EESPs. The commission declines to add the language.

(n) Enforcement

TESCO commented that the enforcement language referencing general enforcement authority of the commission, is too vaguely threatening to utilities, and makes it unclear what method will be used for ensuring enforcement. TESCO claimed in its comments that this part of the rule was not discussed in any detail by the parties during the development of this rule, and that there was no clear consensus on how enforcement should be handled. TXU commented that the enforcement provision is unacceptably vague, broad, and is redundant because enforcement remedies for violation of the energy efficiency rules are already provided by Chapter 15 of PURA. TESCO commented that if utilities are trying hard, yet not reaching their goal, internal utility reviews, annual reviews and advice of the statewide auditor (independent M&V expert), review and advice of the Working Group (energy efficiency implementation docket), and advice from the commission staff should be used to adjust programs to be more effective. Shell commented that PURA requires penalties to be assessed on a case-by-case basis and that this review cannot occur in a rulemaking, and therefore, proposed §25.181(m) should remain unchanged.

The commission deletes §25.181(o) as discussed above in Preamble Issue Number 3.

All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting this section, the commission makes other minor modifications for the purpose of clarifying its intent.

This section is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2000) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, §39.101 and §39.905, which require the commission to ensure that customers have access to providers of energy efficiency services.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 39.101, 39.903, and 39.905.

§25.181. Energy Efficiency Goal.

(a) Purpose. The purposes of this section are to ensure that:

(1) electric utilities administer energy savings incentive programs in a market-based, non-discriminatory manner, and do not provide competitive energy efficiency services, except as permitted in §25.343 of this title (relating to Competitive Energy Services);

(2) all customers, in all customer classes, have a choice of and access to energy efficiency alternatives that allow each customer to reduce energy consumption and energy costs; and

(3) each electric utility provides, through market-based standard offer programs, or limited, targeted market-transformation programs, or both, incentives sufficient for retail electric providers and competitive energy efficiency service providers to acquire additional cost-effective energy efficiency savings equivalent to at least 10% of the electric utility's annual growth in demand by January 1, 2004, and each year thereafter, as mandated by the Public Utility Regulatory Act (PURA) §39.905.

(b) Application. This section applies to electric utilities, as that term is defined in §25.5 of this title (relating to Definitions).

This section shall not apply to an electric utility subject to PURA §39.102(c) until the expiration of the utility's rate freeze period.

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

(1) Calendar year–January 1 through December 31.

(2) Competitive energy efficiency services–Energy efficiency services that are defined as competitive under §25.341(6) of this title (relating to Definitions).

(3) Deemed savings–A pre-determined, validated estimate of energy and peak demand savings attributable to an energy efficiency measure in a particular type of application that a utility may use instead of energy and peak demand savings determined through measurement and verification activities.

(4) Demand–The rate at which electric energy is delivered to or by a system at a given instant, or averaged over a designated period, usually expressed in kilowatts (kW) or megawatts (MW).

(5) Demand side management (DSM)–Activities that affect the magnitude or timing of customer electrical usage, or both.

(6) Energy efficiency–Programs that are aimed at reducing the rate at which electric energy is used by equipment and processes. Reduction in the rate of energy used may be obtained by substituting technically more advanced equipment to produce the same level of end-use services with less electricity; adoption of technologies and processes that reduce heat or other energy losses; or reorganization of processes to make use of waste heat. Efficient use of energy by customer-owned end-use devices implies that existing comfort levels, convenience, and productivity are maintained or improved at a lower customer cost.

(7) Energy efficiency measures–Equipment, materials, and practices that when installed and used at a customer site result in a measurable and verifiable reduction in purchased electric energy consumption, measured in kilowatt-hours (kWh), or peak demand, measured in kWs, or both.

(8) Energy efficiency project–An energy efficiency measure or combination of measures installed under a standard offer contract or a market transformation contract that results in a reduction in customers' electric energy consumption or peak demand, or both, and energy costs.

(9) Energy efficiency service provider–A person who installs energy efficiency measures or performs other energy efficiency services. An energy efficiency service provider may be a retail electric provider or a customer, if the person has executed a standard offer contract.

(10) Energy savings–A quantifiable reduction in a customer's consumption of energy.

(11) Existing contracts–Energy efficiency contracts in effect prior to September 1, 1999, that expire on or after September 1, 1999.

(12) Growth in demand–The annual increase in load, measured on the transmission system, in the Texas portion of an electric utility's service area at time of peak demand, as measured according to subsection (e) of this section.

(13) Hard-to-reach customers–Customers with an annual household income at or below 200% of the federal poverty guidelines.

(14) Incentive payment–Funding that reduces the cost of installing energy efficiency measures, or provides a service or benefit that would otherwise not be available to the end-use customer for installing energy efficiency measures.

(15) Inspection–Onsite examination of a project to verify that a measure has been installed and is capable of performing its intended function.

(16) Large commercial customers–Retail commercial customers with a demand that exceeds 100 kW. For the purpose of this section, a customer's load within a service territory that is under common ownership shall be combined.

(17) Load control–Activities that place the operation of electricity-consuming equipment located at an electric user's site under the control or dispatch of an energy efficiency service provider, an independent system operator, or other transmission organization.

(18) Load management–Load control activities that result in a reduction in peak demand on an electric utility system or a shifting of energy usage from a peak to an off-peak period.

(19) Market transformation program–Strategic efforts to induce lasting structural or behavioral changes in the market that result in increased adoption of energy efficient technologies, services, and practices, as more fully described in subsection (j) of this section.

(20) Measurement and verification (M&V)–Activities intended to determine the actual kWh and kW savings resulting from energy efficiency projects as more fully described in subsections (k) and (l) of this section.

(21) Off-peak period–Period during which the load on an electric utility system is not at or near its maximum volume. For the purpose of this section, the off-peak period will be all hours from October 1 through April 30.

(22) Peak demand–Electrical demand at the time of highest annual demand on the utility's system, measured in 15 minute intervals.

(23) Peak demand reduction–peak demand reduction on the utility system during the utility system's peak period.

(24) Peak period–Period during which a utility's system experiences its maximum demand. For the purposes of this section, the peak period is from May 1 through September 30.

(25) Renewable demand side management (DSM) technologies–Equipment that uses a renewable energy resource, as defined in §25.5 of this title that, when installed at a customer site, reduces the customer's net purchases of energy (kWh), electrical demand (kW), or both.

(26) Small commercial customers–Retail commercial customers with a maximum demand that does not exceed 100 kW.

(27) Standard offer contract–A contract between an energy efficiency service provider and a participating utility specifying the standard payment based upon the amount of energy and peak demand savings achieved through the installation of energy efficiency measures at electric customer sites, the measurement and verification protocols, and other terms and conditions, according to the program requirements. Multiple energy efficiency service providers may participate under a single standard offer contract. For the purposes of this section, the targeted weatherization programs under PURA §39.903 (relating to the System Benefit Fund) to be administered by the Texas Department of Housing and Community Affairs shall be considered a standard offer contract.

(28) Standard offer program–A program under which a utility administers standard offer contracts between the utility and energy efficiency service providers.

(29) Transition period–The period from September 1, 1999, through December 31, 2001.

(d) Cost-effectiveness standard.

(1) Cost-effectiveness. An energy efficiency project is deemed to be cost-effective if the cost of the project to the utility is less than or equal to the benefits of the project. The cost of a project includes the cost of incentives, the measurement and verification costs, and program administrative costs. The benefits of the project include the value of the purchased electrical energy saved, the value of the corresponding generating capacity requirements, and associated reserves displaced or deferred by the project. The present value of the project benefits shall be calculated over the projected life of the measure, not to exceed ten years.

(2) Avoided cost. Incentives shall be set as a percentage of the avoided cost. The avoided cost shall be the estimated cost of a new gas turbine.

(A) Initially, the avoided cost of capacity savings shall be set at $78.5/kW saved at the customer's meter.

(B) Initially, the avoided cost energy savings shall be set at 2.68 cents/kWh saved at the customer's meter.

(C) The commission may adjust the cost effectiveness standard prescribed in subparagraphs (A) and (B) of this paragraph by using an environmental adder up to 20% for targeted projects conducted in an area that is not in attainment for air emission that is subject to the regulations of the Texas Natural Resource Conservation Commission. The environmental adder is available only for targeted energy efficiency projects that are designed to enhance air quality or the reliability of electric service in the non-attainment area, or both, and would not be implemented without the adder.

(e) Annual growth in demand and energy efficiency goal. Electric utilities shall meet the minimum mandate of 10% reduction in growth in demand through energy efficiency savings by January 1, 2004. During the transition period, each utility will set interim goals, consistent with approved funding, to provide a reasonable progression toward the 10% goal to be achieved by January 1, 2004. Each utility is required to meet, at a minimum, 5.0% of its growth in demand through energy efficiency by January 1, 2003. Each utility's energy efficiency goal shall be specified as a percent of its historical five-year average rate of growth in demand, calculated as follows:

(1) Each year's historical demand growth data shall be adjusted for weather fluctuations, using weather data for the most recent ten years. The utility's growth in demand is based on the average growth in retail load in the Texas portion of the utility's service area, measured at the utility's annual system peak for the immediately preceding five years.

(2) The goal for energy-efficiency savings for a year is calculated by applying the percentage goal, prescribed in this subsection, to the average rate of growth in demand, based on the average of the five preceding annual growth rates. The baseline for calculating demand growth shall be reset each year.

(f) Basic program elements. Electric utilities shall administer energy efficiency programs designed to achieve reductions in the customer's purchased energy consumption or demand, or both, and lower energy costs through the implementation of standard offer programs or limited, targeted market transformation programs.

(1) Each electric utility shall submit energy efficiency plans and reports to the commission in accordance with subsection (g) of this section.

(2) Incentive payments shall be made under either standard offer contracts or market transformation contracts, or both, for kWs and kWhs saved. The amount of incentive payment may vary by customer class in order to effectively reach all customer classes, including hard-to-reach customers. Market transformation programs may offer other incentives or benefits as approved by the commission.

(3) Customer protection provisions shall be included in all electric utilities' energy efficiency programs in accordance with subsection (n) of this section.

(4) All projects performed under a standard offer contract shall be subject to inspections, measurement, and verification in accordance with subsection (k) of this section. Energy and peak demand savings under market transformation projects shall be verified in accordance with subsection (j) of this section.

(5) The commission shall establish an implementation docket, as described in subsection (m) of this section, to address program design, implementation and administration, and make recommendations to the commission.

(g) Energy efficiency plans.

(1) Schedule. Each electric utility shall:

(A) By April 1, 2000, file an energy efficiency plan for the transition period and for the years 2002 through 2004, with the utility's application for unbundled transmission and distribution rates. This filing may be supplemented by June 1, 2000 to reflect the results of the energy efficiency implementation docket, as described in subsection (m) of this section.

(B) By April 1, 2001, and annually thereafter, file its updated energy efficiency plan and an annual energy efficiency report as described in paragraph (5) of this subsection.

(C) By no later than January 1, 2002, implement standard offer programs or limited, targeted market transformation programs, or both, as described in subsections (i) and (j) of this section.

(D) Notwithstanding any other provision of this section, 170 days prior to the expiration of the exemption set forth in PURA §39.102(c), an electric utility that is subject to PURA §39.102(c) shall file its energy efficiency plan as a part of the cost separation proceedings package in accordance with §25.344 of this title (relating to Cost Separation Proceedings).

(2) Energy efficiency plan. Each electric utility's energy efficiency plan shall describe how the utility intends to achieve the legislative mandate and the requirements of this section. Beginning January 1, 2002, the plan shall be on a calendar year cycle and shall project at least a four-year period. The plan shall propose an annual budget sufficient to reach the 10% legislative goal by January 1, 2004, and annually thereafter. Each electric utility's energy efficiency plan shall include:

(A) A projection of the utility's annual growth in demand based on actual historical data calculated using the methodology and corresponding energy and peak demand savings goal to be achieved under the plan, as defined in subsection (e)(2) of this section.

(B) A description of existing contract obligations and an explanation of the extent to which these contracts will be used

to meet the utility's annual energy efficiency requirements. Only additional energy and peak demand savings achieved as a result of projects installed after the effective date of this section may count towards the amount of energy and peak demand savings actually achieved on an annual basis.

(C) An estimate of the energy and peak demand savings to be obtained through each separate standard offer contract, market transformation contract, or both.

(D) The proposed design and plan for each of the utility's standard offer contracts and market transformation contracts, including measurement and verification plans when appropriate. For statewide standard offer contracts or market transformation contracts previously approved by the commission, the contract may simply be identified with a description of how it will be implemented in the service territory of the utility. Contracts not previously approved by the commission should be presented in detail, including baseline studies, for review and approval.

(E) A description of the customer classes targeted by the utility's energy efficiency contracts, specifying the size of the hard-to-reach, residential, small commercial, and large commercial and industrial customer classes, and the methodology used for estimating the size of each customer class.

(F) The proposed incentive levels for each customer class shall be set as a percentage of the avoided cost set forth in subsection (d) of this section. Unless the commission adopts different ceilings for incentive levels, incentive levels for standard offer contracts may not exceed:

(i) 100% for hard-to-reach customers.

(ii) 50% for other residential and small commercial customers.

(iii) 35% for large commercial and industrial customers.

(iv) 15% for load management programs.

(G) The proposed annual budget required to implement the utility's standard offer program, market transformation program, or both, broken out by contract for each customer class, including hard-to-reach customers. The proposed budget should detail incentive payments, utility administrative costs, including the independent M&V expert, and the rationale and methodology used to estimate the proposed expenditures.

(H) Savings achieved through programs for hard-to-reach customers shall be no less than 5.0% of the utility's total demand reduction goal.

(I) Savings achieved through load management programs, including interruptible rates, may not exceed 15% of the utility's total demand reduction goal.

(J) A discussion of the types of informational activities the utility plans to use to encourage participation in standard offer contracts or market transformation contracts, including the manner in which utilities will use to post notice of standard offer contracts, market transformation contracts, and any other facts that may be considered when evaluating a project.

(3) Prior to the implementation of the energy efficiency program, the commission shall:

(A) Approve market transformation programs and standard offer contracts.

(B) Maintain a list of qualified contractors.

(C) Review and approve measurement and verification plans, including deemed savings in accordance with the standard offer or market transformation contract guidelines. Projects that require installation-specific measurement and verification may have a measurement and verification process approved by the utility. At the utility's option, the measurement and verification process or deemed savings may be submitted for pre-approval by the commission.

(4) Energy efficiency plan for the transition period. The energy efficiency plan for the transition period shall cover the remainder of 2000 until December 31, 2001. The plan shall describe the utility's goals for the transition period, and include the information required in paragraph (2) of this subsection. The plan for the transition period shall be designed to use any revenue in the utility's current rates to cover the expenses of energy efficiency or DSM programs that were approved prior to the effective date of this section.

(5) Annual energy efficiency report. The annual energy efficiency report shall provide the information listed below:

(A) The utility's projected annual growth in demand calculated using the methodology prescribed in subsection (e) of this section.

(B) The corresponding energy and peak demand savings goal for the utility, as defined in subsection (e)(2) of this section, expressed in kWs and kWhs, for the current calendar year.

(C) The utility's actual annual growth in demand for the preceding calendar year.

(D) The most current information available comparing projected savings to reported savings for each of the utility's standard offer contracts and market transformation contracts.

(E) The most current information available comparing reported savings and verified achieved savings as verified by the independent M&V expert for all contracts.

(F) The most current information available comparing the baseline and milestones to be achieved under market transformation contracts.

(G) A statement of funds expended by the utility for incentive payments, program administration including inspections, and the independent M&V expert.

(H) A statement of any funds that were committed but not spent during the year, by project.

(I) Any decreases by more than 10% in total program cost, with an explanation for the decrease in cost.

(J) Any remaining program funds that were not committed during the year.

(K) The most current information available of ongoing and completed energy efficiency projects by customer class that includes:

(i) Number of customers served by each project.

(ii) Project expenditures.

(iii) Verified energy and peak demand savings achieved by the project, when available.

(L) A description of proposed changes in the energy efficiency plans.

(M) Any other information prescribed by the commission.

(h) Utility administration. Utilities shall administer standard offer programs, market transformation programs, or both, to meet the requirements of the energy efficiency goal in PURA §39.905. The cost of administration may not exceed 10% of the total program costs until December 31, 2003, and may not exceed 5.0% of the total program costs thereafter.

(1) Administrative costs include costs necessary for utility conducted inspection and the independent M&V expert as required under subsections (k) and (l) of this section, and the costs necessary to meet the following requirements:

(A) Conduct informational activities designed to explain the standard offer contracts and market transformation contracts to energy efficiency service providers and vendors.

(B) The utility shall inform energy efficiency service providers that they may contact the commission for inclusion in the list of energy efficiency service providers maintained by the commission and made available to customers from the commission or the utility.

(C) Review and select proposals for energy efficiency projects in accordance with the guidelines of the standard offer contracts under subsection (i) of this section, and market transformation contracts under subsection (j) of this section.

(D) Inspect projects to verify that measures under a standard offer contract were installed and capable of performing their intended function, as required in subsection (k) of this section, before final payment is made. Such inspections shall comply with PURA §39.157 and §25.272 of this title (relating to Code of Conduct for Electric Utilities and Their Affiliates).

(E) Review and approve energy efficiency service providers' savings monitoring reports for both standard offer contracts and market transformation contracts.

(2) A utility administering a standard offer program or a market transformation program shall not be involved in directly providing customers any energy efficiency services, including any technical assistance for the selection of energy efficiency services or technologies, unless a petition for waiver has been granted by the commission pursuant to §25.343 of this title.

(3) The utility shall compensate energy efficiency service providers for energy efficiency projects in accordance with the contract and the requirements of this section. An individual energy efficiency service provider and its affiliates may not receive more than 20% of the total incentive payments available for a particular standard offer contract. A utility may petition the commission for waiver of this limitation if the utility can demonstrate that the utility would not be able to meet its annual energy savings goal under this limitation.

(4) Projects or measures under either the standard offer or market transformation programs are not eligible for incentive payments or compensation if:

(A) A project would achieve demand reduction by eliminating an existing function, shutting down a facility, or operation, or would result in building vacancies, or the re-location of existing operations to locations outside of the facility or area served by the participating utility.

(B) A measure would be installed even in the absence of the energy efficiency service provider's proposed energy efficiency project. For example, a project to install measures that have wide market penetration would not be eligible.

(C) A project results in negative environmental or health effects, including effects that result from improper disposal of equipment and materials.

(D) The project involves the installation of self-generation or cogeneration equipment, except for renewable DSM technologies.

(5) Cost recovery and unspent funds. Funds for achieving the energy efficiency goal will be placed in each utility's transmission and distribution rates effective January 1, 2002. Each utility shall track its energy efficiency expenditures separately from other expenditures and report these in their annual energy efficiency report. Funds not spent within a given year shall be considered as a source of funding for the following year, and the commission shall consider utilities' requests to roll over unspent funds on a case-by-case basis in connection with the utilities' annual energy efficiency report filing under subsection (g)(5) of this section.

(6) Each utility shall meet its energy efficiency goal annually through the acquisition of cost-effective energy efficiency. A utility shall be deemed to have met its energy efficiency goal if the utility achieves a 10% reduction, or if it is an interim goal, the reduction designated in that year in its demand growth through incentives for standard offer programs, market transformation programs, or both.

(i) Standard offer programs. A utility's standard offer program shall be implemented through standard offer contracts. The standard offer contract shall describe the terms and conditions according to the requirements of this section for energy efficiency service providers for the delivery of energy efficiency services. Standard offer contracts will be available to any energy efficiency service provider that satisfies the contract requirements within the commission approved contract parameters.

(1) Statewide standard offer contracts shall be developed as part of the standard offer program and submitted to the commission for approval. Utilities may use the commission approved statewide standard offer contracts without further commission review. Other standard offer contracts will require commission review for approval.

(2) A utility's standard offer program shall meet the following requirements:

(A) A standard offer contract shall be developed to address each customer class. Specific different contracts may be developed to address hard-to-reach customers. All customer classes must have access to an equitable share of the incentive funds.

(B) Each standard offer contract will offer a standard incentive payment and specify a schedule of payments. The incentive shall be set at a level sufficient to meet the goals of the program and shall be consistent with the ceiling under subsection (g)(2)(F) of this section, or any revised ceiling adopted by the commission. The standard offer incentive payments may include both payments for kW and kWh savings, as appropriate. Except for load management projects, the incentive payment may vary by customer class, but not within a customer class.

(C) Peak demand and energy savings for each project shall be identified in the proposals the energy efficiency service providers submit to the utility.

(D) Standard offer contracts shall not limit eligibility to specific technologies, equipment, or fuels, but shall be neutral

with respect to such factors. Energy efficiency projects may lead to switching from electricity to another energy source, provided the energy efficiency project results in overall lower energy costs, lower energy consumption, and the installation of high efficiency equipment. Switching from gas to electricity is not allowable under the program.

(E) All projects must result in a reduction in purchased energy consumption, or peak demand, or both, and a reduction in energy costs for the end-use customer.

(F) Comprehensive projects incorporating more than one energy efficiency measure shall be encouraged. Lighting measures shall be limited to 65% of the savings of each project. When a project consists of lighting measures only, compensation shall not exceed 65% of the ceiling for that class under subsection (g)(2)(F) of this section.

(G) Projects shall result in consistent and predictable energy and peak demand savings over a ten-year period.

(H) A utility shall not condition the provision of any product, service, pricing benefit, or alternative terms or conditions upon the purchase of any other good or service from the utility or its competitive affiliate, except that only customers taking transmission and distribution services from a utility can participate in its energy efficiency programs.

(I) Projects shall disclose potential adverse environmental or health effects associated with the energy efficiency measures to be installed.

(J) rojects shall include the procedures for measuring and reporting the energy and peak demand savings from installed energy efficiency measures, consistent with the requirements under subsection (k) of this section.

(K) Standard offer contracts shall provide a complaint process that allows:

(i) The energy efficiency service provider to file a complaint against a utility.

(ii) A customer to file a complaint against an energy efficiency service provider. The utility may use customer complaints as a criterion for disqualifying energy efficiency service providers from participating in the program.

(L) Renewable DSM technologies are allowed.

(M) A standard offer program shall require contractors to provide the following:

(i) Evidence of good credit rating.

(ii) List of references.

(iii) All applicable licenses required under state law and local building codes.

(iv) Evidence of all building permits required by governing jurisdictions.

(v) Evidence of all necessary insurance.

(j) Market transformation programs. Market transformation programs are strategic efforts, including, but not limited to, incentives and education designed to reduce market barriers for energy efficient technologies and practices. Utilities should cooperate in the creation of regional or statewide contracts, consider statewide administration where appropriate, and where possible, leverage with existing effective national programs that have the potential to save energy in Texas. Statewide market transformation contracts shall be developed under the implementation docket to address targeted customer classes, as described in subsection (m) of this section. The contracts shall be filed for commission review and approval. Utilities may use the statewide commission approved market transformation programs without further commission review. All other market transformation contracts will require commission review for approval. Market transformation contracts shall be conducted through projects that describe the terms and conditions as required under this section for the delivery of energy efficiency services. Market transformation contracts must meet the following criteria:

(1) Except for pilot projects implemented during the transition period, competitive solicitation shall be the preferred method for contract selection. Pilot projects may be developed by an individual utility, a group of utilities, or an energy efficiency service provider. A utility may request a waiver from the requirements of a competitive solicitation for good cause.

(2) A market transformation project shall identify:

(A) Project goals.

(B) Market barriers the project is designed to overcome.

(C) Key intervention strategies for overcoming those barriers.

(D) Estimated costs and projected energy and capacity savings.

(E) A baseline study that is appropriate in time and geographic region.

(F) Project implementation timeline and milestones.

(G) Method for measuring and verifying savings.

(H) Period over which savings shall be considered to accrue, including a date for final market transformation.

(I) Each proposed project shall include a description of how it will achieve the transition from extensive market intervention activities toward a largely self-sustaining market.

(3) The project must be cost-effective, under the standard in subsection (d) of this section.

(4) The project must be designed to achieve energy or peak demand savings, or both, and lasting changes in the way energy efficient goods or services are distributed, purchased, installed, or used.

(k) Inspection, measurement and verification. Each standard offer contract shall include an industry accepted measurement and verification protocol approved by the commission as part of the detailed energy efficiency plan that will be used to measure and verify energy and peak demand savings to ensure that the goals of this section are achieved.

(1) The energy efficiency service provider is responsible for the measurement of energy and peak demand savings using the approved measurement and verification protocol, and may utilize the services of an independent third party for such purposes.

(2) Commission approved deemed energy and peak demand savings may substitute for the energy efficiency service provider's measurement and verification where applicable.

(3) Each customer shall sign a certification indicating that the measures contracted for were installed before final payment is made to the energy efficiency service provider.

(4) An energy efficiency service provider may request a utility inspection at its own expense in the event a customer refuses to sign the measure installation certification.

(5) A statistically significant sample of installations for residential and small commercial customers will be subject to on-site inspection in accordance with the protocol set out for the project. Inspection shall occur within 30 days of notification of measure installation to ensure that measures are installed and capable of performing their intended function. The energy efficiency service provider shall not receive final compensation until the customer documents work completion and the utility has conducted its inspection on the sample of installations.

(6) The sample size for on-site inspections may decrease over time for a contractor under a particular contract that has consistently yielded satisfactory inspection results.

(l) Independent measurement & verification (M&V) expert. An independent M&V expert shall be selected to verify energy and peak demand savings, including deemed savings, reported by energy efficiency service providers statewide for the calendar year 2002.

(1) The independent M&V expert shall be selected by the commission by competitive solicitation.

(2) The independent M&V expert shall be funded from the utilities' program administration budgets.

(3) The independent M&V expert shall perform:

(A) A verification of energy efficiency service providers' reported energy and peak demand savings, based on a statistically representative sample of completed projects; and

(B) A limited process evaluation.

(4) By March 1, 2004, the independent M&V expert shall report its conclusions to the commission and make a recommendation whether the utilities' energy and peak demand savings should be adjusted.

(5) The independent M&V expert shall assist with the development of an oversight program for subsequent years.

(m) Energy efficiency implementation docket. The commission shall initiate an implementation docket to make recommendations to the commission for its consideration with regard to best practices in standard offer programs and market transformation programs. Material submitted to the commission in this docket believed to contain proprietary or confidential information shall be identified as such, and the commission may enter an appropriate protective order. The following functions may be undertaken in the energy efficiency implementation docket:

(1) Development and review of statewide standard offer programs.

(2) Identification, design, and review of market transformation programs.

(3) Determination of measures for which deemed savings are appropriate and participation in the development of deemed savings estimates for those measures.

(4) Recommendation to the commission of one or more independent M&V expert to conduct the audit in accordance with subsection (l) of this section.

(5) Review of and recommendations on the independent M&V expert's annual report with respect to whether utilities will meet the minimum legislative goal by January 1, 2004, and annually thereafter.

(6) Review of and recommendations on incentive payment levels and the adequacy to induce the desired level of participation by the energy efficiency service providers and customer classes.

(7) Review of and recommendations on the utility annual energy efficiency reports with respect to whether all customer classes have access to energy efficiency programs.

(8) Periodic reviews of the cost effectiveness methodology.

(9) Development of information packets for potential residential and commercial customers.

(10) Other activities as requested by the commission.

(n) Customer protection. The customer protection provisions under this section shall apply to residential and small commercial customers only. Each energy efficiency service provider shall provide:

(1) Clear disclosure to the customer of the following:

(A) The customer's right to a cooling-off period of three business days, in which the contract may be canceled, if applicable under law.

(B) The name, telephone number, and street address of the energy services provider, the contractor, and written disclosure of all warranties.

(C) The fact that incentives are made available to the energy efficiency services provider through a ratepayer funded program, manufacturers or other entities.

(D) Notice of provisions that will be included in the customer's contract as described in paragraph (3) of this subsection.

(2) A form developed and approved by the commission may be used to satisfy the requirements of paragraph (1) of this subsection.

(3) Contractual provisions to be included:

(A) Information on work activities, completion dates, and the terms and conditions that protect residential customers in the event of non-performance by the energy efficiency service provider.

(B) Written and oral disclosure of the financial arrangement between the energy efficiency service provider and customer. This includes an explanation of the: total customer payments, the total expected interest charged, all possible penalties for non-payment, and whether the customer's installment sales agreement may be sold.

(C) Disclosure of contractor liability insurance to cover property damage.

(D) An all "All Bills Paid" affidavit be given to the customer to protect against claims of subcontractors.

(E) Provisions prohibiting the waiver of consumer protection statutes, performance warranties, false claims of energy savings and reductions in energy costs.

(F) Information on complaint procedures offered by the contractor, or the utility, as required under subsection (i)(2)(K) of this section, and toll free numbers for the Office of Customer Protection of the Public Utility Commission of Texas, and the Office of Attorney General's Consumer Protection Hotline.

(G) Disclosure that the energy efficiency service provider is not part of, or endorsed by the commission or the utility.

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

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For further information, please call: (512) 936-7308

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Part 6. TEXAS MOTOR VEHICLE BOARD

Chapter 105. ADVERTISING

16 TAC §105.23

The Texas Motor Vehicle Board adopts the amendment to advertising rule §105.23, Manufacturer Sales; Wholesale Prices, to make the identity of a retail seller of a motor vehicle advertised for sale clear to the general buying public, as published in the December 24, 1999, issue of the *Texas Register* (24 TexReg 11659). The section is adopted without changes and will not be republished.

The new amendments restrict advertising that might lead a consumer to believe a manufacturer or distributor is selling an advertised vehicle directly to the public. The amendments are the result of a petition from the Texas Automobile Dealers Association.

The effect of the amendments will be a clearer understanding by the buying public that manufacturers and distributors may not make retail sales of motor vehicles.

Comments in favor of the proposal stated that consumers have a justifiable and legitimate need to know from whom they are purchasing a vehicle. The rule clarifies that manufacturers and distributors cannot sell vehicles directly to the public, and that dealers and manufacturers may not advertise in a manner that would lead consumers to believe they are purchasing a vehicle from a manufacturer or distributor.

Comments were received from Karen Coffey, General Counsel, Texas Automobile Dealers Association (TADA), in favor of the new sections.

The new rule is adopted under the Texas Motor Vehicle Commission Code, §3.06, which provides the Board with authority to adopt rules as necessary and convenient to effectuate the provisions of this act. Texas Motor Vehicle Commission Code §3.05(b) is affected by the new amendments.

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

Filed with the Office of the Secretary of State on March 27, 2000.

TRD-200002200
Brett Bray
Director
Texas Motor Vehicle Board
Effective date: April 16, 2000
Proposal publication date: December 24, 1999
For further information, please call: (512) 416-4899

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TITLE 19. EDUCATION

Part 2. TEXAS EDUCATION AGENCY

Chapter 153. SCHOOL DISTRICT PERSONNEL

Subchapter CC. COMMISSIONER'S RULES ON CREDITABLE YEARS OF SERVICE

19 TAC §153.1021

The Texas Education Agency (TEA) adopts the amendment to §153.1021, concerning school district personnel, with changes to the proposed text as published in the December 24, 1999, issue of the *Texas Register* (24 TexReg 11659). The section determines the experience for which certain professional staff members are given credit in placement on the state minimum salary schedule.

The amendment revises applicable definitions and administrative procedures pertaining to service credit for counselors and nurses in order to conform to the changes to the Texas Education Code (TEC), Chapter 21, enacted by Senate Bill 4, 76th Texas Legislature, 1999.

In response to comments, the following changes have been made to the section since published as proposed.

Language in subsection (d)(8) was modified to require the reporting of accumulated leave paid at the time of employee severance and to eliminate the reduction in state days that was originally proposed.

Language in subsection (g)(18) was modified to make professional service in the Peace Corps other than teaching eligible for credit.

Subsections (h)(7)(C) and (h)(12)(D) were deleted in order to allow credit for service as a nurse in a college or university or in a hospital operated by a college or university.

Language was added to subsections (h)(17) and (h)(18) to clarify that service in the Job Corps or Peace Corps requires valid teaching credentials or other licensure to be eligible for service credit.

In addition, a technical correction was made to the phrase "Teacher Service Record" in subsection (d) for consistency with *Texas Register* format requirements. A typographical error was corrected in a column heading to read "Minimum Full-Time Equivalent Days" in the figure referenced in 19 TAC §153.1021(f). The corrected figure is submitted for publication in this issue (See Figure: 19 TAC §153.1021(f)).

The following comments were received regarding adoption of the amendment.

Comment. The Texas Association of School Nurses (TASN) and the Texas Nurses Association (TNA) commented in support of the school nurse definition in §153.1021(a)(16).

Comment. The TASN and the TNA commented that the statute does not reference "school nurse" when referring to credit for service as a nurse. Therefore, service as a nurse should be recognized in any accredited health-care setting. Such experience, even in home-health fields, is relevant to the competencies of a school nurse.

Agency Response. The agency disagrees with the comments. Service of all professional positions has historically been limited to only service in certain eligible entities. For teachers, librarians, and guidance counselors only certain service at eligible entities is awarded credit. For example, librarian service at a public library owned and operated by a city would not count as creditable service. Private-sector teaching in an unaccredited school would not be recognized. To extend the list of eligible entities beyond those currently recognized for all other service credit purposes would raise questions of fairness in a number of other areas. There would also be a substantial burden placed on the resources of the TEA to maintain appropriate documentation and histories of accredited health care settings in Texas and other states. While many life experiences are relevant to the development of persons in roles covered by the minimum salary schedule, the agency disagrees with extending the list of eligible entities beyond those in which the experience is most closely similar to the kindergarten-Grade 12 educational setting.

Comment. The TASN and the TNA commented that nursing service in the Peace Corps should be recognized in the same manner as teaching service in the Peace Corps.

Agency Response. The agency agrees with this comment and has modified the section. Nursing service in the Peace Corps must have been as a registered nurse.

Comment. An individual commented that nursing service at any organization covered by the Teacher Retirement System should be counted, since all Teacher Retirement System-covered organizations are recognized for teacher service purposes.

Agency Response. The agency disagrees with changing the rule in this respect. Not all service at Teacher Retirement Service-covered institutions counts toward creditable service. For teachers, service must be as a teacher or faculty-level staff member. In addition, only certain part-time service is covered.

Comment. The Texas Classroom Teachers Association (TCTA) expressed that speech therapists should be covered by the service credit rules and the minimum salary schedule.

Agency Response. The agency disagrees with the comment. There has been a long-standing distinction in TEA data gathering and state law between teachers and speech therapists. No changes in the recent legislative session indicate any intent to extend minimum salary schedule protection to speech therapists.

Comment. The TCTA pointed out that there is no statutory authority for setting rules for personal leave. The amendment to 19 TAC §153.1021(d)(8) should be removed.

Agency Response. The agency agrees that there is no authority to regulate the use of state personal leave. However, there is authority to control the content of the service record. As a result, language has been rephrased to require notation of payment for accumulated state personal leave.

Comment. The TASN, the TNA, and several individuals commented that nursing service in any capacity at university-operated hospitals should be recognized in the same manner as teaching service at such institutions. In addition, more than 250 letters from individuals expressed similar views.

Agency Response. Based on the testimony and past practice, the agency has removed the changes that limit nurse service credit at university-operated hospitals.

The amendment is adopted under the Texas Education Code, §21.403, as amended by Senate Bill 4, 76th Texas Legislature, 1999, which authorizes the commissioner of education to adopt rules for the administration of the state minimum salary schedule.

§153.1021. Recognition of Creditable Years of Service.

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

(1) Accredited institution – A public or private elementary, secondary, or post-secondary institution whose education program has been evaluated and deemed accredited by a state department of education or recognized regional accrediting agency.

(2) Assignment – Refers to the actual duties a person has with a school district or other educational entity.

(3) Authorized leave – Leave granted under the state's former minimum sick leave program, leave granted under the state's current minimum personal leave program, (which includes physical assault leave), or any leave granted under a local leave policy for which the employee is paid as if on regular duty.

(4) Certificate – A document issued by the State Board of Educator Certification (formerly the division of teacher certification of the Texas Education Agency) authorizing the holder to teach in the public elementary and secondary schools of Texas.

(5) Certified – Status of a person who holds a valid Texas teaching certificate.

(6) Contractual year – The employment period between July 1 and the following June 30.

(7) Current valid certificate – A certificate that is or was valid at a given time, including the stipulation that after June 30, 1986, a Texas certificate is valid only if the certified person has successfully passed either the Texas Examination of Current Administrators and Teachers or the Examination for Certification of Educators in Texas.

(8) Faculty status – Employment by a college or university as a member of the professional administrative or instructional staff, not as a graduate assistant, an assistant instructor, or an instructor on a fellowship.

(9) Full-time employment – Employment for 100% of an institution's normal work schedule.

(10) Full-time equivalency – The amount of time required of a staff member to perform a less than full-time assignment divided by the amount of time required in performing a corresponding full-time assignment. Full-time equivalency of assignment usually is expressed as a decimal fraction to the nearest tenth.

(11) Minimum salary – The minimum salary a teacher, full-time librarian, full-time counselor, or full-time school nurse must be paid as prescribed in Texas Education Code (TEC), Chapter 21.

(12) Part-time employment–Employment for less than 100% of an institution's normal work schedule.

(13) Professional personnel – Teachers, full-time librarians, full-time counselors, full-time school nurses, other employees who are required to hold a certificate issued under TEC, Chapter 21, Subchapter B, and any other personnel reported by a school district to the Public Education Information Management System with a "professional" role-id.

(14) Regional accrediting agency – The recognized regional accrediting agencies are:

(A) Southern Association of Colleges and Schools;

(B) Middle States Association of Colleges and Schools;

(C) North Central Association of Colleges and Schools;

(D) New England Association of Schools and Colleges;

(E) Western Association of Schools and Colleges;

(F) Northwest Association of Schools and Colleges; and

(G) Commission on International and Trans-regional Accreditation.

(15) Salary increments – Increases in salary granted for teaching or work experience.

(16) School nurse – An educator employed to provide full-time nursing and health care services and who meets all the requirements to practice as a registered nurse (RN) pursuant to the Nursing Practice Act and the rules and regulations relating to professional nurse education, licensure, and practice, and who has been issued a license to practice professional nursing in Texas.

(17) Service – A term of employment measured in school years in an entity in which the employment is recognized for salary increment purposes.

(18) State school – A school that is funded by legislative action in the appropriations act. These schools include the Texas School for the Blind, the Texas School for the Deaf, and schools under the jurisdiction of the Department of Mental Health and Mental Retardation and the Texas Youth Commission.

(19) Substitute teacher – A certified teacher who works on call, does not have a full-time assignment, and provides instruction.

(20) Teacher service record – The official document used to record years of service and days used and accumulated under the states former minimum sick leave program or the state's current personal leave program.

(b) Required documentation. The following records on professional personnel must be readily available for review.

(1) credentials (certificate or license);

(2) service record(s) and any required attachments;

(3) contract;

(4) teaching schedule or other assignment record; and

(5) absence from duty reports.

(c) Credentials for professional personnel. The credentials for professional personnel are as follows.

(1) A current valid Texas certificate, a special assignment permit, a nonrenewable permit, a non-certified instructor's permit, an emergency teaching permit, or the appropriate licensure from the State of Texas.

(2) For special education related service teachers, the credential must be appropriate licensure from the State of Texas.

(3) For those special education related service personnel who do not require Texas certification or licensure, proper credentials as described in §89.1131 of this title (relating to Qualifications of Special Education, Related Service, and Paraprofessional Personnel) are required.

(d) Teacher service record. The basic document in support of the number of years of professional service claimed for salary increment purposes and both the state's sick and personal leave program data for all personnel is the teacher service record (form FIN-115) or a similar form containing the same information. It is the responsibility of the issuing school district to ensure that service records are true and correct and that all service recorded on the service record was actually performed.

(1) The service record must be validated by a person designated by the school district to sign service records.

(2) Supporting documents are required for service in out-of-state private schools, foreign public and private institutions, the military, and colleges and universities. The type of supporting documentation for each particular entity is prescribed by subsection (h) of this section.

(3) If a person is employed by more than one school district during the same school year, a service record from each employing district is required.

(4) For personnel employed in a year-round school system, the actual dates of employment during that school's calendar must be indicated on the service record. The dates may not necessarily conform to the contractual year as defined by subsection (a) of this section.

(5) The service record shall be kept on file at the school district. When employment with the district is terminated, the original service record, signed by the employee shall be given to the employee upon request or sent to the next employing school district. The local school district must maintain a legible copy for audit purposes.

(6) Cooperative personnel employed by a fiscal agent/manager and itinerant personnel of a cooperative shall be considered to be employees of the fiscal agent/manager and the service record shall be the fiscal agent/manager's responsibility. Personnel employed by a member of a cooperative and assigned to the member are employees of the member and the service record shall be the member's responsibility.

(7) Work experience claimed by career and technology education personnel for salary increment purposes as prescribed by subsection (i) of this section must be recorded on a service record.

(8) State sick leave balances, days earned, and days used by personnel under the former state's minimum sick leave program and the state's current personal leave program must be recorded on the service record or another similar form containing the same information. State sick leave or state personal leave accumulated

in Texas public elementary and secondary schools is transferable among these schools. Sick leave accrued by an employee of a Texas regional education service center, not to exceed five days per each year of employment, is transferable to a Texas public elementary and secondary school. Local leave accrued under the policy of any entity recognized for creditable service under subsection (g) of this section may be transferred to a Texas public elementary or secondary school at the discretion of the employing school district. The service record shall separately state the number of accumulated state days for which the employee is paid, if any, upon separation from the employing district.

(e) General provisions for years of creditable service. All service claimed for salary increment purposes must meet the requirements in subsections (f)-(h) of this section. The service record and any other required supporting documents must meet the requirements for such records and documentation in this section. All service shall be based on the contractual year (July 1-June 30). No more than one year of experience may be acquired in any one contractual year.

(f) Minimum requirements. The table in this subsection indicates the minimum number of days required to earn and receive credit for a year of experience.
Figure: 19 TAC §153.1021(f)

(1) For service performed through the 1989-1990 school year, minimum days at less than 100% or at full-time equivalency are applicable only to service in Texas public schools, Texas education service centers, and, beginning in 1978-1979, Texas colleges and universities.

(2) Beginning with service performed during the 1990-1991 school year or any year thereafter, employment at less than 100% of the day is recognized in all entities where full-time employment is recognized, provided that documentation is presented to the employing district which verifies that the employment was for not less than three and one-half hours each day.

(3) The 90 days required at 100% of the day for years prior to 1972-1973 may be equivalent to four and one-half months, a full semester, or three six-weeks. Where the school year was less than 180 days for any year prior to 1972-1973, a minimum of 175 days at 50-99% of the day will be accepted, provided that the 175 days constituted two full semesters or six six-weeks.

(4) For experience from the 1978-1979 through the 1987-1988 school years, full-time equivalent days equal the total number of days employed at 100% of the day plus days employed at 50-99% of the day divided by two.

(5) Beginning with the 1988-1989 school year, full-time equivalent days equal the total number of days employed multiplied by the percent of day actually worked.

(6) Beginning with the 1998-1999 school year, the 90 days required at 100% of the day may be equivalent to four and one-half months or a full semester. The 180 days required at 50-99% of the day may be equivalent to 90 full-time equivalent days (percent of day employed multiplied by number of days employed).

(7) Extended day migrant program employment shall be calculated in accordance with this section and the resulting equivalent must meet the same minimum requirements for professionals for the year in question.

(A) For service prior to the 1970-1971 school year, the days employed in the migrant program shall be multiplied by a factor of 1.37.

(B) For service during the 1970-1971 through the 1975-1976 school years, the days employed in the migrant program shall be multiplied by a factor of 1.31.

(g) Entities recognized for years of service. Service in any of the entities listed in this subsection shall be recognized for professional personnel. The minimum employment requirements in subsection (f) of this section must be met. Requirements concerning service in each type of entity in subsection (h) of this section must also be met. Professional service in the following entities is creditable:

(1) Texas public elementary and secondary schools;

(2) State regional education service centers;

(3) State departments of education;

(4) Texas Department of Corrections-Windham Schools;

(5) Public elementary and secondary schools in all other states in the United States or within the boundaries of any of its territorial possessions;

(6) Overseas schools operated by the U.S. Government;

(7) Texas public or private colleges or universities;

(8) Texas private elementary and secondary schools;

(9) Texas non-public special education contract schools;

(10) Texas Department of Mental Health and Mental Retardation–state hospitals;

(11) Texas veterans' vocational schools;

(12) Public or private colleges or universities and private elementary and secondary schools in all other states in the United States or within the boundaries of any of its territorial possessions;

(13) Foreign public or private colleges or universities, or elementary and secondary schools;

(14) U.S. Department of Interior–Bureau of Indian Affairs;

(15) U.S. service academies;

(16) U.S. military service;

(17) Job Corps; and

(18) Peace Corps (in a professional capacity only).

(h) Requirements. Requirements for entities recognized for professional personnel are as follows:

(1) Texas public elementary and secondary schools.

(A) All professional personnel must be certified by the State of Texas, must hold the proper state or national licensure as required by the position held, or must have the educational requirements for the job assigned. Regardless of the funding source, teachers, full-time librarians, full-time counselors, and full-time school nurses must be paid at least the minimum salary specified in the Texas State Public Education Compensation Plan.

(B) Professional personnel placed on developmental leaves of absence must be paid at least one-half of their state minimum salary by the school district to receive service credit for increment purposes.

(C) Instructors in Reserve Officer Training Corps (ROTC) programs conducted by local school districts must be certified or hold an emergency teaching permit and must be paid at least the state minimum salary to receive service credit for increment

purposes. An emergency teaching permit need not be renewed as long as the person continues in the ROTC assignment.

(2) State regional education service centers.

(A) Personnel employed in cooperatives for which the education service center is acting as fiscal agency must meet the same requirements as personnel employed in Texas public elementary and secondary schools.

(B) All other personnel must meet the same requirements as personnel employed in state departments of education.

(3) State departments of education. Employment must have been in a professional capacity. For Texas department of education employment, professional positions are defined as personnel employed in positions starting in state pay grade classification B4/A12 and above.

(4) Texas Department of Corrections-Windham schools. Requirements in this subsection shall apply.

(5) Public elementary and secondary schools in all other states of the United States or within the boundaries of any of its territorial possessions. Employment prior to 1990-1991 must have been on a full-time basis.

(6) Overseas schools operated by the U.S. government. Schools operated by the United States Government for military dependents and dependents of personnel assigned to an embassy, consulate, etc., are treated as public schools in other states of the U.S. and policies pertaining to public schools in other states apply.

(7) Texas public or private colleges or universities.

(A) Officer Training Corps programs conducted by accredited colleges or universities must have been employed full-time on a faculty status level. Beginning in 1998-1999, service as an instructor in an agricultural extension service operated by an accredited college or university may be recognized for salary increment purposes as long as the person held a valid Texas teaching certificate at the time the service was rendered.

(B) All college or university experience must be recorded on the teacher service record. A supporting letter or form must be attached to the teacher service record verifying that either the full-time or part-time employment was at faculty status or its equivalent and that the schedule of work and the pay constituted that of other similar faculty employees. It is the responsibility of the employing school district to secure verification of college or university experience.

(8) Texas private elementary and secondary schools.

(A) For experience prior to the 1986-1987 school year, accreditation by the Texas Education Agency or the Southern Association of Colleges and Schools is required.

(B) For experience in the 1986-1987, 1987-1988, and 1988-1989 school years, service shall be acceptable if the school was accredited by the Texas Education Agency, or a recognized regional accrediting agency.

(C) For experience in the 1989-1990 school year and thereafter, service shall be acceptable if the school was accredited by the Texas Private School Accreditation Commission.

(D) During the 1986-1987, 1987-1988, and 1988-1989 school years, private schools accredited by the Texas Education Agency, a recognized regional accrediting agency, or an association recognized by the commissioner of education will be listed in the Texas School Directory.

(E) Beginning with the 1989-1990 school year and thereafter, private schools accredited by the Texas Private School Accreditation Commission will be listed in the Texas School Directory.

(9) Non-public special education contract schools.

(A) Approval from the Texas Education Agency to provide special education services during the year service was rendered is required. A list of approved schools is maintained by the Texas Education Agency and is also distributed annually to all public schools in Texas.

(B) The person must have been certified in an area of special education.

(10) Texas Department of Mental Health and Mental Retardation state hospitals and state schools.

(A) The assignment must have been in an educational program operated in conjunction with a public school program or in a non-educational professional capacity.

(B) Persons employed in an educational program must have held a valid Texas teaching certificate and must have been paid at least the state minimum salary of a teacher in a Texas public school.

(11) Texas veteran's vocational school.

(A) The assignment must have been as an instructor or coordinator.

(B) Service during the period of July 1, 1946, through June 30, 1955, must have been at a school under the jurisdiction of the Texas Education Agency (this service can be verified by the agency).

(C) Service after June 30, 1955, must have been at a veteran's vocational school operated by a Texas county board of school trustees under the jurisdiction of the Veterans Administration.

(12) Public or private colleges and universities, and private elementary and secondary schools in all other states in the United States or within the boundaries of any of its territorial possessions.

(A) Employment must have been, and in the case of colleges and universities, must be verified in the same manner as for Texas colleges or universities.

(B) Accreditation by a recognized state or regional accrediting agency in the United States is required. In states or territories that have no provisions for accrediting, licensing, or approving private elementary or secondary schools, service shall be acceptable provided the person held, while employed, a valid teaching certificate from the state in which the school is located or a valid Texas teaching certificate.

(C) It is the responsibility of the employing school district to have evidence on file of the accreditation status of private schools in other states.

(13) Foreign public or private elementary and secondary schools, colleges, and universities.

(A) Employment in colleges or universities must be verified in the same manner as for Texas colleges or universities.

(B) For foreign public schools, public colleges and universities, accreditation by a recognized agency of the foreign country or by a recognized accrediting agency in the United States is required.

(C) For foreign private schools, private colleges or universities, accreditation must be by a recognized accrediting agency in the United States.

(D) The accreditation status must be verified in the same manner as for public or private schools in the United States.

(14) United States Department of the Interior-Bureau of Indian Affairs. Service must have been full-time.

(15) United States service academies.

(A) Employment must have been at a faculty status level and must be verified in the same manner as other college or university service.

(B) The service academies are as follows:

(i) Air Force Academy, Colorado Springs, Colorado;

(ii) Coast Guard Academy, New London, Connecticut;

(iii) Military Academy, West Point, New York;

(iv) Naval Academy, Annapolis, Maryland; and

(v) Merchant Marine Academy, Kings Point, New York.

(16) United States military service. Service with the military forces of the United States of America may be counted for salary increment purposes if the following conditions are met:

(A) The person was a professional employee of any entity recognized for creditable service for salary increment purposes within twelve months of entry into active duty.

(B) Form DD-214 or other official discharge papers must be filed with the teacher service record showing:

(i) that military service was in the capacity of an enlisted man or woman or commissioned officer;

(ii) that release or separation from active duty was under honorable conditions; and

(iii) dates of entry and release from active duty.

(C) The person claiming military service was on active duty during the periods September 1, 1940, through August 31, 1947, or September 1, 1950, through August 31, 1954, or for other periods if:

(i) the military service was a result of involuntary induction into active duty; or

(ii) the military service was a result of voluntary entry into active duty for the first time for the individual, and such initial period of voluntary military service claimed as years of service for teacher salary increments does not exceed four years.

(D) Beginning with the 1983-1984 school year, for purposes of determining the total years of military experience creditable for increment purposes, a year shall be considered to begin on July 1 and end June 30. During this period, four and one-half months of service must be acquired for an individual to be entitled to one year of experience. Only one year of experience may be earned during any 12-month period. Prior to the 1983-1984 school year, credit for military service was calculated based on the 12-month period from September 1-August 31. Credit granted on that basis shall continue to be effective.

(17) Job Corps. The person must have held a valid teaching certificate or appropriate license that would qualify for service credit during the period of employment.

(18) Peace Corps.

(A) Employment must have been with a school system (Grades K-12) in a foreign country.

(B) The person must have held a valid teaching certificate or appropriate license that would qualify for service credit from any state in the United States during the period of employment.

(i) Credit for career and technology teachers. In accordance with TEC, §21.403, effective with the 1982-1983 school year, certified career and technology education teachers employed for at least 50% of the time in an approved career and technology position may count up to two years of work experience for salary increment purposes if the work experience was required for career and technology certification.

(1) For purposes of this section, an emergency teaching permit shall be the equivalent of a teaching certificate.

(2) Once credit for work experience has been granted, the credit shall be continued regardless of the position held. For personnel granted credit under this section whose employment is split between career and technology and non-career and technology positions, the years granted shall apply to both the career and technology and the non-career and technology positions.

(j) Adult basic education program credit. A person teaching adult basic education is eligible for creditable service if the program was operated by a public school and the person held a valid teaching certificate.

(k) Substitute teachers. Beginning with the 1998-99 school year, a substitute teacher, as defined in subsection (a) of this section, employed in an entity recognized for years of service as prescribed by subsection (g) of this section is eligible for creditable service.

(l) Salary schedule. The commissioner of education shall publish annually the state minimum salary schedule.

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

Filed with the Office of the Secretary of State on March 27, 2000.

TRD-200002204
Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
Effective date: April 16, 2000
Proposal publication date: December 24, 1999
For further information, please call: (512) 463-9701

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TITLE 30. ENVIRONMENTAL QUALITY

Part 1. TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

Chapter 284. PRIVATE SEWAGE FACILITIES

The Texas Natural Resource Conservation Commission (commission) adopts the repeal of Chapter 284, Subchapter

A, §§284.1 - 284.15, Sam Rayburn Reservoir; Subchapter B, §§284.21 - 284.35, Toledo Bend Reservoir; Subchapter C, §§284.41 - 284.55, Lake Tawakoni Reservoir; Subchapter D, §§284.61 - 284.75, Lake Fork Reservoir; Subchapter E, §§284.81 - 284.96, Lake Brownwood; Subchapter F, §§284.101 - 284.115, Lake Limestone; Subchapter G, §§284.121 - 284.135, Lumberton Municipal Utility District in Hardin County; Subchapter I, §§284.161 - 284.174, Lake Crook Watershed; Subchapter J, §§284.181 - 284.192, Lake Palestine; Subchapter K, §§284.201 - 284.216, Livingston Reservoir; Subchapter L, §§284.221 - 284.237, Lake Ray Hubbard; Subchapter M, §§284.261 - 284.274, Greenbelt Reservoir; Subchapter N, §§284.281 - 284.294, Cedar Creek Reservoir; Subchapter O, §§284.311 - 284.326, Lake Granbury; Subchapter P, §§284.341 - 284.356, Somerville Reservoir; Subchapter Q, §§284.371 - 284.386, Possum Kingdom Lake; Subchapter R, §§284.401 - 284.414, Richland Creek Reservoir; Subchapter S, §§284.421 - 284.434, Mackenzie Reservoir; Subchapter T, §§284.451 - 284.464, Lake Lavon; Subchapter U, §§284.481 - 284.496, Lake Conroe; Subchapter V, §§284.511 - 284.523, Lake Bob Sandlin; Subchapter W, §§284.531- 284.543, Eagle Mountain Lake; Subchapter X, §§284.551 - 284.560 and 284.562-284.564, Lake Bridgeport; and Subchapter Y, §§284.581 - 284.604, Highland Lakes. The repeals are adopted without changes to the proposed text as published in the December 17, 1999 issue of the *Texas Register* (24 TexReg 11229).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE REPEALS

The repeal of Chapter 284 is adopted because the chapter is no longer based on statutory authority and has been superceded by rules contained in 30 TAC Chapter 285, On-Site Sewage Facilities. Prior to 1987, Texas Water Code (TWC), §26.031 granted to the Texas Water Commission the authority to regulate certain on-site sewage facilities (OSSF) in the state. The rules developed under §26.031 authorized river authorities and special districts to regulate OSSF systems within their areas of jurisdiction, primarily around lakes and reservoirs. The Texas Water Commission adopted Chapter 284 to implement this statute. In 1987, TWC, §26.031 was repealed, and House Bill 1875 was passed, which gave authority to the Texas Department of Health to regulated OSSF systems in Texas. The OSSF program and the authority to regulate OSSF systems was returned to the commission in 1992; however, that authority is now under Texas Health and Safety Code, Chapter 366, and is regulated under Chapter 285.

As published in the Rules Review section of this issue of the *Texas Register*, the commission is also adopting the review of this chapter in accordance with the requirements of Texas Government Code, §2001.039, and the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999. The commission has determined under its review of the rules in Chapter 284 that the reason for their adoption no longer exists. The Notice of Intention to Review was published for comment in the December 17, 1999 issue of the *Texas Register* (24 TexReg 11544).

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 that statute. "Major environmental rule" is a rule which has the specific intent to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Because the specific intent of this rulemaking is to repeal outdated rules, remove ambiguity and confusion with existing rules, and not add regulatory requirements to existing rules, the rulemaking is not anticipated to have an adverse effect on the economy or a sector of the economy and does not meet the definition of a "major environmental rule." In addition, the repeal of Chapter 284 does not meet any of the four applicability requirements of a "major environmental rule." The repeals do not exceed a standard set by federal law because there is no federal equivalent standard, the repeals do not exceed an express requirement of state law because the expressed requirement has been repealed, the repeals do not exceed a requirement of a delegation agreement because the commission is not a party to a delegation agreement with the federal government concerning a state and federal program that would be applicable to this program, and the repeals are based on a lack of specific statutory authority for the rules.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for repeal of this chapter under Texas Government Code, §2007.043. The repeal of this chapter is based on a lack of statutory authority to continue these rules. The repeal would not affect private property because it is intended to eliminate ambiguity between old, outdated rules and the existing rules under Chapter 285. The commission, therefore, concludes that repeal of rules under Chapter 284 will not in itself constitute a takings of private property under Texas Government Code, Chapter 2007.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has determined that the repeal of these rules does not relate to an action subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 et seq.), and the commission's rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the CMP. While these rules concern on-site sewage disposal, they govern lakes that are not in the geographic area subject to the CMP.

HEARING AND COMMENTERS

A public hearing on the proposed rules repeal and on the proposed rules review was scheduled for January 11, 2000; however, no one appeared at the hearing to testify. Also, no written comments on the proposal or the rules review were received by the commission during the comment period.

One comment letter was received after the close of the comment period from Booth, Ahrens and Werkenthin, P. C. representing the Tarrant Regional Water District (District). The District is opposed to the repeal of the subchapters under which it regulates OSSF around its reservoirs (Subchapters N, R, W, and X), because the District believes that the repeals will leave the District's reservoirs unprotected from contamination until the agency takes action on the District's proposed orders to replace the Chapter 284 rules.

The commission responds that the repeal of Chapter 284 is based upon a lack of statutory authority for the rules to exist. Chapter 284 has been superceded by rules contained in Chapter 285, On-Site Sewage Facilities. If the District wishes to continue oversight of the OSSF program, it will need to get an order under Chapter 285 to be the commission's authorized agent. If the District's proposed orders are not approved by the time the repeal of Chapter 284 takes effect, the jurisdiction over the OSSF program around the reservoirs in question will default to the local county if it has an approved order under Chapter 285, or to the commission. The local county or the commission will administer the program until the order authorizing the District's program is approved. Thus, the District's reservoirs will continue to be protected.

Subchapter A. SAM RAYBURN RESERVOIR

30 TAC §§284.1 - 284.15

STATUTORY AUTHORITY

The repeals are adopted under TWC, §5.103 and §5.105, which authorize the commission to adopt rules necessary to carry out its responsibilities and duties under the TWC and other laws of Texas. Since the statutory authority upon which this chapter was based, TWC, §26.031, was repealed by Acts 1987, 70th Legislature, Chapter 406, §2, effective September 1, 1989, and has been replaced by a program to regulate OSSF systems under Texas Health and Safety Code, Chapter 366, which is implemented through existing Chapter 285, the rules are no longer necessary. The review and repeal of the rules is authorized under the requirements of Texas Government Code, §2001.039, and the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999.

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

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Margaret Hoffman
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♦ ♦ ♦

Subchapter B. TOLEDO BEND RESERVOIR

30 TAC §§284.21 - 284.35

STATUTORY AUTHORITY

The repeals are adopted under TWC, §5.103 and §5.105, which authorize the commission to adopt rules necessary to carry out its responsibilities and duties under the TWC and other laws of Texas. Since the statutory authority upon which this chapter was based, TWC, §26.031, was repealed by Acts 1987, 70th Legislature, Chapter 406, §2, effective September 1, 1989, and has been replaced by a program to regulate OSSF systems under Texas Health and Safety Code, Chapter 366, which is regulated under the commission's existing Chapter 285, the rule is no longer necessary. The review and repeal of the rules is authorized under the requirements of Texas Government Code, §2001.039, and the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999.

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

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Subchapter C. LAKE TAWAKONI RESERVOIR

30 TAC §§284.41 - 284.55

STATUTORY AUTHORITY

The repeals are adopted under TWC, §5.103 and §5.105, which authorize the commission to adopt rules necessary to carry out its responsibilities and duties under the TWC and other laws of Texas. Since the statutory authority upon which this chapter was based, TWC, §26.031, was repealed by Acts 1987, 70th Legislature, Chapter 406, §2, effective September 1, 1989, and has been replaced by a program to regulate OSSF systems under Texas Health and Safety Code, Chapter 366, which is regulated under the commission's existing Chapter 285, the rule is no longer necessary. The review and repeal of the rules is authorized under the requirements of Texas Government Code, §2001.039, and the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999.

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

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Subchapter D. LAKE FORK RESERVOIR

30 TAC §§284.61 - 284.75

STATUTORY AUTHORITY

The repeals are adopted under TWC, §5.103 and §5.105, which authorize the commission to adopt rules necessary to carry out its responsibilities and duties under the TWC and other laws of Texas. Since the statutory authority upon which this chapter was based, TWC, §26.031, was repealed by Acts 1987, 70th Legislature, Chapter 406, §2, effective September 1, 1989, and has been replaced by a program to regulate OSSF systems

under Texas Health and Safety Code, Chapter 366, which is regulated under the commission's existing Chapter 285, the rule is no longer necessary. The review and repeal of the rules is authorized under the requirements of Texas Government Code, §2001.039, and the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999.

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

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Subchapter E. LAKE BROWNWOOD

30 TAC §§284.81 - 284.96

STATUTORY AUTHORITY

The repeals are adopted under TWC, §5.103 and §5.105, which authorize the commission to adopt rules necessary to carry out its responsibilities and duties under the TWC and other laws of Texas. Since the statutory authority upon which this chapter was based, TWC, §26.031, was repealed by Acts 1987, 70th Legislature, Chapter 406, §2, effective September 1, 1989, and has been replaced by a program to regulate OSSF systems under Texas Health and Safety Code, Chapter 366, which is regulated under the commission's existing Chapter 285, the rule is no longer necessary. The review and repeal of the rules is authorized under the requirements of Texas Government Code, §2001.039, and the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999.

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Subchapter F. LAKE LIMESTONE

30 TAC §§284.101 - 284.115

STATUTORY AUTHORITY

The repeals are adopted under TWC, §5.103 and §5.105, which authorize the commission to adopt rules necessary to carry out its responsibilities and duties under the TWC and other laws of Texas. Since the statutory authority upon which this chapter was based, TWC, §26.031, was repealed by Acts 1987, 70th Legislature, Chapter 406, §2, effective September 1, 1989, and has been replaced by a program to regulate OSSF systems under Texas Health and Safety Code, Chapter 366, which is regulated under the commission's existing Chapter 285, the rule is no longer necessary. The review and repeal of the rules is authorized under the requirements of Texas Government Code, §2001.039, and the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999.

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

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Subchapter G. LUMBERTON MUNICIPAL UTILITY DISTRICT IN HARDIN COUNTY

30 TAC §§284.121 - 284.135

STATUTORY AUTHORITY

The repeals are adopted under TWC, §5.103 and §5.105, which authorize the commission to adopt rules necessary to carry out its responsibilities and duties under the TWC and other laws of Texas. Since the statutory authority upon which this chapter was based, TWC, §26.031, was repealed by Acts 1987, 70th Legislature, Chapter 406, §2, effective September 1, 1989, and has been replaced by a program to regulate OSSF systems under Texas Health and Safety Code, Chapter 366, which is regulated under the commission's existing Chapter 285, the rule is no longer necessary. The review and repeal of the rules is authorized under the requirements of Texas Government Code, §2001.039, and the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999.

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Subchapter I. LAKE CROOK WATERSHED

30 TAC §§284.161 - 284.174

STATUTORY AUTHORITY

The repeals are adopted under TWC, §5.103 and §5.105, which authorize the commission to adopt rules necessary to carry out its responsibilities and duties under the TWC and other laws of Texas. Since the statutory authority upon which this chapter was based, TWC, §26.031, was repealed by Acts 1987, 70th Legislature, Chapter 406, §2, effective September 1, 1989, and has been replaced by a program to regulate OSSF systems under Texas Health and Safety Code, Chapter 366, which is regulated under the commission's existing Chapter 285, the rule is no longer necessary. The review and repeal of the rules is authorized under the requirements of Texas Government Code, §2001.039, and the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999.

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Subchapter J. LAKE PALESTINE

30 TAC §§284.181 - 284.192

STATUTORY AUTHORITY

The repeals are adopted under TWC, §5.103 and §5.105, which authorize the commission to adopt rules necessary to carry out its responsibilities and duties under the TWC and other laws of Texas. Since the statutory authority upon which this chapter was based, TWC, §26.031, was repealed by Acts 1987, 70th Legislature, Chapter 406, §2, effective September 1, 1989, and has been replaced by a program to regulate OSSF systems under Texas Health and Safety Code, Chapter 366, which is regulated under the commission's existing Chapter 285, the rule is no longer necessary. The review and repeal of the rules is authorized under the requirements of Texas Government Code, §2001.039, and the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999.

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

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Subchapter K. LIVINGSTON RESERVOIR

30 TAC §§284.201 - 284.216

STATUTORY AUTHORITY

The repeals are adopted under TWC, §5.103 and §5.105, which authorize the commission to adopt rules necessary to carry out its responsibilities and duties under the TWC and other laws of Texas. Since the statutory authority upon which this chapter was based, TWC, §26.031, was repealed by Acts 1987, 70th Legislature, Chapter 406, §2, effective September 1, 1989, and has been replaced by a program to regulate OSSF systems under Texas Health and Safety Code, Chapter 366, which is regulated under the commission's existing Chapter 285, the rule is no longer necessary. The review and repeal of the rules is authorized under the requirements of Texas Government Code, §2001.039, and the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999.

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Subchapter L. LAKE RAY HUBBARD

30 TAC §§284.221 - 284.237

STATUTORY AUTHORITY

The repeals are adopted under TWC, §5.103 and §5.105, which authorize the commission to adopt rules necessary to carry out its responsibilities and duties under the TWC and other laws of Texas. Since the statutory authority upon which this chapter was based, TWC, §26.031, was repealed by Acts 1987, 70th Legislature, Chapter 406, §2, effective September 1, 1989, and has been replaced by a program to regulate OSSF systems under Texas Health and Safety Code, Chapter 366, which is regulated under the commission's existing Chapter 285, the rule is no longer necessary. The review and repeal of the rules is authorized under the requirements of Texas Government Code, §2001.039, and the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999.

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Subchapter M. GREENBELT RESERVOIR

30 TAC §§284.261 - 284.274

STATUTORY AUTHORITY

The repeals are adopted under TWC, §5.103 and §5.105, which authorize the commission to adopt rules necessary to carry out its responsibilities and duties under the TWC and other laws of Texas. Since the statutory authority upon which this chapter was based, TWC, §26.031, was repealed by Acts 1987, 70th Legislature, Chapter 406, §2, effective September 1, 1989, and has been replaced by a program to regulate OSSF systems under Texas Health and Safety Code, Chapter 366, which is regulated under the commission's existing Chapter 285, the rule is no longer necessary. The review and repeal of the rules is authorized under the requirements of Texas Government Code, §2001.039, and the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999.

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Subchapter N. CEDAR CREEK RESERVOIR

30 TAC §§284.281 - 284.294

STATUTORY AUTHORITY

The repeals are adopted under TWC, §5.103 and §5.105, which authorize the commission to adopt rules necessary to carry out its responsibilities and duties under the TWC and other laws of Texas. Since the statutory authority upon which this chapter was based, TWC, §26.031, was repealed by Acts 1987, 70th Legislature, Chapter 406, §2, effective September 1, 1989, and has been replaced by a program to regulate OSSF systems under Texas Health and Safety Code, Chapter 366, which is regulated under the commission's existing Chapter 285, the rule is no longer necessary. The review and repeal of the rules is authorized under the requirements of Texas Government Code, §2001.039, and the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999.

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Subchapter O. LAKE GRANBURY

30 TAC §§284.311 - 284.326

STATUTORY AUTHORITY

The repeals are adopted under TWC, §5.103 and §5.105, which authorize the commission to adopt rules necessary to carry out its responsibilities and duties under the TWC and other laws of Texas. Since the statutory authority upon which this chapter was based, TWC, §26.031, was repealed by Acts 1987, 70th Legislature, Chapter 406, §2, effective September 1, 1989, and has been replaced by a program to regulate OSSF systems under Texas Health and Safety Code, Chapter 366, which is regulated under the commission's existing Chapter 285, the rule is no longer necessary. The review and repeal of the rules is authorized under the requirements of Texas Government Code, §2001.039, and the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999.

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Subchapter P. SOMERVILLE RESERVOIR

30 TAC §§284.341 - 284.356

STATUTORY AUTHORITY

The repeals are adopted under TWC, §5.103 and §5.105, which authorize the commission to adopt rules necessary to carry out its responsibilities and duties under the TWC and other laws of Texas. Since the statutory authority upon which this chapter was based, TWC, §26.031, was repealed by Acts 1987, 70th Legislature, Chapter 406, §2, effective September 1, 1989, and has been replaced by a program to regulate OSSF systems under Texas Health and Safety Code, Chapter 366, which is regulated under the commission's existing Chapter 285, the rule is no longer necessary. The review and repeal of the rules is authorized under the requirements of Texas Government Code, §2001.039, and the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999.

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Subchapter Q. POSSUM KINGDOM LAKE

30 TAC §§284.371 - 284.386

STATUTORY AUTHORITY

The repeals are adopted under TWC, §5.103 and §5.105, which authorize the commission to adopt rules necessary to carry out its responsibilities and duties under the TWC and other laws of Texas. Since the statutory authority upon which this chapter was based, TWC, §26.031, was repealed by Acts 1987, 70th Legislature, Chapter 406, §2, effective September 1, 1989, and has been replaced by a program to regulate OSSF systems under Texas Health and Safety Code, Chapter 366, which is regulated under the commission's existing Chapter 285, the rule is no longer necessary. The review and repeal of the rules is authorized under the requirements of Texas Government Code, §2001.039, and the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999.

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

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Subchapter R. RICHLAND CREEK RESERVOIR

30 TAC §§284.401 - 284.414

STATUTORY AUTHORITY

The repeals are adopted under TWC, §5.103 and §5.105, which authorize the commission to adopt rules necessary to carry out its responsibilities and duties under the TWC and other laws of Texas. Since the statutory authority upon which this chapter was based, TWC, §26.031, was repealed by Acts 1987, 70th Legislature, Chapter 406, §2, effective September 1, 1989, and has been replaced by a program to regulate OSSF systems under Texas Health and Safety Code, Chapter 366, which is regulated under the commission's existing Chapter 285, the rule is no longer necessary. The review and repeal of the rules is authorized under the requirements of Texas Government Code, §2001.039, and the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999.

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

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Subchapter S. MACKENZIE RESERVOIR

30 TAC §§284.421 - 284.434

STATUTORY AUTHORITY

The repeals are adopted under TWC, §5.103 and §5.105, which authorize the commission to adopt rules necessary to carry out its responsibilities and duties under the TWC and other laws of Texas. Since the statutory authority upon which this chapter was based, TWC, §26.031, was repealed by Acts 1987, 70th Legislature, Chapter 406, §2, effective September 1, 1989, and has been replaced by a program to regulate OSSF systems under Texas Health and Safety Code, Chapter 366, which is regulated under the commission's existing Chapter 285, the rule is no longer necessary. The review and repeal of the rules is authorized under the requirements of Texas Government Code, §2001.039, and the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999.

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

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Subchapter T. LAKE LAVON

30 TAC §§284.451 - 284.464

STATUTORY AUTHORITY

The repeals are adopted under TWC, §5.103 and §5.105, which authorize the commission to adopt rules necessary to carry out its responsibilities and duties under the TWC and other laws of Texas. Since the statutory authority upon which this chapter was based, TWC, §26.031, was repealed by Acts 1987, 70th Legislature, Chapter 406, §2, effective September 1, 1989, and has been replaced by a program to regulate OSSF systems under Texas Health and Safety Code, Chapter 366, which is regulated under the commission's existing Chapter 285, the rule is no longer necessary. The review and repeal of the rules is

authorized under the requirements of Texas Government Code, §2001.039, and the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999.

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

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Subchapter U. LAKE CONROE

30 TAC §§284.481 - 284.496

STATUTORY AUTHORITY

The repeals are adopted under TWC, §5.103 and §5.105, which authorize the commission to adopt rules necessary to carry out its responsibilities and duties under the TWC and other laws of Texas. Since the statutory authority upon which this chapter was based, TWC, §26.031, was repealed by Acts 1987, 70th Legislature, Chapter 406, §2, effective September 1, 1989, and has been replaced by a program to regulate OSSF systems under Texas Health and Safety Code, Chapter 366, which is regulated under the commission's existing Chapter 285, the rule is no longer necessary. The review and repeal of the rules is authorized under the requirements of Texas Government Code, §2001.039, and the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999.

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Subchapter V. LAKE BOB SANDLIN

30 TAC §§284.511 - 284.523

STATUTORY AUTHORITY

The repeals are adopted under TWC, §5.103 and §5.105, which authorize the commission to adopt rules necessary to carry out its responsibilities and duties under the TWC and other laws of Texas. Since the statutory authority upon which this chapter was based, TWC, §26.031, was repealed by Acts 1987, 70th Legislature, Chapter 406, §2, effective September 1, 1989, and has been replaced by a program to regulate OSSF systems under Texas Health and Safety Code, Chapter 366, which is regulated under the commission's existing Chapter 285, the rule is no longer necessary. The review and repeal of the rules is authorized under the requirements of Texas Government Code, §2001.039, and the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999.

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Subchapter W. EAGLE MOUNTAIN LAKE

30 TAC §§284.531 - 284.543

STATUTORY AUTHORITY

The repeals are adopted under TWC, §5.103 and §5.105, which authorize the commission to adopt rules necessary to carry out its responsibilities and duties under the TWC and other laws of Texas. Since the statutory authority upon which this chapter was based, TWC, §26.031, was repealed by Acts 1987, 70th Legislature, Chapter 406, §2, effective September 1, 1989, and has been replaced by a program to regulate OSSF systems under Texas Health and Safety Code, Chapter 366, which is regulated under the commission's existing Chapter 285, the rule is no longer necessary. The review and repeal of the rules is authorized under the requirements of Texas Government Code, §2001.039, and the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999.

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

Filed with the Office of the Secretary of State on March 24, 2000.

TRD-200002189
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Effective date: April 13, 2000
Proposal publication date: December 17, 1999
For further information, please call: (512) 239-1966

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Subchapter X. LAKE BRIDGEPORT

30 TAC §§284.551 - 284.560, 284.562 - 284.564

STATUTORY AUTHORITY

The repeals are adopted under TWC, §5.103 and §5.105, which authorize the commission to adopt rules necessary to carry out

its responsibilities and duties under the TWC and other laws of Texas. Since the statutory authority upon which this chapter was based, TWC, §26.031, was repealed by Acts 1987, 70th Legislature, Chapter 406, §2, effective September 1, 1989, and has been replaced by a program to regulate OSSF systems under Texas Health and Safety Code, Chapter 366, which is regulated under the commission's existing Chapter 285, the rule is no longer necessary. The review and repeal of the rules is authorized under the requirements of Texas Government Code, §2001.039, and the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999.

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

Filed with the Office of the Secretary of State on March 24, 2000.

TRD-200002190
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Effective date: April 13, 2000
Proposal publication date: December 17, 1999
For further information, please call: (512) 239-1966

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Subchapter Y. HIGHLAND LAKES

30 TAC §§284.581 - 284.604

STATUTORY AUTHORITY

The repeals are adopted under TWC, §5.103 and §5.105, which authorize the commission to adopt rules necessary to carry out its responsibilities and duties under the TWC and other laws of Texas. Since the statutory authority upon which this chapter was based, TWC, §26.031, was repealed by Acts 1987, 70th Legislature, Chapter 406, §2, effective September 1, 1989, and has been replaced by a program to regulate OSSF systems under Texas Health and Safety Code, Chapter 366, which is regulated under the commission's existing Chapter 285, the rule is no longer necessary. The review and repeal of the rules is authorized under the requirements of Texas Government Code, §2001.039, and the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999.

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

Filed with the Office of the Secretary of State on March 24, 2000.

TRD-200002191
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Effective date: April 13, 2000
Proposal publication date: December 17, 1999
For further information, please call: (512) 239-1966

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

Chapter 61. DESIGN AND CONSTRUCTION

Subchapter A. CONTRACTS FOR PUBLIC WORKS

31 TAC §§61.21, 61.24 - 61.26

The Texas Parks and Wildlife Commission adopts amendments to 31 TAC §61.21 and §61.24, new §61.25, and new §61.26, concerning contracts for public works, without changes to the proposed text as published in the October 15, 1999, issue of the *Texas Register* (24 TexReg 8916).

The amendments and new sections are necessary to provide a mechanism for the agency to enter into contracts when circumstances make sealed bidding impractical.

The amendment to §61.21, concerning General, adds a new subsection (c) to allow the executive director to solicit proposals for public works projects by means of a Request for Proposal (RFP) process. The amendment to §61.24, concerning Award, alters the title of the section to reflect the fact that the rule pertains to sealed bids rather than the RFP process. New §61.25, concerning Solicitation, Evaluation, and Selection of Proposals, sets forth the protocol for the issuance of an RFP, the evaluation of proposals received in response to an RFP, and the selection of proposals for award. New §61.26, concerning Award in Response to Proposals, specifies the conditions for contract awards in response to an RFP, and provides for the termination of negotiations with proposers under certain circumstances.

The department received no comments concerning adoption of the proposed amendments and new sections.

The amendments and new sections are adopted under Parks and Wildlife Code, Chapter 11, Subchapter B, which requires the commission to adopt policies and procedures consistent with applicable state procurement practices for soliciting and awarding contracts.

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

Filed with the Office of the Secretary of State on March 23, 2000.

TRD-200002108
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Effective date: April 12, 2000
Proposal publication date: November 15, 1999
For further information, please call: (512) 389-4775

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TITLE 34. PUBLIC FINANCE

Part 1. COMPTROLLER OF PUBLIC ACCOUNTS

Chapter 1. CENTRAL ADMINISTRATION

Subchapter C. ADVISORY COMMITTEES

34 TAC §1.301

The Comptroller of Public Accounts adopts new §1.301, concerning the duties and responsibilities of the "*e*-Texas" Citizens' Commission, without changes to the proposed text as published in the December 31, 1999, issue of the *Texas Register* (24 TexReg 12013).

The new section is in Subchapter C which has been renamed Advisory Committees, under Title 34, Part 1.

The new section is proposed pursuant to Government Code, §403.011(a)(18), which allows the comptroller to suggest plans for the improvement and management of the general revenue, and §403.022, which allows the comptroller to review and analyze the effectiveness and efficiency of the policies, management, fiscal affairs, and operations of state agencies.

Section 1.301 states that the purpose of *e*-Texas is to compile information and recommend improvements to enhance the efficiency and effectiveness of state government. The section establishes a date on which the citizens' commission will automatically be abolished. The section outlines the membership and supervision and control of the citizens' commission. The section also outlines the procedures for handling any donations to the state for the operation of *e*-Texas.

No comments were received regarding adoption of the new section.

This new section is adopted under the Government Code, §2110.005 and §2110.008 which requires a state agency to adopt rules regarding the purposes, duties, and duration of advisory committees.

The new section implements the Government Code, §403.022 and §403.011.

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

Filed with the Office of the Secretary of State on March 22, 2000.

TRD-200002093
Martin Cherry
Special Counsel
Comptroller of Public Accounts
Effective date: April 11, 2000
Proposal publication date: December 31, 1999
For further information, please call: (512) 463-4062

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Part 5. TEXAS COUNTY AND DISTRICT RETIREMENT SYSTEM

Chapter 105. CREDITABLE SERVICE

34 TAC §105.3

The Texas County and District Retirement System adopts new §105.3, concerning the crediting of service in the retirement system for qualifying service performed in the military. The rule is adopted with changes to the proposed text as published in the February 18, 2000, issue of the *Texas Register* (25 TexReg 1255).

The rule is necessary to implement and administer the statutory changes made by Sections 19 and 64, Senate Bill 1129, 76th Legislature (1999) to the provisions of the Texas County and District Retirement System Act relating to the optional authorization allowing credited service in the retirement system for qualified military service.

The rule describes the eligibility requirements for establishing credited service for qualified military service, and the manner of calculating the amount of service that is to be credited to an eligible member based on the type of military duty. An eligible member may receive up to 60 months of credited service at the rate of 1 month of credited service for each month of qualified military service performed on active duty, and 1 month of credited service for each 12 months of qualified military service performed on inactive duty, but dual credit may not be received for any month. In addition, the rule describes the eligibility requirements of an authorization reducing the eligibility period from 10 years to 8 years, and provides that the effective date of the authorization will be January 1 of the year following the year in which the reduction is authorized.

No comments were received regarding the adoption of the rule.

The rule is adopted under the Government Code, §845.102 which provides the board of trustees of the Texas County and District Retirement System with the authority to adopt rules necessary or desirable for the efficient administration of the system.

§105.3. Credited Service for Qualified Military Service.

(a) In this section:

(1) The term "Act" means the Texas Government Code, Title 8, Subtitle F as amended. Unless otherwise indicated, all section numbers refer to sections of the Act.

(2) The term "credited service" means membership service for determining retirement eligibility only. Member contributions and monetary credits are not required or permitted with respect to credited service for qualified military service established after December 31, 1999.

(3) The term "eligible member" means a member of an eligible subdivision who has performed, as an employee, at least 10 years of service credited in the retirement system; who does not receive and is not eligible to receive federal retirement payments based on 20 years or more of active federal military duty or its equivalent; who has performed qualified military service; and who has been released from military duty under honorable conditions.

(4) The term "eligible subdivision" means a subdivision whose governing board has adopted the optional authorization for the establishment of credited service in the retirement system for qualified military service under Section 843.601(c).

(5) The term "qualified military service" means service in the uniformed services as defined in 38 U.S.C. Section 4303(13). It excludes that service which was performed in a month for which the member has received credited service in this retirement system under any other provision of the Act, and that service which is credited by another retirement system or program established or governed by state law. A member may not receive more than one month of credited service for any month.

(b) An eligible member may receive one month of credited service in the retirement system for each month of qualified military service performed while on active duty. A member may receive one month of credited service in the retirement system for each 12 months

or fraction of months of qualified military service performed while on inactive duty. An eligible member may not accumulate more than a combined total of 60 months of credited service in the retirement system for qualified military service under Section 843.601 and for membership credited service under Section 842.109(b).

(c) The governing body of an eligible subdivision that has adopted the Optional Benefit Eligibility Plan Two described by Section 844.210 may authorize a reduction in the minimum credited service requirement for eligibility to establish credit under Section 843.601(c) from 10 to 8 years. The reduction may not take effect until January 1 of the year following the year in which the authorization was adopted except that a reduction authorized by an eligible subdivision that begins participation after December 31, 1999 may take effect on the date the subdivision begins participation.

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

Filed with the Office of the Secretary of State on March 20, 2000.

TRD-200002041
Terry Horton
Director
Texas County and District Retirement System
Effective date: April 9, 2000
Proposal publication date: February 18, 2000
For further information, please call: (512) 328-8889

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Chapter 107. MISCELLANEOUS RULES

34 TAC §107.8, §107.9

The Texas County and District Retirement System adopts the amendments to §107.8 concerning the electronic transfer of funds, and §107.9 concerning the electronic filing of documents, without changes to the proposed text as published in the February 18, 2000 issue of the *Texas Register* (25 TexReg 1256).

The amendment of §107.8 is necessary to clarify that a reversal of an ACH Debit by a subdivision constitutes non-payment of the required contributions with respect to the monthly report and will be treated in the same manner as an ACH Debit that fails because of insufficient funds in the transferee's account. The amendment to §107.9 expands the definition of documents that can be electronically filed and clarifies that documents filed electronically by a subdivision will be considered to have been certified by the subdivision, and that documents electronically filed by a member, beneficiary or annuitant will be considered to have been certified by the filer if certifying language appears on the document.

No comments were received regarding the adoption of these amendments.

The amendments are adopted under the general provisions of Government Code, §845.102, which provides the board of trustees of the Texas County and District Retirement System with the authority to adopt rules necessary or desirable for efficient administration of the system; and under the specific provisions of Government Code, §845.116(b) which authorizes the board of trustees to adopt rules and procedures relating to the electronic transfer of funds and the electronic filing of documents.

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

Filed with the Office of the Secretary of State on March 20, 2000.

TRD-200002042
Terry Horton
Director
Texas County and District Retirement System
Effective date: April 9, 2000
Proposal publication date: February 18, 2000
For further information, please call: (512) 328-8889

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part 11. TEXAS JUVENILE PROBATION COMMISSION

Chapter 348. JUVENILE JUSTICE ALTERNATIVE EDUCATION PROGRAMS

Subchapter A. PROGRAM OPERATIONS

37 TAC §348.110

The Texas Juvenile Probation Commission adopts amended §348.110, concerning written policy and procedure in the reporting and handling of cases of child abuse and/or neglect in juvenile justice alternative education programs. Section 348.110 is adopted without changes to the proposed text as published in the February 4, 2000, issue of the *Texas Register* (25 TexReg 700) and will not be republished.

TJPC adopts this rule in an effort an effort to conform with changes made during the 76th Texas Legislative Session to Chapter 261 of the Texas Family Code regarding the reporting of child abuse and neglect incidents to the Texas Juvenile Probation Commission in all juvenile justice programs and facilities.

The following public comments were received:

Section 348.110(j) Abuse or Neglect

PUBLIC COMMENT: Public comment was received on the proposed language dealing with those persons alleged to be a perpetrator of child abuse or neglect in the JJAEP. The recommendation was made to strike "to a position having no contact with children" because of the potential for lack of staff on duty to cover all matters of instruction and supervision. It is believed that this language should be at the discretion of the local program.

AGENCY RESPONSE: The board considered this recommendation at its March 17, 2000, meeting and adopted the rule as written. There is no recommended change to the proposed standard. The proposed language is identical to TJPC standards §343.2 and §344.2 for pre and post adjudication facilities and was developed to protect the departments and provide discretion and latitude in the development of their internal investigation procedures. Depending on the department's procedures, staff removals may be minimal and short term depending on the

situation. In response to false allegations of abuse or neglect, such incidents should be reported to law enforcement according to the Texas Family Code 261.107 to minimize false accusations.

PUBLIC COMMENT: Public comment was received and it was requested that the terms "victim" and "perpetrator" in all corresponding standards and the TJPC Incident Report Form should be replaced with the terms "complainant" and "subject". The terms perpetrator and victim imply that the accused is guilty and that injury and harm has in fact occurred.

AGENCY RESPONSE: The board considered this recommendation at its March 17, 2000, meeting and adopted the rule as written. There is no recommended change to the proposed standard. The proposed terms "alleged victim" and "alleged perpetrator" are terms consistent with the language used by the other Health and Human Service Agencies including Department of Protective and Regulatory Services.

PUBLIC COMMENT: Public comment was received relating to an "alleged" perpetrator being put on administrative leave or reassigned. This language takes away any discretion by the department as to actions it deems appropriate in a reported incident or the validity of such a complaint. In addition, small counties will be unable to find qualified replacements to continue the education process if a teacher is removed in every instance of an allegation.

AGENCY RESPONSE: The board considered this recommendation at its March 17, 2000, meeting and adopted the rule as written. There is no recommended change to the proposed standard. The proposed language is identical to TJPC standards §343.2 and §344.2 for pre and post adjudication facilities. This language was developed to protect the departments and provide discretion and latitude in the development of their internal investigation procedures. Depending on the department's procedures, staff removals may be minimal and short term depending on the situation.

PUBLIC COMMENT: Public comment was received regarding the potential for an "outbreak" of allegations made because there would be a lack of staff to continue the program with an alleged perpetrator be reassigned or placed on administrative leave.

AGENCY RESPONSE: The board considered this recommendation at its March 17, 2000, meeting and adopted the rule as written. There is no recommended change to the proposed standard. The proposed language is identical to TJPC standards §343.2 and §344.2 for pre and post adjudication facilities. This language was developed to protect the departments and provide discretion and latitude in the development of their internal investigation procedures. Depending on the department's procedures, staff removals may be minimal and short term depending on the situation. In response to false allegations of abuse or neglect, such incidents should be reported to law enforcement according to the Texas Family Code 261.107 to minimize false accusations.

These standards are adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

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

Filed with the Office of the Secretary of State on March 21, 2000.

TRD-200002056
Lisa Capers
Deputy Executive Director & General Counsel
Texas Juvenile Probation Commission
Effective date: April 10, 2000
Proposal publication date: February 4, 2000
For further information, please call: (512) 424-6710

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.

Agency Rule Review Plan-Revised

Texas Board of Physical Therapy Examiners

Title 22, Part 16

Filed: March 29, 2000

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Proposed Rule Reviews

Texas State Board of Barber Examiners

Title 22, Part 2

The State Board of Barber Examiners files this notice of intention to review §§51.11 - 51.40, concerning Barber Colleges, Schools and Students, pursuant to the General Appropriations Act, Article IX, §167, 75th Legislature.

As part of this review process, the board is proposing amendments to §51.13 of this title (relating to Change of Ownership of Barber School), §51.15 of this title (relating to Barber Chairs Per Student), §51.16 of this title (relating to Equipment for Students), §51.17 of this title (relating to Specialty Equipment), §51.18 of this title (relating to Classroom Consultants), §51.19 of this title (relating to Absence of Teachers), §51.20 of this title (relating to Applying for Enrollment), §51.21 of this title (relating to Enrollment Application Deadline), §51.23 of this title (relating to Student Certificate), §51.24 of this title (relating to Interruption of Attendance), §51.25 of this title (relating to Reenrollment or Notification), §51.26 of this title (relating to Student Progress Reports), §51.30 of this title (relating to Registered Barber Course), §51.39 of this title (relating to Barber Refresher Course), §51.40 of this title (relating to All Other Businesses Prohibited in a Barber College). The proposed amendments may be found in the Proposed Rules section of the *Texas Register*. As required by §167, the board will accept comments regarding whether the reasons for adopting the rules continue to exist together with any substantive comments submitted concerning the proposed amendments.

The board is also proposing the repeal of §51.22 of this title (relating to Date of Enrollment), §51.36 of this title (relating to Enrollment Application Form), §51.37 of this title (relating to Student Certificate Form). The proposed repeals may be found in the Proposed Rules section of the *Texas Register*. As required by §167, the board will accept comments regarding whether the reason for adopting the rules continue to exist together with any substantive comments submitted concerning the proposed repeals.

Finally, the board is proposing to readopt §51.11 of this title (relating to Barber School Contract), §51.12 of this title (relating to Inspection of New Barber School or College), §51.14 of this title (relating to Business Hours of Barber School), §51.28 of this title (relating to Teacher Course), §51.29 of this title (relating to Mandatory Curriculum), §51.31 of this title (relating to Manicurist Course), §51.32 of this title (relating to Wig Specialist Course), §51.33 of this title (relating to Wig Instructor Course), §51.34 of this title (relating to Barber Technician Course), §51.35 of this title (relating to Definition of Barber's Technician), §51.38 of this title (relating to Progress Report Barber School Monthly Records of Student Hours). The agency's reasons for adopting these rules continue to exist in order to discharge the agency's statutory examination and licensing responsibilities.

Any questions regarding this notice of intention to review and comments regarding whether the reasons for adopting these rules continues to exist should be directed to Will K. Brown, Executive Director, State Board of Barber Examiners, 333 Guadalupe, Suite 2-110, Austin, Texas 78701.

Proposed Amendments:

§51.13 Change of Ownership of Barber School

§51.15 Barber Chairs per Student

§51.16 Equipment for Students

§51.17 Specialty Equipment

§51.18 Classroom Consultants

§51.19 Absence of Teachers

§51.20 Applying for Enrollment

§51.21 Enrollment Application Deadline

§51.23 Student Certificate

§51.24 Interruption of Attendance

§51.25 Reenrollment or Transfer

§51.26 Student Progress Reports

§51.30 Registered Barber Course

§51.39 Barber Refresher Course

§51.40 All Other Businesses Prohibited in a Barber College

Proposed Repeals:

§51.22 Date of Enrollment

§51.36 Enrollment Application Form

§51.37 Student Certificate Form

Proposed Rules to be Readopted:

§51.11 Barber School Contract

§51.12 Inspection of New Barber School or College

§51.14 Business Hours of Barber School

§51.28 Teacher Course

§51.29 Mandatory Curriculum

§51.31 Manicurist Course

§51.32 Wig Specialist Course

§51.33 Wig Instructor Course

§51.34 Barber Technician Course

§51.35 Definition of Barber's Technician

§51.38 Progress Report Barber School Monthly Records of Student Hours

TRD-200002062
Will K. Brown
Executive Director
Texas State Board of Barber Examiners
Filed: March 21, 2000

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The State Board of Barber Examiners files this notice of intention to review§§51.01-51.02, concerning The Board; §§51.91-51.97, concerning Barber Shops; §51.101, concerning Advertising; §51.111, concerning Contested Cases; §51.121, concerning Personnel-Qualifications and Duties; §51.131, concerning Informal Disposition, pursuant to the General Appropriations Act, Article IX §167, 75th Legislature.

As part of this review process, the board is proposing amendments to §51.92 of this title (Barber Pole (symbol of Barbering Since Ancient Days)), §51.95 of this title (No Other Businesses in a Barber Shop or Specialty Shop), §51.97 of this title (Booth Rental Permit), §51.101 of this title (Barber Advertisements). The proposed amendments may be found in the Proposed Rules section of the *Texas Register*. As required by §167, the board will accept comments regarding whether the reasons for adopting the rules continue to exist together with any substantive comments submitted concerning the proposed amendments.

The Board is also proposing the repeal of §51.91 of this title (Separation of Barber Shop and Beauty Parlor), §51.93 of this title (Inspection Report). The proposed repeals may be found in the Proposed Rules section of the *Texas Register*. As required by §167, the board will accept comments regarding whether the reason for adopting the rules continue to exist together with any substantive comments submitted concerning the proposed repeals.

Finally, the board is proposing to readopt§51.01 of this title (Regular Meetings and Examinations), §51.02 of this title (Quorum), §51.94 of this title (Regulation of Dress in a Barber Shop, Specialty Shop, or School), §51.96 of this title (Animals Prohibited in a Barber Shop, Specialty Shop, or School), §51.111 of this title (Admission of Parties), §51.121 of this title (Barber Inspector), §51.131 of this title (Informal Disposition). The agency's reasons for adopting these rules continue to exist in order to discharge the agency's statutory examination and licensing responsibilities.

Proposed Amendments:

§51.92. Barber Pole (Symbol of Barbering Since Ancient Days).

§51.95. No Other Businesses in a Barber Shop or Specialty Shop.

§51.97. Booth Rental Permit.

§51.101. Barber Advertisements.

Proposed Repeals:

§51.91. Separation of Barber Shop and Beauty Parlor.

§51.93. Inspection Report.

Proposed Rules to be Readopted:

§51.01. Regular Meetings and Examinations.

§51.02. Quorum.

§51.94. Regulation of Dress in a Barber Shop, Specialty Shop, or School.

§51.111. Admission of Parties.

§51.121. Barber Inspector.

§51.131. Informal Disposition.

TRD-200002065
Will K Brown
Executive Director
Texas State Board of Barber Examiners
Filed: March 21, 2000

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Texas Department of Health

Title 25, Part 1

The Texas Department of Health (department) will review and consider for readoption, revision or repeal Title 25, Texas Administrative Code, Part I, Chapter 229. Food and Drug, Subchapter C. Purchase of Domestic Beef, §§229.31 - 229.33; Subchapter E. Canned Foods, §§229.61 - 229.72; Subchapter G. Manufacture, Storage, and Distribution of Ice Sold for Human Consumption, Including Ice Produced at Point of Use, §§229.111 - 229.120; Subchapter I. Sanitation in Pecan Shelling Plants, §§229.131 - 229.134; Subchapter S. Pesticides in Food, §229.334; and Subchapter T. Licensure of Tanning Facilities, §§229.341 - 229.357.

This review is in accordance with the requirements of the Texas Government Code, §2001.039, the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999.

An assessment will be made by the department as to whether the reasons for adopting or readopting these rules continue to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the department. The review of all rules must be completed by August 31, 2003.

Comments on the review may be submitted in writing within 30 days following the publication of this notice in the Texas Register to Linda Wiegman, Office of General Counsel, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Any proposed changes to these rules as a result of the review will be published in the Proposed Rule Section of the Texas Register and will be open for an additional 30 day public comment period prior to final adoption or repeal by the department.

TRD-200002242
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: March 29, 2000

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Texas Natural Resource Conservation Commission

Title 30, Part 1

The Texas Natural Resource Conservation Commission (commission) proposes the review of Chapter 294, Underground Water Management Areas. This review is in accordance with the requirements of Texas Government Code, §2001.039, and the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999, which requires state agencies to review and consider for readoption each of their rules every four years. A review must include an assessment of whether the reasons for the rules continue to exist.

Chapter 294 contains the designations and the procedures for designation of groundwater management areas and priority groundwater management areas. Subchapters A and B designate groundwater management areas for the Carrizo-Wilcox and the Antlers Sand Aquifers. Subchapters C and E contain the procedures for the designation of a groundwater management area and for the designation of a priority groundwater management area, respectively. Subchapter D contains the designations for the following priority groundwater management areas: Briscoe, Hale and Swisher Counties; Dallam County; Hill Country; and Reagan, Upton, and Midland Counties.

The commission has reviewed the rules in Chapter 294 and made a preliminary assessment that the reason for their adoption continues to exist. The procedures and powers provided to the commission relating to the designation of groundwater management areas and priority groundwater management areas are contained in Texas Water Code (TWC) Chapter 35, Groundwater Studies. These rules are necessary to implement the provisions of Chapter 35 and to provide further explanation of the procedures relating to designating these areas.

The commission's review of Chapter 294 has also revealed that the readability of Subchapters C and E could be improved by reordering the sequence of some of the subsections. The usability of these subchapters could by improved by defining the role of the Texas Department of Agriculture as provided by changes to TWC, §§35.007, 35.012, and 35.013 that were added by House Bill 2660, 76th Legislature, 1999; and that the title of Chapter 294 should be revised from "Underground Water Management Areas" to "Groundwater Management Areas" to reflect changes to TWC, Chapter 35. The commission intends to propose changes in the near future to address these issues.

Today's proposal is limited to the review in accordance with the requirements of the Texas Government Code, §2001.039, and the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999. The commission is accepting comments on whether the reasons for the rules in Chapter 294 continue to exist. However, the commission invites comments on any corrections or other revisions that could be considered in the aforementioned future rulemaking.

A public hearing will not be held on this proposal. Comments may be submitted to Lisa Martin, Office of Environmental Policy, Analysis, and Assessment, MC 205, P. O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 1999-075- 294-WT. Comments must be received by 5:00 p.m., May 8, 2000. For further information, please contact Mary Ambrose, Regulation Development Section, (512) 239-4813.

TRD-200002198
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: March 27, 2000

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Texas Board of Physical Therapy Examiners

Title 22, Part 16

The Texas Board of Physical Therapy Examiners files this notice of intention to review the rules as listed below, pursuant to the General Appropriations Act, House Bill 1, Article IX, §167, passed by the 75th Legislature (1997), and the revised review plan published in this issue of the *Texas Register*.

The board's reasons for adopting the rules in these chapters continue to exist, and it proposes to readopt them all. Any rule amendments determined to be necessary during the review will be formally proposed at a subsequent board meeting, and will not be submitted simultaneously with the Notice of Readoption.

The board encourages comments regarding the readoption of the rules. The deadline for comments is 30 days after the publication of this notice in the *Texas Register*.

Any questions or comments regarding whether the reason for adopting these rules continues to exist must be received at the agency by 5:00 p.m. on May 8, 2000. All questions or comments should be directed to Nina Hurter, PT Coordinator, 333 Guadalupe, Suite 2-510, Austin, Texas, 78701. Phone: (512) 305-6900. Email: nhurter@mail.capnet.state.tx.us.

Chapter 321, DEFINITIONS

Chapter 322, PRACTICE

Chapter 323, POWERS AND DUTIES OF THE BOARD

Chapter 325, ORGANIZATION OF THE BOARD

Chapter 327, COMPENSATION

Chapter 329, LICENSING PROCEDURE

Chapter 335, PROFESSIONAL TITLE

Chapter 337, DISPLAY OF LICENSE

Chapter 339, FEES

Chapter 341, LICENSE RENEWAL

Chapter 342, OPEN RECORDS

Chapter 343, CONTESTED CASE PROCEDURE

Chapter 344, ADMINISTRATIVE FINES AND PENALTIES

Chapter 345, ACCESSIBLE SERVICES

Chapter 346, PRACTICE SETTINGS FOR PHYSICAL THERAPY

Chapter 347, REGISTRATION OF PHYSICAL THERAPY FACILITIES

TRD-200002253
John P. Maline
Executive Director
Texas Board of Physical Therapy Examiners
Filed: March 29, 2000

♦ ♦ ♦

Texas Real Estate Commission

Title 22, Part 23

The Texas Real Estate Commission proposes to review the following sections of Chapter 535 in accordance with the Texas Government Code, §2001.039, and the General Appropriations Act of 1999, Article IX, Section 167. The commission will accept comments for 30 days following the publication of this notice in the Texas Register as to whether the reason for adopting each of these sections continues to exist. Any questions pertaining to this notice of intention to review should be directed to Mark A. Moseley, General Counsel, Texas Real Estate Commission. P.O. Box 12188, Austin, Texas 78711-2188 or e-mail to general.counsel@trec.state.tx.us.

§535.131. Unlawful Conduct; Splitting Fees.

§535.132. Eligibility for Licensure.

§535.133. Consent to be Sued; Exception to Requirements.

§535.141. Initiation of Investigation.

§535.143. Fraudulent Procurement of License.

§535.144. When acquiring or disposing of own property.

§535.145. False promise.

§535.146. Failure to Properly Account for Money; Commingling.

§535.147. Splitting Fee with Unlicensed Person.

§535.148. Failing to Specify Date of Termination of Listing Contract.

§535.149. Lottery or Deceptive Trade Practice.

§535.150. Acting in Dual Capacity.

§535.151. Guaranteeing Profits.

§535.152. Offering Property Without Owner's Consent.

§535.153. Violating an Exclusive Agency.

§535.154. Misleading Advertising.

§535.155. Associating with Unlicensed Person; Conspiring to Violate Act.

§535.156. Dishonesty; Bad Faith; Untrustworthiness.

§535.157. Negligence; Incompetence.

§535.158. Violation of Act.

§535.159. Failing to Properly Deposit Escrow Monies.

§535.160. Failing to Properly Disburse Escrow Money.

§535.161. Failing to Provide Information.

§535.171. Hearing: Subpoenas and Fees.

§535.181. Penalty.

§535.191. Prerequisites.

§535.192. Written Agreement Required.

TRD-200002224
Mark A. Moseley
General Counsel
Texas Real Estate Commission
Filed: March 28, 2000

♦ ♦ ♦

Adopted Rule Reviews

Texas Natural Resource Conservation Commission

Title 30, Part 1

The Texas Natural Resource Conservation Commission (commission) adopts the review of Chapter 284, Private Sewage Facilities. This review is in accordance with the requirements of Texas Government Code, §2001.039, and the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999, which requires state agencies to review and consider for readoption each of their rules every four years. The Notice of Intention to Review was published for comment in the December 17, 1999 issue of the *Texas Register* (24 TexReg 11544).

The commission has reviewed the rules in Chapter 284 and made an assessment that the reason for their adoption no longer continues to exist. The commission adopts the repeal of Chapter 284 as part of the adoption of this review as contained in the Adopted Rules section of this issue of the *Texas Register*.

Prior to 1987, Texas Water Code (TWC), §26.031 granted to the Texas Water Commission the authority to regulate certain on-site sewage facilities (OSSF) in the state. The rules developed under §26.031 authorized river authorities and special districts to regulate OSSF systems within their areas of jurisdiction, primarily around lakes and reservoirs. The Texas Water Commission adopted Chapter 284 to implement this statute. In 1987, TWC, §26.031 was repealed, and House Bill 1875 was passed, which gave authority to the Texas Department of Health to regulate OSSF systems in Texas. The OSSF program and the authority to regulate OSSF systems was returned to the commission in 1992; however, that authority is now contained in Texas Health and Safety Code, Chapter 366, and is implemented through 30 TAC Chapter 285, On-Site Sewage Facilities. The commission has determined that it no longer has statutory authority to continue the rules under Chapter 284. Additionally, Chapter 284 is superceded by rules under Chapter 285 and the existence of both chapters causes confusion in the regulated community.

A public hearing on the proposed rules review and proposed rules repeal was scheduled for January 11, 2000; however, no one appeared at the hearing to testify. Also, no written comments on the proposed rules review or the proposed rules repeal were received by the commission during the comment period. Tarrant Regional Water District (District) submitted a comment letter after the close of the comment period. The District is opposed to the repeal of Subchapters N, R, W, and X of Chapter 284 because the District believes that the repeal will leave the District's reservoirs unprotected from contamination until the agency takes action on the District's proposed orders to replace the Chapter 284 rules.

The commission responds that the repeal of Chapter 284 is based upon a lack of statutory authority for the rules to exist. Chapter 284 has been superceded by rules contained in Chapter 285. If the District wishes to continue oversight of the OSSF program, it will need to get an order authorizing the District to be an authorized agent of the commission under Chapter 285. If the District's proposed orders are not approved by the time the repeal of Chapter 284 takes

effect, jurisdiction over the on-site sewage facilities program around the reservoirs in question will default to the local county if it has an approved order under Chapter 285, or to the commission. The local county or the commission will administer the program until the order authorizing the District's program is approved. Thus, the District's reservoirs will continue to be protected.

TRD-200002192
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: March 24, 2000

♦ ♦ ♦

Texas Board of Professional Engineers

Title 22, Part 6

The Texas Board of Professional Engineers readopts without changes the review to Chapter 131, Subchapter E (§§131.91-131.94), concerning Education, in accordance with the Appropriations Act of 1997, HB 1, Article IX, §167, as proposed in the December 31, 1999, issue of the *Texas Register* (24 TexReg 12079).

No comments were received regarding adoption of these sections.

22 TAC §131.91. Educational Requirements for Applicants

22 TAC §131.92. Degrees from Non-Accredited Programs

22 TAC §131.93. Transcripts

22 TAC §131.94. English Translation

TRD-200002154
Randi Warrington
Deputy Executive Director
Texas Board of Professional Engineers
Filed: March 24, 2000

♦ ♦ ♦

The Texas Board of Professional Engineers readopts without changes the review to Chapter 131, Subchapter F (§§131.101-131.106), concerning Examinations, pursuant to the Appropriations Act of 1997, HB 1, Article IX, §167, as proposed in the December 31, 1999, issue of the *Texas Register* (24 TexReg 12079).

No comments were received regarding adoption of these sections.

22 TAC §131.101. Engineering Examinations Required for a License to Practice as a Professional Engineer

22 TAC §131.102. Examination for Record Purposes

22 TAC §131.103. Engineer-in-Training

22 TAC §131.104. Engineer-in-Training Certificates

22 TAC §131.105. Examination Analysis

22 TAC §131.106. Examination Irregularities

TRD-200002155
Randi Warrington
Deputy Executive Director
Texas Board of Professional Engineers
Filed: March 24, 2000

♦ ♦ ♦

The Texas Board of Professional Engineers readopts without changes the review to Chapter 131, Subchapter G (§§131.111-131.116), concerning Board Review of Application, pursuant to the Appropriations Act of 1997, HB 1, Article IX, §167, as proposed in the December 31, 1999, issue of the *Texas Register* (24 TexReg 12080).

No comments were received regarding adoption of these sections.

22 TAC §131.111. Reviewing, Evaluation and Processing Applications

22 TAC §131.112. Processing of Non-Approved Applications

22 TAC §131.113. Reconsideration of Non-Approved Applications or Examination Waivers

22 TAC §131.114. Personal Interviews of Applicants

22 TAC §131.115. Application Files

22 TAC §131.116. Issuance of License

TRD-200002156
Randi Warrington
Deputy Executive Director
Texas Board of Professional Engineers
Filed: March 24, 2000

♦ ♦ ♦

The Texas Board of Professional Engineers readopts without changes the review to Chapter 131, Subchapter H (§§131.131-131.136), concerning Licensing, pursuant to the Appropriations Act of 1997, HB 1, Article IX, §167, as proposed in the December 31, 1999, issue of the *Texas Register* (24 TexReg 12080).

No comments were received regarding adoption of these sections.

22 TAC §131.131. Regular and Temporary Licenses

22 TAC §131.132. Provisional Licenses

22 TAC §131.133. Professional Designations

22 TAC §131.134. Expirations and Renewals

22 TAC §131.135. Replacement Certificates

22 TAC §131.136. New Design Certificates

TRD-200002157
Randi Warrington
Deputy Executive Director
Texas Board of Professional Engineers
Filed: March 24, 2000

♦ ♦ ♦

The Texas Board of Professional Engineers readopts without changes the review to Chapter 131, Subchapter I (§§131.151-131.156), concerning Professional Conduct and Ethics, pursuant to the Appropriations Act of 1997, HB 1, Article IX, §167, as proposed in the December 31, 1999, issue of the *Texas Register* (24 TexReg 12080).

No comments were received regarding adoption of these sections.

22 TAC §131.151. Engineers Shall Protect the Public

22 TAC §131.152. Engineers Shall Be Objective and Truthful

22 TAC §131.153. Engineers' Actions Shall Be Competent

22 TAC §131.154. Engineers Shall Maintain Confidentiality of Clients

22 TAC §131.155. Engineers' Responsibility to the Profession

22 TAC §131.156. Action in Another Jurisdiction

TRD-200002158
Randi Warrington
Deputy Executive Director
Texas Board of Professional Engineers
Filed: March 24, 2000

♦ ♦ ♦

The Texas Board of Professional Engineers readopts without changes the review to Chapter 131, Subchapter J (§§131.161-131.168), concerning Compliance and Enforcement, pursuant to the Appropriations Act of 1997, HB 1, Article IX, §167, as proposed in the December 31, 1999, issue of the *Texas Register* (24 TexReg 12080).

No comments were received regarding adoption of these sections.

22 TAC §131.161. General

22 TAC §131.162. Firm Compliance

22 TAC §131.163. Engineer Compliance

22 TAC §131.164. Business Names

22 TAC §131.165. A License Holder's Responsibility to the Board

22 TAC §131.166. Engineers' Seals

22 TAC §131.167. Disciplinary Actions

22 TAC §131.168. Actions Against Non-License Holders

TRD-200002159
Randi Warrington
Deputy Executive Director
Texas Board of Professional Engineers
Filed: March 24, 2000

♦ ♦ ♦

The Texas Board of Professional Engineers readopts without changes the review to Chapter 131, Subchapter K (§§131.171-131.173), concerning Complaints, pursuant to the Appropriations Act of 1997, HB 1, Article IX, §167, as proposed in the December 31, 1999, issue of the *Texas Register* (24 TexReg 12080).

22 TAC §131.171. General

22 TAC §131.172. Complaints Against License Holders

22 TAC §131.173. Complaints Against Unlicensed Persons, or Firms, Partnerships and Other Entities

TRD-200002160
Randi Warrington
Deputy Executive Director
Texas Board of Professional Engineers
Filed: March 24, 2000

♦ ♦ ♦

The Texas Board of Professional Engineers readopts without changes the review to Chapter 131, Subchapter L (§§131.181-131.223), concerning Hearings-Contested Cases, pursuant to the Appropriations Act of 1997, HB 1, Article IX, §167, as proposed in the December 31, 1999, issue of the *Texas Register* (24 TexReg 12081).

No comments were received regarding adoption of these sections.

22 TAC §131.181. State Office of Administrative Hearings

22 TAC §131.182. Board Responsibilities

22 TAC §131.183. Jurisdiction; Request for Hearing or Law Judge

22 TAC §131.184. Filings

22 TAC §131.185. Stipulations; Agreements

22 TAC §131.186. Service

22 TAC §131.187. Conduct and Decorum

22 TAC §131.188. Classification of Parties

22 TAC §131.189. Appearances in Person or by Representative; Waivers; Default

22 TAC §131.190. Classification of Pleadings

22 TAC §131.191. Form and Content of Pleadings

22 TAC §131.192. Discovery

22 TAC §131.193. Motions; Amendments

22 TAC §131.194. Prehearing Conferences and Orders

22 TAC §131.195. Notice of Hearing

22 TAC §131.196. Certificates of Registration

22 TAC §131.197. Conduct of Hearings

22 TAC §131.198. Formal Exceptions

22 TAC §131.199. Motions for Postponement, Continuance, Withdrawal, or Dismissal of Matters Before the Board

22 TAC §131.200. Place and Nature of Hearings

22 TAC §131.201. Administrative Law Judge

22 TAC §131.202. Order of Proceedings

22 TAC §131.203. Reporters and Transcript

22 TAC §131.204. Telephone Hearings

22 TAC §131.205. Dismissal, Settlement without Hearing

22 TAC §131.206. Rules of Evidence

22 TAC §131.207. Documentary Evidence

22 TAC §131.208. Official Notice

22 TAC §131.209. Prepared or Prefiled Testimony

22 TAC §131.210. Limitations on Number of Witnesses

22 TAC §131.211. Exhibits

22 TAC §131.212. Offer of Proof

22 TAC §131.213. Depositions

22 TAC §131.214. Subpoenas

22 TAC §131.215. Proposals for Decision

22 TAC §131.216. Filing of Exceptions, Briefs, and Replies

22 TAC §131.217. Form and Content of Briefs, Exceptions, and Replies

22 TAC §131.218. Oral Argument

22 TAC §131.219. Final Decisions and Orders

22 TAC §131.220. Administrative Finality

22 TAC §131.221. Motions for Rehearing

22 TAC §131.222. Rendering of Final Decision or Order

22 TAC §131.223. The Record

This completes the review of Chapter 131.

TRD-200002161
Randi Warrington
Deputy Executive Director

Texas Board of Professional Engineers
Filed: March 24, 2000

♦ ♦ ♦

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.

Figure: 19 TAC §153.1021(f)

YEAR SERVICE RENDERED	MINIMUM DAYS AT 100% OF THE DAY	MINIMUM DAYS AT 50-99% OF THE DAY	MINIMUM FULL-TIME EQUIVALENT DAYS
Beginning 1998-1999	90	180	90
Beginning 1988-1989	---	---	85
1987-1988 To 1978-1979	85	170	85
1977-1978	85	175	---
1976-1977 To 1972-1973	90	180	---
Prior To 1972-1973	90	180	---

Figure: 30 TAC §101.27(c)(1)

Fiscal Year	Rate Per Ton	Minimum Fee
1992	$3	
1993	$5	$25
1994	$25	$25
1995	$26	$26
1996	$26	$26
1997	$26	$26
1998	$26	$26
1999	$26	$26
2000	$26	$26

The rate of $26 per ton will remain effective for future fiscal years until amended. If the fee is applicable, the company responsible for the account shall pay the calculated emissions fee or the minimum fee, whichever is greater.

Figure: 30 TAC §101.333(1)

$$A = \frac{ER * HI}{2000\ lb / allowance}$$

Where:

A = Number of allowances

HI = Total heat input (million British thermal units (MMBtu)) as listed in the 1997 Emissions Scorecard from EPA's Acid Rain Program, or if not listed in the 1997 Emissions Scorecard, by a method approved by the executive director, consistent with the emission reduction requirements of this division.

ER = Emission rate, as defined in subparagraphs (A) and (B) of this paragraph;

Figure: 30 TAC §115.420(a)(9)[(7)]

Pounds of VOC per gallon of coating (minus water and exempt solvents) = $\frac{W_v}{V_m - V_w - V_{es}}$

Where:

W_v = weight of VOC, in pounds, contained in V_m gallons of coating
V_m = volume of coating, generally assumed to be one gallon
V_w = volume of water, in gallons, contained in V_m gallons of coating
V_{es} = volume of exempt solvents, in gallons, contained in V_m gallons of coating

Figure: 30 TAC §115.420(a)(10)[(8)]

Pounds of VOC per gallon of solids = $\frac{W_v}{V_m - V_v - V_w - V_{es}}$

Where:

W_v = weight of VOC, in pounds, contained in V_m gallons of coating
V_m = volume of coating, generally assumed to be one gallon
V_v = volume of VOC, in gallons, contained in V_m gallons of coating
V_w = volume of water, in gallons, contained in V_m gallons of coating
V_{es} = volume of exempt solvents, in gallons, contained in V_m gallons of coating

Figure: 30 TAC §115.420(b)(1)(OO)

grams of VOC per liter of coating = $\frac{W_s - W_w - W_{es}}{V_s - V_w - V_{es}}$
(less wager and less exempt solvent)

W_s =weight of total volatiles in grams

W_w =weight of water in grams

W_{es} =weight of exempt compounds in grams

V_s =volume of coating in liters

V_w =volume of water in liters

V_{es} =volume of exempt compounds in liters

Figure: 30 TAC §115.420(b)(1)(DDDD)

$$PP_c = \sum_{i=1}^{n} \frac{\frac{W_i}{MW_i} \times VP_i}{\frac{W_w}{MW_w} + \frac{\sum_{i=1}^{n} W_e}{MW_e} + \sum_{i=1}^{n} \frac{W_i}{MW_i}}$$

W_i = Weight of the "i"th VOC compound, grams.
W_w = Weight of water, grams.
W_e = Weight of nonwater, non-VOC compound, grams.
MW_i = Molecular weight of the "i"th VOC compound, g/g-mole.
MW_w = Molecular weight of water, g/g-mole.
MW_e = Molecular weight of exempt compound, g/g-mole.
PP_c = VOC composite partial pressure at 20 degrees Celsius, millimeters of mercury (mm Hg).
VP_i = Vapor pressure of the "i"th VOC compound at 20 degrees Celsius, mm Hg.

Figure: 30 TAC §115.420(b)(12)[~~(13)~~](B)(i)

$$VOC\ T_{bc/cc} = \frac{VOC_{bc} + (2 \times VOC_{cc})}{3}$$

where:

VOC $T_{bc/cc}$ is the VOC content, in pounds of VOC per gallon (less water and exempt solvent) as applied, in the basecoat/clearcoat system;

VOC_{bc} is the VOC content, in pounds of VOC per gallon (less water and exempt solvent) as applied, of any given basecoat; and

VOC_{cc} is the VOC content, in pounds of VOC per gallon (less water and exempt solvent) as applied, of any given clearcoat.

Figure: 30 TAC §115.420(b)(12)[~~(13)~~](B)(iii)

$$VOC\ T_{3\text{-stage}} = \frac{VOC_{bc} + VOC_{mc} + (2 \times VOC_{cc})}{4}$$

where:

$VOC\ T_{3\text{-stage}}$ is the VOC content, in pounds of VOC per gallon (less water and exempt solvent) as applied, in the three-stage system;

VOC_{bc} is the VOC content, in pounds of VOC per gallon (less water and exempt solvent) as applied, of any given basecoat;

VOC_{mc} is the VOC content, in pounds of VOC per gallon (less water and exempt solvent) as applied, of any given midcoat; and

VOC_{cc} is the VOC content, in pounds of VOC per gallon (less water and exempt solvent) as applied, of any given clearcoat.

Figure: 30 TAC §115.421(a)(8)(A)

Operation	VOC Emission Limitation			
	Coating delivered (minus water and exempt solvent)		Solids deposited	
(including application, flashoff, and oven areas)	lb/gal	kg/liter	lb/gal	kg/liter
prime application (body and front-end sheet metal)	1.2	0.15	N/A	N/A
primer surfacer application	2.8	0.34	15.1	1.81
topcoat application	2.8	0.34	15.1	1.81
final repair application	4.8	0.58	*	*

* As an alternative to the emission limitation of 4.8 pounds of VOC per gallon of coating applied for final repair, if a source owner does not compile records sufficient to enable determination of a daily weighted average VOC content, compliance with the final repair emission limitation may be demonstrated each day by meeting a standard of 4.8 pounds of VOC per gallon of coating (minus wate and exempt solvents) on an occurrence weighted average basis. Compliance with such alternative emission limitation shall be determined in accordance with the procedure specified in §115.425(3) of this title.

Figure: 30 TAC §115.421(a)(11)(B)

VOC LIMITS FOR SPECIALTY COATINGS (IN GRAMS OF VOC PER LITER OF COATING, LESS WATER AND EXEMPT SOLVENT)

Coating type	Limit
Ablative Coating	600
Adhesion Promoter	890
Adhesive Bonding Primers:	
Cured at 250°F or below	850
Cured above 250°F	1030
Adhesives:	
Commercial Interior Adhesive	760
Cyanoacrylate Adhesive	1,020
Fuel Tank Adhesive	620
Nonstructural Adhesive	360
Rocket Motor Bonding Adhesive	890
Rubber-based Adhesive	850
Structural Autoclavable Adhesive	60
Structural Nonautoclavable Adhesive	850
Antichafe Coating	660
Bearing Coating	620
Caulking and Smoothing Compounds	850
Chemical Agent-Resistant Coating	550
Clear Coating	720
Commercial Exterior Aerodynamic Structure Primer	650
Compatible Substrate Primer	780
Corrosion Prevention Compound	710
Cryogenic Flexible Primer	645
Dry Lubricative Material	880
Cryoprotective Coating	600
Electric or Radiation-Effect Coating	800
Electrostatic Discharge and Electromagnetic Interference (EMI) Coating	800
Elevated-Temperature Skydrol-Resistant Commercial Primer	740
Epoxy Polyamide Topcoat	660
Fire-Resistant (interior) Coating	800
Flexible Primer	640
Flight-Test Coatings:	
Missile or Single Use Aircraft	420
All Other	840
Fuel-Tank Coating	720
High-Temperature Coating	850
Insulation Covering	740
Intermediate Release Coating	750
Lacquer	830
Maskants:	
Bonding Maskant	1,230
Critical Use and Line Sealer Maskant	1,020
Seal Coat Maskant	1,230
Metallized Epoxy Coating	740
Mold Release	780
Optical Anti-Reflective Coating	750
Part Marking Coating	850
Pretreatment Coating	780
Rain Erosion-Resistant Coating	850
Rocket Motor Nozzle Coating	660
Scale Inhibitor	880
Screen Print Ink	840
Sealants:	
Extrudable/Rollable/Brushable Sealant	280
Sprayable Sealant	600
Silicone Insulation Material	850
Solid Film Lubricant	880
Specialized Function Coating	890
Temporary Protective Coating	320
Thermal Control Coating	800
Wet Fastener Installation Coating	675
Wing Coating	850

Figure: 30 TAC §115.423[~~(a)~~](1)

$$S = C / (1 - (C / D))$$

where:

S = the applicable emission limit from §115.421 expressed on a pounds of VOC per gallon of solids basis
C = the applicable emission limit from §115.421 expressed on a pounds of VOC per gallon of coating basis
D = an assumed solvent density of 7.36 pounds of VOC per gallon

Figure: 30 TAC §115.425[~~(a)~~](3)(B)(iii) i)

$$Q = \frac{(Up \times Vp) + (Ub \times Vb) + (Uc \times Vc)}{(Up) + (Ub) + (Uc)}$$

Figure: 30 TAC §116.119(a)(3)

ESL of Substance(s)	Emission Rate Cap for Individual Substances, Sitewide		Emission Rate Cap for Multiple Substances, Sitewide	
(µg/m³)	(pounds/day)	(tons/year)	(pounds/day)	(tons/year)
≥3500	5	0.9	10	2.4
1200-3499	3	0.5	6	1.3
400-1199	1	0.2	3	0.5
100-399	0.25	0.05	1	0.2

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.

Ark-Tex Council of Governments

Request for Proposals for Computer Equipment

The Ark-Tex Council of Governments (ATCOG), on behalf of the Northeast Texas Workforce Development Board (NETWDB), is soliciting proposals for the procurement of computer equipment, and printers.

The project is seeking; fifty (50) Intel Pentium III 650 Desktop workstations, five (5) Hewlett Packard PhotoSmart P1000 printers.

Potential respondents may obtain a copy of the request for proposal by contacting Bill Moss or Malinda Walker, Ark-Tex Council of Governments, P.O. Box 5307, Texarkana, Texas 75505-5307, or call (903) 832-8636. The deadline for proposal submission is Thursday, April 13, 2000, at 5:00 p.m.

TRD-200002091
James C. Fisher, Jr.
Executive Director
Ark-Tex Council of Governments
Filed: March 22, 2000

♦ ♦ ♦

Texas State Auditor's Office

Request for Proposals

Notice of Request for Proposals. The State Auditor's Office (SAO) is requesting proposals from Consultants for a performance audit of the asset management function at selected Texas state agencies and institutions of higher education (Agencies).

Objective and Scope of Work: This project's objective is to determine whether inadequate inventory and asset management practices at certain Agencies create a risk of property loss. Sub-objectives of the project will include the following:

(1) Quantifying the effect of any identified weaknesses;

(2) Providing industry-accepted criteria for inventory and asset management, including performance measures to monitor and evaluate the inventory and asset management process; and

(3) Developing cost-effective recommendations for state agencies and universities to use in managing their inventory and assets.

The Consultant will select the Agencies after performing a risk analysis approved by the SAO. The Consultant will furnish findings and recommendations to each Agency after fieldwork testing and data analysis. In addition, the Consultant will summarize its findings and recommendations and submit the summary to the SAO.

Statement of Experience. Respondents must provide evidence of extensive experience in statistical sampling methods, data analysis, and knowledge of current inventory management practices and procedures.

Awards Procedure. All proposals must meet the requirements set forth in the RFP, available from the SAO in April 2000. SAO staff will evaluate all compliant proposals based on the criteria in the RFP. At any time during this process, proposers may be asked to clarify their proposal, which may include telephone inquiries, revisions to the proposal, or an oral presentation at the SAO. The SAO reserves the right to accept or reject any or all proposals submitted. Issuance of this RFP creates no obligation to award a contract or to pay proposal preparation costs.

TO OBTAIN THE RFP, CONTACT: Lucien Hughes at (512) 479-4774; State Auditor's Office; P. O. Box 12067; Austin, Texas 78711-2067, or send an e-mail request for the RFP to lhughes@sao.state.tx.us

TRD-200002090
Leticia E. Flores
Associate General Counsel
Texas State Auditor's Office
Filed: March 22, 2000

♦ ♦ ♦

Texas Cancer Council

Request for Applications

Introduction:

The Texas Cancer Council announces the availability of state funds to be awarded to support the *Texas Cancer Plan*. Funds will be awarded to selected entities that display collaborative, innovative, and effective programs providing cancer related quality of life or symptom management programs to their community. It is anticipated that these will be two (2) year projects and the maximum funding each project

will receive annually in FY 2001 and FY 2002 will be $50,000. Truly innovative projects may be considered for a third year of funding to develop a model program that can be disseminated statewide.

Purpose:

The purpose of the Request for Applications (RFA) is to solicit statewide applications for projects that will promote cancer quality of life and symptom management programs among cancer survivors, families, and caregivers.

Eligibility requirements:

All applicants must meet the following criteria: The proposal must be made on behalf of a collaborative partnership (an affiliation of at least five individuals who are either representatives of community agencies, organizations, or interested individuals from the community). Letters of intent and applications must be submitted by an entity that will serve as the fiscal agent and legal contractor for the project. The lead entity may be a governmental agency, educational institution, a nonprofit organization, or a for-profit organization.

Letter of intent requirements:

To be considered for funding, letters of intent must be received in the Council office by 5:00 p.m. on May 1, 2000. The Council will acknowledge the receipt of letters of intent in writing. Letters of intent may be mailed to P.O. Box 12097, Austin, Texas 78711, or sent by facsimile machine: (512) 475-2563. Applicants are encouraged to contact the Council office immediately upon sending a letter of intent to ensure that the letter is received. Contact the Council at (512) 463-3190.

Letters of intent should not exceed five (5) pages and should succinctly identify the lead contractor; members of the partnership; problem to be addressed; population to be reached; and geographic area covered. Additionally, for each fiscal year of the two year initiative, the letter of intent should state the project goals; objectives; major activities to attain the objectives; expected outcomes; number of people to be reached; and requested budget amounts. Letters of intent must be submitted in a font-size no smaller than 11 point.

Semi-finalist selection and application preparation workshop:

Council staff will review letters of intent and semi-finalists will be selected, based on the criteria outlined in this funding announcement. By May 8, semi-finalists will be notified telephonically of their selection as a semi-finalist, mailed a funding application packet, and invited to attend an application technical assistance workshop. The applicants' workshop will be held in Austin on Monday, May 22, 2000. This workshop will be open to all semi-finalists and will be conducted to clarify RFA requirements, provide technical assistance on application preparation, and delineate Council expectations. Semi-finalists are responsible for any travel expenses (parking, transportation, lodging, et cetera) incurred to attend the workshop.

Application requirements:

Applications from the semi-finalists will be due at the Texas Cancer Council office by 5 p.m. on June 2, 2000. Applications must be submitted according to the Texas Cancer Council's application instructions and forms.

Applications sent by facsimile machine will not be accepted.

Application instructions provide information about disallowable expenses, reimbursement policies, and reporting requirements. Application materials, and a copy of the *Texas Cancer Plan*, can be obtained by calling (512) 463-3190.

Project requirements:

Projects funded under this initiative must provide:

* A culturally relevant quality of life and/or symptom management education program based on community needs.

* Quality of life and/or symptom management information for cancer survivors, families, and/or caregivers that addresses one or more of the following aspects:

-Fatigue

-Nutrition

-Pain management

-Psycho-social needs

-End of life needs

* Awareness and access to supportive services.

* A method for evaluating the project's effectiveness.

Project must also:

* Demonstrate previous successful experience or background knowledge in providing culturally relevant health promotion services, preferably in the area of cancer prevention and/or control.

* Document the selected population's needs and how the proposed project will address these needs.

* Propose innovative responses to the selected population's unmet needs.

* Involve and coordinate with local American Cancer Society offices in developing programs.

* Provide assurances that the proposed project utilizes existing credible educational materials (such as those from the National Cancer Institute, Centers for Disease Control, and the American Cancer Society), wherever appropriate.

* Document strong community support for this initiative and community collaboration through the sharing of resources (equipment, personnel, volunteers, educational resources, et cetera) from a variety of community agencies/organizations.

* Document collaboration with established programs and agencies addressing cancer concerns, such as the Regional School Health Specialists, American Cancer Society, American Association of Retired Persons, Komen Foundation, and Breast and Cervical Cancer Control Program providers (Texas Department of Health contractors).

* Provide assurances that the project does not duplicate existing services or resources in the community.

* Provide evidence that the project has the capability of being sustained within the community after termination of Council funding (favorable weight will be given to proposals that indicate, where appropriate, that active attempts will be made to solicit additional funds or continuation funds for the project - including a list of sources to be approached).

* Document an in-kind contribution of at least ten percent. In-kind contributions may include applicant funds committed to the project, donated services, or other in-kind contributions. The Council reserves the right to waive this requirement, on a case-by-case basis.

Funding awards:

Applications will be reviewed by Council staff for completeness and technical merit. The Texas Cancer Council will make final funding decisions on or about August 2, 2000. Written notification of approval can be expected by August 10, 2000. All applicants will

receive written notification of the Council's decisions regarding their applications.

The Council's funding decision will be based on:

* Degree to which the application addresses the goals of the *Texas Cancer Plan*, as described in the purposes and requirements of the funding announcement;

* The scope of the project, including the anticipated number of people served;

* Innovative aspects of the proposed project;

* Applicant's collaboration with other relevant community groups and/or state-level organizations/agencies who provide cancer services;
* Applicant's qualifications to conduct the proposed project;

* Reasonableness of budgeted amounts and appropriateness of budget justifications;

* Evidence of a sound plan for continuity of the project beyond Council funding; and

* Completeness and clarity of the application.

The Texas Cancer Council has sole discretion and reserves the right to reject any or all applications received in response to this funding announcement. This announcement does not constitute a commitment by the Council to award a contract or to pay costs incurred in the preparation of an application.

It is anticipated that up to three (3) projects will be selected under this initiative to receive Council funding through August 31, 2002. The Council may fund more, or fewer projects, based on the merit of applications received and the availability of funding. The Council reserves the right to take the needs of geographic locations into consideration when selecting projects.

Funded projects must submit annual continuation applications. The Council will award annual continuation contracts, based upon a review of the contractor's achievement of the prior year's work plan objectives and performance measure projections, the merits of the contractor's continuation application, and the availability of Council funding.

Use of funds:

Council funds are intended for start-up expenses and operational costs, such as staff salaries and basic benefits, education materials, and other administrative expenses. Funds may not be used for indirect costs, remodeling of buildings to accommodate health services, purchase of clinic equipment, reduction of deficits from pre-existing operations, clinical research, or treatment. Further, funds may not be used to supplant existing funds or services, or to duplicate existing resources or services. Additionally, Council funds may not be used for clinical services, such as mammograms, Pap smears, or other cancer screening tests. Projects are to provide such services through other funding sources or donations.

Additional information:

For additional information about this funding announcement, contact Don Ray, Program Manager, Texas Cancer Council, P.O. Box 12097, Austin, Texas 78711, (512) 463-3190.

TRD-200002227
Mickey L. Jacobs, M.S.H.P.
Executive Director
Texas Cancer Council
Filed: March 28, 2000

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Comptroller of Public Accounts

Notice of Request for Proposals

Pursuant to Chapter 2254, Subchapter B, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces its Request for Proposals (RFP) from qualified independent consultants to provide the Comptroller with computer-related consulting services for a public Texas Sales and Use Tax Web Filing Site. The successful respondent, if any, shall analyze, identify, review and resolve any and all infrastructure configuration, performance and/or architecture issues relating to the public Texas Sales and Use Tax Web Filing Site. The successful respondent will expected to begin performance of the contract on or about May 15, 2000.

Contact: Parties interested in submitting a proposal should contact Kelly O'Shieles, Assistant General Counsel - Contracts at the Comptroller of Public Accounts, 111 E. 17th St., Room G-24, Austin, Texas 78774, (512) 305-8673, to obtain a complete copy of the RFP. The Comptroller will mail copies of the RFP only to those parties specifically requesting a copy. The RFP will be available for pick-up at the above referenced address on Friday, April 7, 2000, between 2:00 p.m. and 5:00 p.m. Central Zone Time (CZT), and during normal business hours thereafter. The Comptroller will also make the RFP available electronically on the Texas Marketplace after Friday, April 7, 2000, 2:00 p.m. CZT. The website address is www.marketplace.state.tx.us. All written inquiries must be received at the above referenced address prior to 2:00 p.m. CZT on Friday, April 14, 2000. All responses to questions and other information pertaining to this procurement will be posted electronically on ! the Texas Marketplace. Questions received after this time and date will not be considered. Prospective respondents are encouraged to fax Questions, to (512) 475-0973, to ensure timely receipt.

Evaluation Criteria: Proposals will be evaluated under the evaluation criteria outlined in the RFP.

Closing Date: Proposals must be received in the Legal Counsel's Office no later than 2:00 p.m. CZT, on April 28, 2000. Proposals received after this time and date will not be considered.

Evaluation and Award Procedure: All proposals will be subject to evaluation by a committee based upon the evaluation criteria set forth in the RFP. The Comptroller will make the final decision.

The Comptroller reserves the right to accept or reject any or all proposals submitted. The Comptroller is under no legal or other obligation to execute a contract on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits the Comptroller to pay for any costs incurred prior to the execution of a contract.

The anticipated schedule of events is as follows: *Issuance of RFP* - April 7, 2000, 2:00 p.m. CZT; *Questions Due* - April 14, 2000, 2:00 p.m. CZT; *Proposals Due* - April 28, 2000, 2:00 p.m. CZT; *Contract Execution* - May 8, 2000; *Commencement of Work* - May 15, 2000.

TRD-200002262
David R. Brown
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: March 29, 2000

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, and 303.009, Tex. Fin. Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 04/03/00 - 04/09/00 is 18% for Consumer [1]/Agricultural/ Commercial [2]/credit thru $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 04/03/00 - 04/09/00 is 18% for Commercial over $250,000.

The monthly ceiling as prescribed by §303.0053 for the period of 04/01/00 - 04/30/00 is 18% for Consumer/Agricultural/Commercial/ credit thru $250,000.

The monthly ceiling as prescribed by §303.005 for the period of 04/ 01/00 - 04/30/00 is 18% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

[3] For variable rate commercial transactions only.

TRD-200002216
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: March 28, 2000

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Texas Credit Union Department

Application(s) for a Merger or Consolidation

Notice is given that the following application has been filed with the Texas Credit Union Department and is under consideration:

An application was received from EPNE Credit Union (El Paso) seeking approval to merge with West Texas Credit Union (El Paso) with the latter being the surviving credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200002260
Harold E. Feeney
Commissioner
Texas Credit Union Department
Filed: March 29, 2000

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East Texas Council of Governments

Request for Qualifications Soliciting Training for Staff and Policy Board Members

This Request for Qualifications (RFQ) to trainers is filed under the provisions of the Government Code 2254.

Notice is given that the East Texas Council of Governments (ETCOG) as the administrative unit for the local Workforce Development Board is soliciting information for the provision of training on Workforce related topics to workforce center staff, policy board members, and/or board staff. We desire to receive information on the services trainers can provide and available dates to provide them. It is our intent to produce a list of trainers and the services they can provide for specific dates in the time period specified.

Interested parties should contact: Daniel Pippin, Regional Planner, ETCOG (903) 984-8641. If Mr. Pippin is unavailable, you may speak with Gary Allen, Section Chief - Planning and Board Support. Requests for the Request for Qualifications should be sent to: East Texas Council of Governments, 3800 Stone Road, Kilgore, TX 75662, Attention: Daniel Pippin, Fax: 903-983-1440.

The closing date for the receipt of responses to the Request of Qualifications is 5:00 p.m. Central Daylight Time, April 20, 2000.

The ETCOG Executive Committee, who will be responsible for contract award, will review responses.

TRD-200002101
Glynn Knight
Executive Director
East Texas Council of Governments
Filed: March 23, 2000

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Texas Education Agency

Correction of Error

The Texas Education Agency adopted an amendment to 19 TAC §33.5, Code of Ethics. The adopted amendment was published in the March 24, 2000, issue of the *Texas Register* (25 TexReg 2564). Two figures were filed with the adopted amendment to 19 TAC §33.5. The figures appeared in the Tables & Graphics section of the *Texas Register*.

Due to error by the Texas Education Agency, the figure entitled "Report of Expenditures of Persons Providing Services to the State Board of Education Relating to the Management and Investment of the Permanent School Fund" on page 2669, the date in the heading was incorrect. The reporting period in the figure heading should read:

"June 1,_____ through May 31,_____."

TRD-200002281
Texas Education Agency

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Texas Department of Health

Notice of Request for Proposals for the Emergency Medical Services Local Projects Grant Program

PURPOSE. The Emergency Medical Services (EMS) Local Projects Grant program was established in 1990 for the purpose of improving EMS throughout Texas by providing money and technical assistance to eligible organizations. This program is administered by the Bureau of Emergency Management (bureau) of the Texas Department of Health (department). The program provides reimbursement for approved cost incurred for a specific project completed during a specified contract period, September 1, 2000 - August 31, 2001.

DESCRIPTION. The department is accepting proposals for local EMS projects to increase the availability and quality of emergency pre-hospital health care. Applicable projects are those which upon completion, will demonstrate a positive impact on the delivery of emergency pre- hospital health care in the area implemented.

Types of projects acceptable for funding include: EMS certification training; specialty training related to pre-hospital health management; EMS equipment; computers for data collection; prevention projects; continuing education programs; ambulances; and system development programs.

Contracts will be developed between the department and successful applicants and will last for 12 months. The contracts will detail items such as budget, reporting requirements, department general provisions, and any other specifies that might apply to the award. All registered, licensed, or certified organizations as determined by the Bureau (e.g. licensed EMS providers, registered first responder organizations) must maintain the appropriate credentials throughout the specified contract period. The grant provides reimbursement for an approved project and associated cost deemed reasonable and necessary and incurred after the award is made and during the stated contract period only. Reimbursement may be withheld and a request for return of funds may be necessary if any of the stated requirements of this grant are not met. The Chief of the Bureau of Financial Services or department's designee, is the only individual who may legally commit the department to expenditure of public funds. No cost chargeable to the proposed contract may be reimbursed before receipt of a fully executed contract. For EMS certification projects, proof of successful certification must be submitted within 45 days following the end of the contract period. In addition, it will be the responsibility of the grant recipient to maintain a record of all costs and activities related to the administration of the project. Projects must start on or after September 1, 2000, and be completed prior to August 31, 2001.

The average award in 1999-2000 was approximately $8,787 with a range of $240 to $42,932. The maximum grant for a new ambulance will be $35,000.

Matching funds may come from sources such as local funds, private donations, other state grants, federal grants, or private foundations. "Soft" or "in-kind" matching funds are not acceptable. Matching funds will be required for the following:

Any individual equipment item with a useful life of more than one year and a cost greater than $1,000 (including shipping costs) requires 50% matching funds, with the following exceptions: (1) fax machines, stereo equipment, cameras, video recorders/players, computers, software and printers. These items require a 50% match if the individual cost exceeds $500 and the useful life is greater than one year; and (2) medical laboratory equipment (defined as microscopes, oscilloscopes, centrifuges, balances, and incubators) will require a 50% match if the unit cost exceeds $500.

Any project that involves advanced life support (ALS) will require the signature of a medical director on the application page. ALS projects include, but are not limited to, items such as the purchase of monitor/defibrillator/pacer units, automated external defibrillators, and ALS training.

Any project that involves hosting of an initial certification course or continuing education course will require prior discussion of the potential course with EMS staff at the local public health region office. On-site training requests must indicate the distance to the nearest training facility.

Any project involving the purchase of computers and computer related items, including accessories and software, must be thoroughly described within the proposal. An appropriate description would be "300 MHz Pentium Processor, 64 MG RAM, 6.0 GB hard drive, 56K modem, 24X CD ROM." Also, a similar description of make and model for the printer, monitor, and any software is essential.

The program only provides reimbursement for approved costs associated with the implementation of the approved project. Projects will be funded until funds have been exhausted or preset limits reached. Examples of costs that are not applicable for funding include items such as salaries, fringe benefits, indirect costs, disposable supplies, and day-to-day operating expenses (e.g. fuel, insurance, loan payments, rent, etc.). Land purchases or building funds do not qualify as applicable projects under this program.

Should a project not be completed or the full allocation of funding not be used, the department may redistribute funds at its discretion. The department reserves the right to fund projects at any level considered appropriate, according to the availability of funds and justification for need. Any costs incurred prior to the contract start date (September 1, 2000) will not be eligible for reimbursement.

ELIGIBLE APPLICANTS. Proposals will be accepted from organizations directly or indirectly responsible for providing or impacting emergency pre-hospital health care. (e.g. Licensed EMS providers, registered first responder organizations, EMS training programs, local governments, and other organizations without direct patient care responsibility impacting emergency pre-hospital health care). First responder organizations must be registered with the Texas Department of Health. Registered first responder organizations have the proper Bureau first responder paperwork, based on 25 Texas Administrative Code §157.21 First Responder Organization Registry, entered into the department network as active no later than deadline date of this application. In addition, applicants must be members of their regional advisory council. Failure to comply with these requirements of the grant constitutes grounds for revocation of any award made as part of the local projects grant program.

LIMITATIONS. The department reserves the right to reject any or all applications and is not liable for costs incurred by the applicant in the development, submission, or review of the application. Costs incurred in the preparation of the application shall be borne by the applicant and are not allowable in the Request for Proposals (RFP).

The department reserves the right to alter, amend, or modify any provisions of this RFP, or to withdraw this RFP, at any time prior to the award of a contract pursuant thereto, if in the best interest of the department or the State of Texas to do so. The decision of the department will be administratively final in this regard.

DEADLINE. The deadline for submitting the application, original proposal, applicable forms, plus three copies of each will be 5:00 p.m., Central Standard Time, June 14, 2000. The application page and proposal may be faxed to (512) 834-6611, and may be counted as one of the required copies. Only those original proposals and copies, which are postmarked or received by this deadline will be reviewed regardless of the circumstances. Applications may be mailed, hand delivered, or faxed. If delivered by hand, the proposal must be taken to the Exchange Building, Bureau of Emergency Management, 8407 Wall Street, Suite S220, Austin, Texas, no later than the specified deadline.

The original and three copies of the completed application, applicable forms, and proposal should be submitted to Kathryn C. Perkins, Acting Bureau Chief, Attention: Local Projects Grant Program, Bureau of Emergency Management, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199.

EVALUATION AND SELECTION. Proposals will be reviewed and evaluated based on information provided by the applicant. Eligibility criteria includes, but is not limited to: proposal received or postmarked by 5:00 p.m., Central Standard Time, June 14, 2000; all signatures included; original documents provided; Medical Director's

signature for ALS projects included; project can be completed by August 31, 2001; agency has not made any purchases prior to September 1, 2000; proposal does not exceed ten pages, including attachments; applications representing multiple organizations (three or more) will be allowed one page per organization with a maximum of twenty pages, including attachments; proposal is typed or computer generated (does not apply to application page); and proposal offers matching funds, if required. Evaluation criteria includes, but is not limited to: level of registration (licensed provider or registered first responder, EMS education agency, or other support agency); percentage of volunteer staff; use of EMS instructors in proposals for prevention programs or EMS training; history of prior local projects grant award; number of agencies benefiting from proposal; length of time in operation; proposal will upgrade level of service from Basic Life Support (BLS) to Advanced Life Support (ALS) or Mobile Intensive Care Unit (MICU); letters of support included; average transport distance provided; detail included in project budget; detail included in project timeline; type of county noted (frontier, rural, or urban); call volume; highest level of service available in county; method of project evaluation; current, pending, or past investigations or disciplinary action; multi-entity (three or more organizations) proposals shall include: name of provider/First Responder or other recipient; justification of provider/First Responders need; itemized list of equipment being requested and intended recipient; signature of Medical Director for all providers for whom ALS equipment is being requested.

Proposals will be reviewed to ensure all budget items requested are applicable and appropriate, that matching funds are available and that implementation of the proposed project is possible. Tentative approval will be given by the Acting Chief of the Bureau of Emergency Management and the Associate Commissioner for Health Care Quality and Standards. Final approval will be given by the Commissioner of Health or the Commissioner's appointed agent. All projects not funded will remain active until the end of the funding cycle for consideration in the event funding becomes available.

The department strongly supports the concept of cooperative applications between multiple providers and/or registered first responder programs, and applications that clearly demonstrate and document regional projects involving multiple service organizations. In the event of a cooperative application between multiple entities being submitted, an itemized proposal must be provided to clearly identify equipment/training allocation. Though not a prerequisite for this grant, the department encourages all applicants to pursue such cooperative agreements. Additionally, preference will be given to proposals that are most economical (i.e. refurbished ambulances will be given preference over new ambulances).

CONTACT. Information concerning the RFP may be obtained from Ed Loomis, Local Project Grants Program, Bureau of Emergency Management, Texas Department of Health, 1100 West 49th Street, Austin Texas 78756, Telephone (512) 834-6700 ext. 2376, Fax (512) 834-6611 or email ed.loomis@tdh.state.tx.us.

TRD-200002244
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: March 29, 2000

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Houston-Galveston Area Council

Request for Proposal

Description: The Houston-Galveston Area Council (H-GAC) as the Metropolitan Planning Organization (MPO) is requesting written proposals to perform traffic and transportation data collection for Congestion Mitigation Analysis (CMA) and Transportation Control Measures (TCMs). The primary objective of this project is to gather traffic and transportation system data to evaluate the justification of new added-capactiy projects with and without the application of any TCMs. A secondary objective of this study is to gather the Before-Implementation and After-Implementation TCM data, including Travel-Time Runs to measure TCM effectiveness over time. The Request for Proposal (RFP) can be reviewed on H-GAC's web page at WWW.HGAC.COG.TX.US. Also, a copy of the RFP can be obtained at the H-GAC offices at 3555 Timmons Lane, Suite 500, Houston, Texas, 77027, or by contacting Mr. Jerry Bobo at (713) 993-4571.

A pre-proposal meeting is scheduled for Tuesday, April 18, 2000, at 2:30 p.m. at H-GAC's Conference Room "B" (Second Floor of 3555 Timmons Lane, Houston, Texas 77027). Questions from consultants concerning any aspect of the RFP will be addressed during this meeting. Please RSVP to Mr. ILyas Choudry at (713) 993-4564, if you plan to attend. The deadline for the submission of this proposal is Tuesday, May 02, 2000, by 4:00 PM.

TRD-200002165
Alan Clark
MPO Director
Houston-Galveston Area Council
Filed: March 24, 2000

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Request for Proposal

The Houston-Galveston Area Council (H-GAC) solicits information from organizations and individuals interested in preparing and conducting a marketing campaign-including advertising, public relations, and media relations-for the Gulf Coast Workforce Board's regional system. This system provides a variety of services for more than 95,000 businesses and 4.5 million residents of the 13-county area that includes Houston, Harris County, and the twelve surrounding counties. Prospective proposers may obtain a copy of the Request for Proposals online at http://www.gulfcoastjobs.org/rfp.html or by contacting Carol Kimmick or Mary Soria at 713.627.3200 or by sending email to ckimmick@hgac.cog.tx.us. Responses are due at H-GAC offices by 12:00 noon on Thursday, May 18, 2000. Late proposals will not be accepted. There will be no exceptions.

TRD-200002250
Jack Steele
Executive Director
Houston-Galveston Area Council
Filed: March 29, 2000

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Texas Department of Human Services

Public Hearings-Statewide Program Directions and Funding Priorities for Texas Department of Health and Human Services, Texas Department of Health, Texas Department of Human Services and Texas Department of Protective and Regulatory Services

This posting supersedes the posting that appeared in the March 24, 2000, issue of the*Texas Register* (25 TexReg 2679).

How can health and human services programs help you in State Fiscal Years 2002- 2003? (September 2001 - August 2003)

Give your comments and suggestions on statewide program directions and funding priorities to the Texas Health and Human Services Commission, Texas Department of Health, Texas Department of Human Services, and the Texas Department of Protective and Regulatory Services at public hearings to be held on the following dates:

April 11 - Houston - 5 p.m. - Power Center, 12401 South Post Oak

April 20 - El Paso - 12:30 p.m. - Region 19 Education Service Center, Tierra Del Sol Conference Room, 6611 Boeing Drive

April 25 - Fort Worth - 5 p.m. - Botanic Gardens & Conservatory Auditorium, 3220 North Botanic Gardens Drive

April 27 - Edinburg - 1:30 p.m. - Tropical Texas Mental Health Mental Retardation, 1901 South 24th Street

Testimony will be taken on all programs and services provided by health and human services agencies in the State of Texas. Programs and services include, but are not limited to, the following: community care services; preventive child health care; long term care services; licensing of child care facilities; regulation of long term care facilities; dental services; child and adult foster care; genetic services; child care for low-income families; nutrition services; child and adult protective services; prenatal care; services to children in need of special health care; family planning; community initiatives for youth; prescription drugs; case management services for high-risk pregnant women and infants, and children in need of special health care; provider reimbursement; TANF cash assistance; prevention and early intervention services.

Block grant funding sources include, but are not limited to, the following: Title XX Social Services Block Grant, Temporary Assistance for Needy Families (TANF), Title V Maternal and Child Health Block Grant, and Title X Public Health Services Act.

Copies of the Title XX Intended Use Report for Fiscal Year 2000 may be obtained by contacting the Texas Department of Human Services at 512/438-3056.

Contact Gary Bego at 512/424-6630 if you have questions about the hearings. Persons with disabilities who will need auxiliary aids or services at the hearings are asked to contact Civil Rights at the Texas Department of Human Services 438-4313 (voice) or 512/438- 2960 (TDD) at least five days in advance of the hearing.

Written comments may be submitted to: Gary Bego, Health and Human Services Commission, P. O. Box 13247, Austin, Texas 78711.

TRD-200002220
Paul Leche
Agency Liaison
Texas Department of Human Services
Filed: March 28, 2000

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Request for Proposal for CLASS Case Management Services in Nueces County

Request for Proposal (RFP): The Texas Department of Human Services (TDHS) is requesting proposals from providers for the delivery of case management services provided through the Community Living Assistance and Support Services (CLASS) program. To be eligible to contract with the department, a case management agency must be selected in the RFP process, be enrolled as a CLASS provider, and attend and complete mandatory CLASS provider agency training.

Texas Register Publication Date: This announcement should appear in the Texas Register on April 7, 2000.

Purpose: The purpose of this RFP is to meet the department's requirements for periodic re-procurement of CLASS providers and to offer participants a choice of providers.

Description of Services: A case management agency enrolls participants in the CLASS program and is the focal point for developing service plans, coordinating services, and tracking participant progress. The case manager convenes the interdisciplinary team (IDT) that is responsible for developing the plan of care and assures that services are consistent with the needs and preferences of the individual participant. Case managers further assist in the identification and development of appropriate community resources, crisis intervention, advocacy, and safeguarding individual rights. The case manager works in a cooperative relationship with the direct services agency which delivers home and community-based services.

Geographic Area: The department intends to contract for the delivery of CLASS services to the following number of individuals in the following service areas/counties: Possibility of up to 95 individuals in the Nueces area (Nueces, Jim Wells, Kleberg, San Patricio counties). Participants have the choice of providers to deliver the services. One provider is already providing services in the area.

Closing Date and Time: Proposals must be received by the department by 5:00 p.m. on Wednesday, May 17, 2000.

Contact Person for RFP: To obtain a Request for Proposal packet, please write Jessie Hood, System Support Specialist III, CLASS Program, Texas Department of Human Services, 701 W. 51st Street (Mail Code W-521, Austin, TX 78751), P.O. Box 149030, Mail Code W-521, Austin, Texas 78714-9030. You may call Jessie Hood at (512) 438-3516 or fax a request to (512) 438-5135. The RFP packet will be available on Monday, April 10, 2000.

Bidder's Questions/Inquiries: Bidders must submit questions pertaining to the RFP and/or the CLASS program, in writing, to TDHS to the attention of Jessie Hood at the address or fax number above. All questions must be received by TDHS by 5:00 p.m. on Friday, April 28, 2000.

Historically underutilized businesses, public or private profit, with demonstrated knowledge, competence and qualifications in performing these services are encouraged to apply.

TRD-200002221
Paul Leche
Agency Liaison
Texas Department of Human Services
Filed: March 28, 2000

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Department of Information Resources

Notice of Contract Award

Pursuant to Chapter 2254, Subchapter B, Texas Government Code, the Department of Information Resources (DIR) announces the award of a consultant contract for the Licensing System Requirements Analysis for fourteen regulatory agencies. The Analysis shall include: documentation of regulatory system requirements, solutions for process improvements through the use of technology, recommendations for a regulatory system solution or solutions, an assessment of current systems, an assessment of packaged systems, identification of required

resources, the estimated cost to buy or build a new system or systems, and strategies for funding the development and implementation of the new system or systems.

The contract was awarded to Abdeladim & Associates, 17918 Holderness Lane, Pflugerville, Texas 78660.

The contract begins March 20, 2000 and ends August 15, 2000. The total value of the contract is $134,000.00.

Abdeladim & Associates is required to present a final report to DIR on August 1, 2000.

TRD-200002261
C.J. Brandt, Jr.
General Counsel
Department of Information Resources
Filed: March 29, 2000

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Texas Department of Insurance

Insurer Services

The following applications have been filed with the Texas Department of Insurance and are under consideration:

Application for admission to the State of Texas by PENNSYLVANIA MANUFACTURERS INDEMNITY COMPANY ("PMIC"), a foreign fire and casualty company. The home office is in Blue Bell, Pennsylvania.

Application for admission to the State of Texas by MANUFACTURERS ALLIANCE INSURANCE COMPANY ("MAICO"), a foregin fire and casualty company. The home office is in Blue Bell, Pennsylvania.

Application for admission to the State of Texas by BENEFIT LAND TITLE INSURANCE COMPANY, a title company. The home office is in Santa Ana, California.

Any objections must be filed with the Texas Department of Insurance, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200002255
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: March 29, 2000

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Notice of Public Hearing

The Commissioner of Insurance will hold a public hearing under Docket No. 2445, on April 19, 2000, at 10:00 a.m. in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street in Austin, Texas, to consider the nomination for re-appointment to the Board of Directors of the Texas Windstorm Insurance Association (TWIA). Mr. Harley Londrie of Laguna Vista, Texas has been nominated by the Office of Public Insurance Counsel for re-appointment as a public member to serve on the TWIA Board.

The hearing is held pursuant to the Insurance Code, Article 21.49, §5A, which provides that the Commissioner after notice and hearing, may issue any orders considered necessary to carry out the purposes of Article 21.49 (Catastrophe Property Insurance Pool Act), including but not limited to, maximum rates, competitive rates, and policy forms. Any person may appear and testify for or against the proposed appointment.

Pursuant to Article 21.49, §5, two members of the nine-member TWIA Board of Directors are to be representatives of the general public, nominated by the Office of Public Insurance Counsel, who, as of the date of the appointment, reside in a catastrophe area and are TWIA policyholders; and two members are to be local recording agents licensed under the Texas Insurance Code with demonstrated experience in the TWIA and whose principal offices, as of the date of the appointment, are located in a catastrophe area.

Any questions concerning this matter should be addressed to David Durden, Associate Commissioner, Property and Casualty Division, (512) 322-3430, MC 104-5A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

TRD-200002163
Bernice Ross
Sylvia Gutierrez
Texas Department of Insurance
Filed: March 24, 2000

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Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for admission to Texas of The Epoch Group, L.C., a foreign third party administrator. The home office is Kansas City, Missouri.

Application for incorporation in Texas of Community Neuropsychiatric Network, (doing business under the assumed name of Community Behavioral Health Network, a domestic third party administrator. The home office is Houston, Texas.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Charles M. Waits, MC 107-5A, 333 Guadalupe, Austin, Texas 78714-9104.

TRD-200002240
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: March 28, 2000

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Texas Lottery Commission

RFP Lotto/Cash 5 Drawing Machines

The Texas Lottery Commission announces the issuance of a Request for Proposals for Lotto/Cash 5 Drawing Machines (the "RFP"). The purpose of the RFP is to obtain proposals from qualified vendors to provide Lotto/Cash 5 drawing machines and related services to the Texas Lottery.

Proposers responding to the RFP are expected to provide the Texas Lottery with information, evidence and demonstrations that will permit awarding a contract in a manner that provides the best value to the Texas Lottery.

The RFP is issued in accordance with the State Lottery Act, Texas Government Code Chapter 466, and the procurement rules of the Texas Lottery. All responses to the RFP are subject to the requirements of the State Lottery Act and the procurement rules of

the Texas Lottery, regardless of whether specifically addressed in either the RFP or the response. All Proposers should read and be familiar with the State Lottery Act and the procurement rules of the Texas Lottery.

The time schedule for awarding a contract under this RFP is shown below. The Texas Lottery reserves the right to amend the schedule.

Issuance of RFP - March 28, 2000

Letter of Intent to Propose Due - April 14, 2000 (4:00 p.m., CT)

Written Questions Due - April 17, 2000 (4:00 p.m., CT)

Answers to Written Questions Issued - April 21, 2000

Deadline for Proposals - May 5, 2000 (4:00 p.m., CT)

Announcement of the Apparent Successful Proposer - May 12, 2000

Delivery of Drawing Machines - June 30, 2000

To obtain a copy of the RFP, please contact Ridgely C. Bennett, Deputy General Counsel, Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630, telephone (512) 344-5050, or by facsimile at (512) 344-5189.

TRD-200002249
Ridgely C. Bennett
Deputy General Counsel
Texas Lottery Commission
Filed: March 29, 2000

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Texas Natural Resource Conservation Commission

Enforcement Orders

An agreed order was entered regarding LOWENCO, INC., Docket No. 1998-0504- MLM-E; SWR No. 38987; TNRCC PST ID No. 0055921 on March 16, 2000 assessing $28,625 in administrative penalties with $13,625 deferred.

Information concerning any aspect of this order may be obtained by contacting William Puplampu, Staff Attorney at (512) 239-0677 or Tim Haase, 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 FT. BEND PROPERTIES INC DBA FORT BEND PROPERTIES, INC. DBA SPRING WEST WATER SUPPLY CORP., Docket No. 1998-1128-MWD-E; TNRCC ID No. 12812-001 on March 16, 2000 assessing $2,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting John Sumner, Staff Attorney at (512) 239-0497 or John Mead, Enforcement Coordinator at (512) 239-6010, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SIDNEY L. BISHOP JR., Docket No. 1998- 1011-MWD-E; WQ Permit No. 11099-001on March 16, 2000 assessing $3,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting John Wright, Staff Attorney at (512) 239-2269 or Pamela Campbell, Enforcement Coordinator at (512) 239-4493, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding RALPH J. MCSHAN, Docket No. 1999-1061- OSS-E; On-Site Sewage Facility Certification No. 459561516 on March 16, 2000 assessing $1,750 in administrative penalties with $350 deferred.

Information concerning any aspect of this order may be obtained by contacting Steven Lopez, Enforcement Coordinator at (512) 239-1896, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding HAROLD JACKSON SMITH, III, Docket No. 1999-0873-OSS-E; OSSF Installer No. OS-5702 on March 16, 2000 assessing $1,000 in administrative penalties with $200 deferred.

Information concerning any aspect of this order may be obtained by contacting Michelle Harris, Enforcement Coordinator at (512) 239-0492, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ERNEST L. THOMPSON, Docket No. 1999- 0816-OSI-E; OSSF Installer No. OS-5196 on March 16, 2000 assessing $3,125 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sherry Smith, Enforcement Coordinator at (512) 239-0572, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding FINA OIL AND CHEMICAL COMPANY, Docket No. 1999-0994-IHW-E; SWR No. 30551 on March 16, 2000 assessing $4,375 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Thomas Greimel, Enforcement Coordinator at (512) 239-5690, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding APPLIED INDUSTRIAL MATERIALS CORPORATION, Docket No. 1999-1102-IWD-E; TPDES Permit No. TX0094129 on March 16, 2000 assessing $4,000 in administrative penalties with $800 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Clausewitz, Enforcement Coordinator at (512) 239-2359, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding STEVEN LEWIS DBA FRESNO MOBILE HOME PARK, Docket No. 1999-0737-IWD-E; WQ Permit No. 0012804-001 and TPDES Permit No. TX0093912(E)8820) on March 16, 2000 assessing $3,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Joseph Daley, Enforcement Coordinator at (512) 239-3308, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding HUMUS PRODUCTS OF AMERICA, INC., Docket No. 1999-0717-IWD-E; No TNRCC ID No. on March 16, 2000 assessing $3,125 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting John Wright, Staff Attorney at (512) 239-2269 or Gilbert Angelle, Enforcement Coordinator at (512) 239-4489, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CROSBY MUNICIPAL UTILITY DISTRICT, Docket No. 1999-0874-MWD-E; WQ Permit

No. 11388-001; TPDES Permit No. TX0054151 on March 16, 2000 assessing $5,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Michelle Harris, Enforcement Coordinator at (512) 239-0492, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Genesis Service Co., Inc., Docket No. 1999- 0822-PST-E; PST Facility ID Nos. 0008055, 0008059, 0008063, 0024680, 0038673, 0038675, 0038822 on March 16, 2000 assessing $20,250 in administrative penalties with $4,050 deferred.

Information concerning any aspect of this order may be obtained by contacting Joseph Daley, Enforcement Coordinator at (512) 239-3308, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ALI KERIMAGHAEE, GENESIS SERVICE CO, INC. AND KEVIN MOMIN DBA SHOP-N-SAVE; Docket No. 1999-0898-PST-E; PST Facility ID No. 008064 on March 16, 2000 assessing $3,150 in administrative penalties with $630 deferred.

Information concerning any aspect of this order may be obtained by contacting Jospeh Daley, Enforcement Coordinator at (512) 239-3308, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ALIEF PETROLEUM, INC., Docket No. 1999- 0942-PST-E; PST Facility ID No. 0039680 on March 16, 2000 assessing $2,750 in administrative penalties with $550 deferred.

Information concerning any aspect of this order may be obtained by contacting Erika Fair, Enforcement Coordinator at (512) 239-6673, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding EDGAR EVANS DBA 377 STOP N GO, Docket No. 1999-1237-PST-E; PST Facility ID No. 0006310 on March 16, 2000 assessing $1,250 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.

An agreed order was entered regarding FRANK DRUMMOND DBA DEE & DEE OIL COMPANY, Docket No. 1999-0546-PST-E; PST Facility ID No. 0046944 on March 16, 2000 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 VALLEY STAR, INC. DBA MIKE GANT'S GROCERY, Docket No. 1999-0844-PST-E; PST Facility ID No. 0026920 on March 16, 2000 assessing $2,625 in administrative penalties with $525 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael De La Cruz, Enforcement Coordinator at (512) 239-0259, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding G B A K PROPERTIES, INC., Docket No. 1999-0799-PST-E (@0035534(E)13854) on March 16, 2000 assessing $1,800 in administrative penalties with $360 deferred.

Information concerning any aspect of this order may be obtained by contacting Kent Heath, Enforcement Coordinator at (512) 239-4575, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SPENCER DISTRIBUTING CO. DBA JJ'S FAST STOP, Docket No. 1999-1068-PST-E; PST Facility ID No. 0068927 on March 16, 2000 assessing $1,375 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca Clausewitz, Enforcement Coordinator at (512) 239-2359, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SSN INVESTMENTS, LLC DBA MARKET PLACE #3, Docket No. 1999-0825-PST-E; PST Facility ID No. 0008056 on March 16, 2000 assessing $2,500 in administrative penalties with $500 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael De La Cruz, Enforcement Coordinator at (512) 239-0259, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding VP MOTORS, INCORPORATED DBA VP AUTO SALES, Docket No. 1999-1267-AIR-E; Account No. DB-4350-M on March 16, 2000 assessing $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 MAVERICK TUBE CORPORATION, Docket No. 1999-0090-AIR-E; Air Account No. MQ-0028-B on March 16, 2000 assessing $53,000 in administrative penalties with $10,600 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 PAR TOOL SUPPLY, INC. DBA PAR PRODUCTS, Docket No. 1999-0963-AIR-E; CP-0356-L on March 16, 2000 assessing $34,375 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Michael De La Cruz, Enforcement Coordinator at (512) 239-0259, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding U.S. STONE, INCORPORATED, Docket No. 1999-0966-AIR-E; Air Account No. 93-8502-E on March 16, 2000 assessing $2,500 in administrative penalties with $500 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael De La Cruz, Enforcement Coordinator at (512) 239-0259, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CHATLEFF CONTROLS, INCORPORATED, Docket No. 1999-1072-PWS-E; PWS No. 1050101 on March 16, 2000 assessing $188 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sandy Van Cleave, Enforcement Coordinator at (512) 239-0667, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CHURCH OF THE NAZARENE WEST TEXAS DISTRICT DBA CAMP ARROW-HEAD, Docket No. 1999-0944-PWS-E; PWS No. 2130018 on March 16, 2000 assessing $3,438 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Michael De La Cruz, Enforcement Coordinator at (512) 239-0259, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MONTGOMERY PLACE WATER SYSTEM, INC. AND MITCHELL M. MARTIN, Docket No. 1999-1038-PWS-E; TNRCC ID No. 1700074 on March 16, 2000 assessing $125 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tracy Gross, Staff Attorney at (512) 239-1736 or Shawn Stewart, Enforcement Coordinator at (512) 239-6684, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SOUTH TEXAS DISTRICT OF THE ASSEMBLIES OF GOD DBA HILL COUNTRY CAMP, Docket No. 1999-0010-PWS-E; TNRCC ID No. 1330033 on March 16, 2000 assessing $8,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tracy Gross, Staff Attorney at (512) 239-1736 or 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 OAKDALE PARK, INCORPORATED DBA CAMP N FISH, Docket No. 1999-0947-PWS-E; PWS No. 2130028 on March 16, 2000 assessing $438 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Michael De La Cruz, Enforcement Coordinator at (512) 239-0259, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An order was entered regarding FOUR SEASONS MOBILE HOME PARK L.C., Docket No. 1998-0673-MWD-E; SOAH Docket No. 582-99-1231 on March 10, 2000 assessing $15,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Nathan Block, Staff Attorney at (512) 239-4706 or Michael Meyer, Enforcement Coordinator at (512) 239-4492, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200002238
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: March 28, 2000

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Notice of Administratively Complete Application

APPLICATION. Solutia Inc.-Chocolate Bayou Plant, FM 2917, P.O. Box 711, Alvin, Texas, 77512-0711, located in Brazoria County with existing license number RW-0219 has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a Radioactive Material License (RML) renewal under 30 Texas Administrative Code §336.501 and §336.519. The Solutia Chocolate Bayou plant is located on FM 2917, approximately 11 miles southeast of the city of Alvin in Brazoria County, Texas. The plant is approximately 35 miles southeast of Houston. Current plant operations include the manufacture of chemical feedstocks and intermediates at the following manufacturing units: Acrylonitrile (AN), Diphenyl Oxide (DPO), Formalin, Iminodiacetic Acid (IDA), Metionine Hydroxy Butanoic Acid (MHBA), Nitrilotriacetic Acid (NTA), Linear Alkyl Benzene (LAB), and Sorbic Acid. The license application requests authorization for the continued operation of an active waste disposal cell number III to dispose of depleted uranium catalyst along with hazardous waste, and for the construction and operation of three additional cells (IV, V, and VI). The grouping of these six cells (two of which have already been filled and closed) at this location is also termed a hazardous waste landfill, identified as RCRA Permit Unit 02 under TNRCC's Permit No. HW- 50189-001. This license application was submitted to the TNRCC on November 29, 1999. The application is available for viewing and copying at Alvin Library, 105 South Gordon Street, Alvin, TX 77511, (281) 388-4300. The TNRCC Executive Director has determined the application is administratively complete and will conduct a technical review of the application. After completion of the technical review, the TNRCC will issue a Notice of License Application stating either that the Executive Director has prepared a draft license or is recommending denial of the application. MAILING LISTS. You may ask to be placed on a mailing list to obtain additional information regarding this application. You may also ask to be on a county-wide mailing list to receive public notices for TNRCC permits in the county. To get on a mailing list, send a request to the Office of the Chief Clerk, MC 105, TNRCC, P.O. Box 13087, Austin, TX 78711-3087. ADDITIONAL NOTICE. After the technical review is complete, the Executive Director may prepare a draft license or recommend denial of the application. At that time, a Notice of License Application for renewal will be published and mailed to those who are on the county-wide mailing list or the mailing list for this application. That notice will contain detailed information concerning the procedures and deadline for filing written comments and requests for a contested case hearing. INFORMATION. If you need more information about this license application or the licensing process (such as being added to the mailing list), please call the TNRCC Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TNRCC can be found at our web site at www.tnrcc.state.tx.us. Further information may also be obtained from Solutia, Inc.-Chocolate Bayou Plant at the address stated above or by calling Daniel C. Charles, Radiation Safety Officer, Solutia, Inc. at (281) 228 - 4228.

TRD-200002237
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: March 28, 2000

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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 Texas Water Code (the Code), §7.075, which requires that the TNRCC may not approve these AOs unless the public has been provided an opportunity

to submit written comments. Section 7.075 requires that notice of the proposed orders and of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **May 8, 2000**. Section 7.075 also requires that the TNRCC promptly consider any written comments received and that the TNRCC may withhold approval of an AO if a comment discloses facts or considerations that indicate the proposed AO is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code, the Texas Health and Safety Code (THSC), and/or the Texas Clean Air Act (the Act). Additional notice is not required if changes to an AO are made in response to written comments.

A copy of each of the proposed AOs is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable Regional Office listed as follows. Written comments about these AOs should be sent to the enforcement coordinator designated for each AO at the TNRCC's Central Office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on May 8, 2000**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The TNRCC enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the TNRCC in **writing**.

(1) COMPANY: ABC-NACO, Inc.; DOCKET NUMBER: 1999-1002-AIR-E; IDENTIFIER: Air Account Number FG-0044-H; LOCATION: Richmond, Fort Bend County, Texas; TYPE OF FACILITY: steel foundry plant; RULE VIOLATED: 30 TAC §101.10 and the Act, §382.085(b), by failing to submit an emission inventory; and 30 TAC §101.24, by failing to pay air emissions and inspections fees; PENALTY: $2,000; ENFORCEMENT COORDINATOR: Tel Croston, (512) 239-5717; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023- 1486, (713) 767-3500.

(2) COMPANY: Afreen Enterprises, Inc.; DOCKET NUMBER: 1999-1100-PST-E; IDENTIFIER: Petroleum Storage Tank (PST) Facility Identification Number 0017143; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(3) and the Act, §382.085(b), by failing to complete the five-year test for the Stage II vapor recovery system (VRS); and 30 TAC §334.22(a), by failing to pay the underground storage tank facility fees; PENALTY: $1,000; ENFORCEMENT COORDINATOR: Erika Fair, (512) 239-6673; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: Wayne E. Barnes; DOCKET NUMBER: 1999-1401-OSI-E; IDENTIFIER: On- Site Sewage Facility Installer Number OS4473; LOCATION: near Cleveland, Harris County, Texas; TYPE OF FACILITY: on-site sewage; RULE VIOLATED: 30 TAC §285.58(a)(10), by failing without just cause to perform work for thirty consecutive days; and 30 TAC §285.34(b)(1), §285.58(a)(6) and (11), and the THSC, §366.004, by failing to install a low pressure dosing pump tank that was water tight and operable and call for the required final inspections from the permitting authority; PENALTY: $2,500; ENFORCEMENT COORDINATOR: Sherry Smith, (512) 239-0572; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767- 3500.

(4) COMPANY: City of Bartlett; DOCKET NUMBER: 1999-1366-AIR-E; IDENTIFIER: Air Account Number BF-0221-T; LOCATION: Bartlett, Bell County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §101.4 and the Act, §382.085(b), by failing to prevent nuisance level odorous emissions from the wastewater treatment plant; PENALTY: $1,750; ENFORCEMENT COORDINATOR: Kyle Headley, (254) 751-0335; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(5) COMPANY: Bishop Consolidated Independent School District; DOCKET NUMBER: 1999- 1301-MWD-E; IDENTIFIER: Permit Number 11754-001; LOCATION: Petronila, Nueces County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: Permit Number 11754-001, by allegedly falsifying the recorded values for dissolved oxygen, pH, and chlorine; PENALTY: $10,000; ENFORCEMENT COORDINATOR: Gary McDonald, (361) 825-3100; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(6) COMPANY: Mr. Myrl Herrin dba Brazos Body Shop; DOCKET NUMBER: 1999-1470-AIR- E; IDENTIFIER: Air Account Number HQ-0109-D; LOCATION: Granbury, Hood County, Texas; TYPE OF FACILITY: paint and body shop; RULE VIOLATED: 30 TAC §116.110(a) and the Act, §382.085(b), by failing to comply with 30 TAC §106.436 prior to operating a paint and body shop; PENALTY: $800; ENFORCEMENT COORDINATOR: Wendy Penland, (817) 469-6750; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(7) COMPANY: Colorado Interstate Gas Company; DOCKET NUMBER: 1999-1534-AIR-E; IDENTIFIER: Air Account Number MR-0121-W; LOCATION: Masterson, Moore County, Texas; TYPE OF FACILITY: natural gas processing and compressor station; RULE VIOLATED: 30 TAC §122.122(b), §122.103, and the Act, §382.054, by failing to submit a Title V abbreviated initial application; PENALTY: $2,000; ENFORCEMENT COORDINATOR: Shawn Hess, (806) 353-9251; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353- 9251.

(8) COMPANY: Colorado County Water Control & Improvement District Number 2; DOCKET NUMBER: 1999-1354-MWD-E; IDENTIFIER: Permit Number 10152-001 and National Pollutant Discharge Elimination System (NPDES) Permit Number TX0023329; LOCATION: Garwood, Colorado County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: Permit Number 10152-001 and the Code, §26.121, by failing to comply with their permit limits for chlorine residual; PENALTY: $2,880; ENFORCEMENT COORDINATOR: David Van Soest, (512) 239-0468; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767- 3500.

(9) COMPANY: Continental Carbon Company; DOCKET NUMBER: 2000-0029-AIR-E; IDENTIFIER: Air Account Number MR-0003-G; LOCATION: Sunray, Moore County, Texas; TYPE OF FACILITY: carbon black plant; RULE VIOLATED: 30 TAC §116.115(c) and the Act, §382.085(b), by failing to limit emissions of volatile organic compound; and 30 TAC §290.51(a)(3), by failing to pay public health service fees; PENALTY: $4,000; ENFORCEMENT COORDINATOR: Shawn Hess, (806) 353-9251; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(10) COMPANY: City of Corsicana; DOCKET NUMBER: 2000-0005-MSW-E; IDENTIFIER: Municipal Solid Waste (MSW) Facility Identification Number 1467; LOCATION: Corsicana, Navarro County, Texas; TYPE OF FACILITY: municipal solid waste; RULE VIOLATED: 30 TAC §330.254(a)(1), by failing to prevent and correct erosion of cover material and maintain adequate vegetation growth; and 30 TAC §330.602, by failing to pay the MSW fees; PENALTY: $1,000; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 469-

6750; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(11) COMPANY: CR/PL, LLC; DOCKET NUMBER: 2000-0078-AIR-E; IDENTIFIER: Air Account Number DB-0907-L; LOCATION: Dallas, Dallas County, Texas; TYPE OF FACILITY: steel sanitary bathware manufacturing; RULE VIOLATED: 30 TAC §122.121, §122.130(b), and the Act, §382.085(b) and §382.054, by failing to obtain a permit to operate a Title V facility; PENALTY: $2,000; ENFORCEMENT COORDINATOR: Wendy Penland, (817) 469-6750; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(12) COMPANY: City of Denton; DOCKET NUMBER: 1999-1122-MWD-E; IDENTIFIER: Permit Number 01992; LOCATION: Denton, Denton County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: Permit Number 01992 and the Code, §26.121, by failing to meet the daily average and maximum copper concentration limits and water temperature limit; PENALTY: $4,875; ENFORCEMENT COORDINATOR: Michelle Harris, (512) 239-0492; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(13) COMPANY: Philip G. Dozier; DOCKET NUMBER: 1999-1445-OSS-E; IDENTIFIER: Installer Certification Number OS133; LOCATION: Livingston, Polk County, Texas; TYPE OF FACILITY: on-site sewage; RULE VIOLATED: 30 TAC §285.5(2), §285.58(a)(3), and the THSC, §366.051(c) and §366.054, by failing to obtain the necessary authorization from the permitting authority and submit planning materials before installing an on-site sewage facility; and 30 TAC §§285.30(i), 285.58(a)(6), 285.33(b)(1), and the THSC, §366.004, by allegedly installing a gravel-less pipe drain field in Class IV soil conditions; PENALTY: $700; ENFORCEMENT COORDINATOR: Corey Burke, (512) 239-5259; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1892, (409) 898-3838.

(14) COMPANY: G & C Investment Company, L.L.P.; DOCKET NUMBER: 1999-1287-IWD- E; IDENTIFIER: Permit Number 11923-001 and NPDES Permit Number TX0075078; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: Permit Number 11923-001, NPDES Permit Number TX0075078, and the Code, §26.121 by failing to comply with permit limits for total suspended solids; PENALTY: $1,800; ENFORCEMENT COORDINATOR: Susan Johnson, (512) 239-2555; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(15) COMPANY: Mr. Clyde Gachter dba Gachter's Car Care/Phillips 66; DOCKET NUMBER: 1999-1348-PST-E; IDENTIFIER: PST Facility Identification Number 0044114; LOCATION: Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: motor vehicle fuel dispensing; RULE VIOLATED: 30 TAC §115.241 and the Act, §382.085(b), by failing to install an approved Stage II VRS; PENALTY: $3,125; ENFORCEMENT COORDINATOR: Mohammed Issa, (512) 239-1445; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(16) COMPANY: General Cable Industries, Incorporated; DOCKET NUMBER: 1999-1045- IHW-E; IDENTIFIER: Solid Waste Registration (SWR) Number 30403; LOCATION: Plano, Collin County, Texas; TYPE OF FACILITY: non-ferrous wire drawing and insulating; RULE VIOLATED: 30 TAC §335.4 and the Code, §26.121, by allegedly discharging industrial solid waste; 30 TAC §335.2(b), by failing to ensure that the facility's industrial waste was disposed of at an authorized facility; and 30 TAC §335.513(c), by failing to document the hazardous waste determinations for the waste aluminum mud, copper mud, scrap insulation, and plant trash; PENALTY: $6,000; ENFORCEMENT COORDINATOR: Michael De La Cruz, (512) 239-0259; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(17) COMPANY: Harris Creek Water Company; DOCKET NUMBER: 1999-1592-PWS-E; IDENTIFIER: Public Water Supply (PWS) Number 1550076; LOCATION: McGregor, McLennan County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.41(c)(1)(A) and (F), by failing to ensure that the well site was not located within 150 feet of a septic tank drain field and secure a sanitary easement covering all property within 150 feet of the well location; 30 TAC §290.43(c)(6), by failing to ensure that all potable water storage tanks and all associated appurtenances were tight against leakage; 30 TAC §290.42(e)(7), by failing to equip the chlorination room with a fan; and 30 TAC §290.45(b)(1)(D)(iv), by failing to meet the minimum water system capacity requirements of a pressure tank capacity of 20 gallons per connection; PENALTY: $1,875; ENFORCEMENT COORDINATOR: Kyle Headley, (254) 751-0335; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(18) COMPANY: Heartland Rig International, Inc.; DOCKET NUMBER: 1999-0315-IHW-E; IDENTIFIER: Industrial Hazardous Waste Registration Number 35046; LOCATION: Brady, McCulloch County, Texas; TYPE OF FACILITY: trailer chassis manufacturing; RULE VIOLATED: 30 TAC §335.6(c), by failing to provide additional information with respect to its initial notification; 30 TAC §335.69(a)(1)(A), (2), (3), and (4), (d)(1)(A), and (e), referencing 30 TAC §335.112(a)(2), and 40 Code of Federal Regulations (CFR) §262.34(a)(1)(i) and (c)(2), (3), and (4), referencing 40 CFR §265.35, by failing to close hazardous waste drums, provide an accumulation date on a hazardous waste label, label two drums of hazardous waste in the container storage area, dispose of hazardous waste in less than 90 days, have adequate aisle space in its waste storage area, make arrangements with local authorities, have a contingency plan for its facility, provide training for employees, close hazardous waste drum in the satellite accumulation area, and mark the beginning accumulation date on a hazardous waste drum; and 30 TAC §335.479, by failing to have a source reduction and waste minimization plan; PENALTY: $36,875; ENFORCEMENT COORDINATOR: Mark Newman, (915) 655-9479; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(19) COMPANY: Hidalgo County; DOCKET NUMBER: 1999-0694-MSW-E; IDENTIFIER: MSW Permit Number 1727; LOCATION: Penitas, Hidalgo County, Texas; TYPE OF FACILITY: landfill; RULE VIOLATED: 30 TAC §330.5(d) and §330.125(a), by failing to prevent burning of solid waste; 30 TAC §330.111, by failing to obtain an approved and updated permit; 30 TAC §330.113(b)(2), (6), and (9), by failing to record and retain information as required in the operating record; 30 TAC §114(5)(A), (B), and (C), and (6), by failing to provide a copy of the approved site operating plan, conduct random inspections, maintain records of the inspections, have appropriate training for facility personnel, and provide a fire protection plan; 30 TAC §330.115, by failing to provide proper fire protection for the landfill; 30 TAC §330.116, by failing to control access to the landfill; 30 TAC §330.117(a), (b), and (c), and §330.138, by failing to unload waste; 30 TAC §330.120(1) and (2), by failing to control within and outside of the site boundaries wind-blown litter; 30 TAC §330.121(a) and (b), by failing to place required markers to identify all easements and mark off the buffer zone; 30 TAC §330.122, by failing to maintain all of the required landfill markers and benchmarks; 30 TAC §330.124, by failing to comply with removal and discharge prevention requirements of bulk items;

30 TAC §330.128 by failing to prevent uncontrolled salvaging and scavenging; 30 TAC §330.130, by failing to monitor all landfill gases; 30 TAC §330.132, by failing to spread and compact the solid waste with a suitable compactor; 30 TAC §330.133(a), (e), (f), and (g), by failing to provide landfill cover; and 30 TAC §330.134, by failing to eliminate ponded water from the active cell; PENALTY: $6,000; ENFORCEMENT COORDINATOR: Fara O'Neal, (956) 425-6010; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(20) COMPANY: City of Hillsboro; DOCKET NUMBER: 1999-1205-MWD-E; IDENTIFIER: Permit Number 10630-001; LOCATION: Hillsboro, Hill County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: Permit Number 10630-001 and the Code, §26.121, by failing to comply with their five-day biochemical oxygen demand (BOD_5), total suspended solids, carbonaceous biochemical oxygen demand, ammonia-nitrogen, and dissolved oxygen permit limits; PENALTY: $16,000; ENFORCEMENT COORDINATOR: Michelle Harris, (512) 239- 0492; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751- 0335.

(21) COMPANY: Interstate Forging Industries, Inc.; DOCKET NUMBER: 2000-0074-AIR-E; IDENTIFIER: Air Account Number GK-0016-C; LOCATION: Navasota, Grimes County, Texas; TYPE OF FACILITY: steel forging; RULE VIOLATED: 30 TAC §122.121, §122.130(b)(1), and the Act, §382.054, by failing to submit a federal operating permit application; PENALTY: $2,000; ENFORCEMENT COORDINATOR: Kyle Headley, (254) 751-0335; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(22) COMPANY: Mobil Chemical Company, Inc.; DOCKET NUMBER: 1999-1416-AIR-E; IDENTIFIER: Air Account Number JE-0062-S; LOCATION: Beaumont, Jefferson County, Texas; TYPE OF FACILITY: chemical plant; RULE VIOLATED: 30 TAC §101.20(3), §116.115(b)(2)(G) and (c), Air Permit Number 7799, and the Act, §382.085(b), by failing to comply with the permit limit of oxides of nitrogen and carbon monoxide emissions; PENALTY: $6,000; ENFORCEMENT COORDINATOR: Susan Kelly, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1892, (409) 898-3838.

(23) COMPANY: Nagel Manufacturing and Supply Company; DOCKET NUMBER: 1999-1371- AIR-E; IDENTIFIER: Air Account Number BR-0016-K; LOCATION: Caldwell, Burleson County, Texas; TYPE OF FACILITY: wire garment hanger manufacturing; RULE VIOLATED: 30 TAC §116.115(b) and the Act, §382.085(b), by failing to properly operate and maintain air pollution abatement equipment and failing to pay hazardous and non-hazardous waste generation fees; PENALTY: $400; ENFORCEMENT COORDINATOR: Kyle Headley, (254) 751-0335; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(24) COMPANY: Paktank Corporation; DOCKET NUMBER: 1999-0814-IWD-E; IDENTIFIER: Permit Number 01662 and NPDES Permit Number TX0030929; LOCATION: Galena Park, Harris County, Texas; TYPE OF FACILITY: special warehousing and storage; RULE VIOLATED: Permit Number 01662, NPDES Permit Number TX0030929, and the Code, §26.121, by allegedly violating its permitted daily maximum total organic carbon concentration limit of 70 milligrams per liter (mpl); PENALTY: $1,000; ENFORCEMENT COORDINATOR: Mike Meyer, (512) 239-4492; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(25) COMPANY: City of Palmer; DOCKET NUMBER: 1999-0951-MWD-E; IDENTIFIER: Permit Number 13620-001; LOCATION: Palmer, Ellis County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: Permit Number 13620-001 and the Code, §26.121, by allegedly allowing the discharge of raw sewage from a clean-out pipe and failing to maintain the chlorine residual; 30 TAC §305.125(1) and (9)(A), Permit Number 13620-001, and the Code, §26.121, by failing to maintain the minimum dissolved oxygen, orally notify the commission of the unauthorized discharge, maintain the daily average five-day BOD_5 limit of ten mpl, maintain the individual grab BOD_5 effluent limit of 35 mpl, maintain the daily averaging loading BOD_5 effluent limit of 19 pounds per day, properly monitor the chlorine residual, and maintain the minimum chlorine residual of at least 1.0 mpl, by discharging visible floating foam, solids, and sludge in the receiving stream, by using the sludge lagoon at the site, and by failing to properly operate and maintain the wastewater treatment plant, submit a written certification statement, and develop a written standard operating procedure for the operation and routine scheduled maintenance; PENALTY: $16,500; ENFORCEMENT COORDINATOR: Michael De La Cruz, (512) 239-0259; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(26) COMPANY: Paxton Water Supply Corporation; DOCKET NUMBER: 1999-1185-PWS-E; IDENTIFIER: PWS Numbers 2100012 and 2100031; LOCATION: Center, Shelby County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(d), (i), (m), (n), and (y), by failing to properly complete the monthly operations report, amend the customer service agreement, maintain, repair, or replace severely corroded and damaged ground storage tanks, seal the water level control probe, prepare and keep up-to-date a map of the distribution system, and properly install wiring in conduit and maintain electrical panel covers; 30 TAC §290.42(e)(5) and (7), and (j), by failing to provide self-contained breathing apparatus, equip the chlorination room with forced-air ventilation, and provide a thorough plant operations manual; 30 TAC §290.45(b)(1), (c), and (f), by failing to provide a minimum water system capacity and secure a written purchased water contract between the purchaser and wholesaler; and 30 TAC §290.41(c)(1)(F) and (3)(N), by failing to obtain sanitary easements covering all property within 150 feet of each well location and provide a well discharge meter on each well pump discharge line; and 30 TAC §290.43(c)(1) and (d)(3), by failing to protect the vent opening on the ground storage tank and repair or replace the facilities for maintaining the air to water volume at the design water level and working pressure for the pressure tank; PENALTY: $6,588; ENFORCEMENT COORDINATOR: Laura Clark, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1892, (409) 898-3838.

(27) COMPANY: Petron, Inc.; DOCKET NUMBER: 1999-1576-PST-E; IDENTIFIER: PST Facility Identification Number 34431; LOCATION: Vidor, Orange County, Texas; TYPE OF FACILITY: gasoline products; RULE VIOLATED: 30 TAC §115.221 and the Act, §382.085(b), by failing to use Stage I vapor recovery equipment during a gasoline delivery; PENALTY: $7,500; ENFORCEMENT COORDINATOR: Susan Kelly, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1892, (409) 898-3838.

(28) COMPANY: City of Ranger; DOCKET NUMBER: 1999-0798-MWD-E; IDENTIFIER: Permit Number 11557-001 and NPDES Permit Number TX0071064; LOCATION: Ranger, Eastland County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: Permit Number 11557-001 and the Code, §26.121, by failing

to complete and have online a new wastewater treatment facility and certify compliance with the five-day BOD_5 permit limits and comply with the BOD_5, total suspended solids, ammonia-nitrogen, five-day carbonaceous biochemical oxygen demand, flow, dissolved oxygen, and chlorine limits contained in the permit; PENALTY: $8,000; ENFORCEMENT COORDINATOR: Laurie Eaves, (512) 239-4495; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(29) COMPANY: Resort Water Services, Incorporated; DOCKET NUMBER: 2000-0001-PWS- E; IDENTIFIER: PWS Number 1110060; LOCATION: Granbury, Hood County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(f)(1)(A) and (t), by failing to maintain a free chlorine residual of 0.2 mpl and maintain all distribution system lines in a watertight condition; PENALTY: $240; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 469-6750; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(30) COMPANY: River City Metal Finishing, Inc.; DOCKET NUMBER: 1999-1105-IHW-E; IDENTIFIER: SWR Number 82605; LOCATION: San Antonio, Bexar County, Texas; TYPE OF FACILITY: metal finishing and electroplating; RULE VIOLATED: 30 TAC §335.112(a)(9), 40 CFR §265.192 and §265.193, 30 TAC §335.2(a), and 40 CFR §270.1(c), by failing to properly design and install a tank system; 30 TAC §335.4 and the Code, §26.121, by failing to properly handle industrial solid waste and electroplating process materials; 30 TAC §335.6(a) and (c), by failing to provide notification of on-site processing of electroplating wastewaters; 30 TAC §335.9(a)(1), by failing to maintain records of on-site industrial solid waste generating and processing activities; 30 TAC §335.62 and 40 CFR §262.11, by failing to perform a hazardous waste determination on industrial solid waste; 30 TAC §335.63 and 40 CFR §262.12, by failing to obtain an United States Environmental Protection Agency identification number; and 30 TAC §335.69(f), and 40 CFR §262.34(a)(2) and (3), and §265.173, by failing to comply with the requirements which apply for on-site sewage storage of hazardous waste; PENALTY: $7,480; ENFORCEMENT COORDINATOR: Malcolm Ferris, (210) 490-3096; REGIONAL OFFICE: 140 Heimer Road, Suite 360, San Antonio, Texas 78232-5042, (210) 490-3096.

(31) COMPANY: Starward Realty and Development, Inc. dba Sunchase Subdivision Water Supply; DOCKET NUMBER: 1999-1459-PWS-E; IDENTIFIER: PWS Number 1230083; LOCATION: Beaumont, Jefferson County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(f)(1)(A) and (w), by failing to operate the water system's chlorination facilities to maintain a free chlorine residual and post a legible system ownership sign; 30 TAC §290.42(e)(8), by failing to house the hypochlorination facilities; 30 TAC §290.43(d)(2), by failing to provide the pressure tank with a pressure release device; 30 TAC §290.45(b)(1)(A)(i) and (ii), by failing to meet the agency's minimum water system capacity requirements for a well capacity of 1.5 gallons per minute (gpm) per connection and pressure tank capacity of 50 gpm; 30 TAC §290.41(c)(3)(J), by failing to provide the well with a properly constructed sealing block; 30 TAC §290.44(a)(4), by failing to maintain water distribution lines no less than 24 inches below ground surface; and 30 TAC §290.113, by failing to meet the commission's standards for iron and chlorides; PENALTY: $1,563; ENFORCEMENT COORDINATOR: Laura Clark, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1892, (409) 898-3838.

(32) COMPANY: Ms. Lillian Hopkins dba Stephens Creek Camping; DOCKET NUMBER: 1999-1570-PWS-E; IDENTIFIER: PWS Number 2040028; LOCATION: Coldspring, San Jacinto County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.43(d)(2), by failing to provide the pressure tank with a pressure release valve; 30 TAC §290.46(f)(2), (x), and (y), by failing to test the disinfectant residual in the distribution system, plug the abandoned well or provide proof that the well is non-deteriorated and constructed to water well standards, and secure the water system's electrical wiring in conduit; and 30 TAC §290.41(c)(1)(F) and (3)(A) and (N), by failing to provide a sanitary control easement, provide well completion data, and provide a flow measuring device; PENALTY: $1,050; ENFORCEMENT COORDINATOR: Laura Clark, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1892, (409) 898-3838.

(33) COMPANY: The City of Streetman; DOCKET NUMBER: 1999-1538-MSW-E; IDENTIFIER: Texas Pollutant Discharge Elimination System (TPDES) Permit Number 10471-001; LOCATION: Streetman, Freestone County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: TPDES Permit Number 10471-001 and the Code, §26.121, by failing to comply with the total suspended solids daily average concentration permit limit of 20 mpl; PENALTY: $600; ENFORCEMENT COORDINATOR: Kristi Jones, (512) 239-1258; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(34) COMPANY: Texas Parks and Wildlife Department; DOCKET NUMBER: 1999-1324-PWS- E; IDENTIFIER: PWS Number 0140159; LOCATION: Killeen, Bell County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.106(a)(1) and (e)(2), and the Code, §341.033(d), by failing to submit samples for bacteriological analysis and notify the public of the failure to submit the samples for bacteriological analysis; PENALTY: $1,200; ENFORCEMENT COORDINATOR: Shawn Stewart, (512) 239-6684; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(35) COMPANY: Trifinery Petroleum Services; DOCKET NUMBER: 1999-1367-AIR-E; IDENTIFIER: Air Account Number NE-0195-W; LOCATION: Corpus Christi, Nueces County, Texas; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §122.130(a)(2) and the Act, §382.054 and §382.085(b), by failing to submit a timely federal operating permit application; 30 TAC §122.121 and the Act, §382.054 and §382.085(b), by failing to obtain authorization to operate emission units at the site; 30 TAC §116.160(a) and the Act, §382.085(b), by failing to obtain authority according to prevention of significant deterioration requirements; 30 TAC §116.115(c) and the Act, §382.085(b), by failing to comply with the maximum emission rates; and 30 TAC §111.111(a)(4)(A)(ii) and the Act, §382.085(b), by failing to maintain consistent daily observations of the flare in a flare operation log; PENALTY: $16,000; ENFORCEMENT COORDINATOR: Audra Baumgartner, (361) 825-3100; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

TRD-200002217
Paul Sarahan
Director, Litigation Division
Texas Natural Resource Conservation Commission
Filed: March 28, 2000

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Notice of Public Hearing (Chapters 101, 106, and 116)

The Texas Natural Resource Conservation Commission (commission) will conduct a public hearing to receive testimony concerning revisions to 30 TAC Chapters 101, 106, and 116 and to the state implementation plan (SIP) under the requirements of Texas Health

and Safety Code, §382.017; Texas Government Code, Subchapter B, Chapter 2001; and 40 Code of Federal Regulations, §51.102 of the United States Environmental Protection Agency regulations concerning SIPs. The revisions to Chapter 101 and §§116.10, 116.110, 116.116, 116.603, 116.620, 116.621, 116.710, 116.715, 116.722, and 116.750 are proposed as revisions to the SIP.

The proposed amendments to Chapter 101, concerning General Air Quality Rules, would remove the 4,000 ton per year emission fee cap and triple fees for emissions above 4,000 tons per year on unpermitted facilities and facilities without a pending permit application after September 1, 2001. The amendments also correct the inadvertent omission of the term "NO_x" in the section related to the allocation of emission allowances.

The proposed amendments to Chapter 106, concerning Exemptions From Permitting, remove the term "exemptions from permitting" and replaces it with the term "permit by rule." Prior authorizations issued under the term "exemption from permitting" will remain valid. Those sections concerning concrete batch plants (Subchapter H) would be amended to state that registrations under those sections would no longer be accepted upon the issuance of a concrete batch plant standard permit.

The proposed amendments to Chapter 116, concerning Control of Air Pollution by Permits for New Construction or Modification, create a new source classification called de minimis that would allow the construction of very small sources of air contaminants without prior authorization by the commission. The amendments also would create the multiple plant permit, which would allow the combination of existing multiple sites or facilities under one permit, provided the facilities and sites are under common ownership or control.

A public hearing on this proposal will be held in Austin on May 4, 2000, at 10:00 a.m. at the commission complex in Building B, Room 201A, located at 12100 Park 35 Circle. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

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

Comments may be submitted to Lisa Martin, MC 205, Office of Environmental Policy, Analysis, and Assessment, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, or by fax to (512) 239-4808. All comments should reference Rule Log Number 99029B-116- AI, and must be received by 5:00 p.m., May 8, 2000. For further information, please contact Beecher Cameron, Policy and Regulations Division, (512) 239-1495.

TRD-200002116
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: March 24, 2000

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Notice of Public Hearing (Chapter 115)

Notice is hereby given that pursuant to the requirements of the Texas Health and Safety Code,§382.017; Texas Government Code, Subchapter B, Chapter 2001; and 40 Code of Federal Regulations, §51.102, of the United States Environmental Protection Agency (EPA) regulations concerning State Implementation Plans (SIP), the Texas Natural Resource Conservation Commission (commission) will conduct a public hearing to receive testimony regarding revisions to 30 TAC Chapter 115, Subchapter E, Division 2, and the SIP, concerning Surface Coating Processes.

Under the 1990 Federal Clean Air Act (FCAA), §183, the EPA is required to issue Aerospace Manufacturing and Rework Operations Control Techniques Guideline (CTG) guidance documents to help states develop reasonably achievable control technology (RACT) controls for sources of volatile organic compound (VOC) emissions. This proposed rulemaking will implement the Aerospace Manufacturing and Rework Operations CTG that was final on March 27, 1998. Additionally, each state is required to submit a revision to its SIP which implements RACT regulations for VOC sources in moderate or above ozone nonattainment areas. Specifically, FCAA §182(b)(2)(A), requires states to submit RACT regulations for VOC sources that are covered by a CTG issued after November 15, 1990, but prior to the time of attainment.

A public hearing on the proposal will be held May 2, 2000, at 2:00 p.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 prior to the hearing and answer questions before and after the hearing.

Comments may be submitted to Angela Slupe, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Comments must be received by 5:00 p.m., May 8, 2000, and should reference Rule Log Number 1999-023-115-AI. For further information, please contact Beecher Cameron, (512) 239-1495.

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-200002115
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: March 24, 2000

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Notice of Request for Nominations

The Texas Natural Resource Conservation Commission (TNRCC) is requesting nominations for three individuals to serve on the Municipal Solid Waste Management and Resource Recovery Advisory Council (Council) for the following positions. Appointments will be made by the TNRCC Commissioners.

1.A representative from a private environmental conservation organization (term will end 08-31- 2003).

2.An elected official from a city having a population of 100,000 or more, but less than 750,000, according to the most recent federal census (term will end 08-31-2003).

3.A registered waste tire processor (term will end 08-31-2003).

The Council was created by the 69th Legislature (1983). Members represent various interests; i.e., city and county solid waste agencies, a public solid waste district or authority, a commercial solid waste landfill operator, planning regions, an environmentalist, city and county officials, a financial advisor, registered waste tire processor, a professional engineer, a solid waste professional, a composting/ recycling manager and general public representatives.

Upon request from the TNRCC Commissioners, the Council reviews and evaluates the effect of state policies and programs on municipal solid waste management; makes recommendations on matters relating to municipal solid waste management; recommends legislation to encourage the efficient management of municipal solid waste; recommends policies for the use, allocation, or distribution of the planning fund; and recommends special studies and projects to further the effectiveness of municipal solid waste management and recovery for the state of Texas.

A minimum of four Council meetings are held each year. The meetings usually last one full day and are held in Austin, Texas. Members who live outside the Austin area are reimbursed travel expenses to attend the meetings.

To Nominate an Individual:

1. Ensure the individual is qualified for the position which he/she is being considered.

2. Submit a biographical summary which includes work experience.

The Nominee Should: submit a letter indicating his/her agreement to serve, if appointed.

Address: mail all correspondence to: Mr. Gary W. Trim, Program Administrator, Waste Permits Division, TNRCC, P.O. Box 13087, MC 126, Austin, Texas 78711-3087 or fax to (512) 239-2007.

Deadline: written nominations and letters from nominees must be received by the TNRCC by 5:00 p.m., on June 1, 2000.

Date of Appointments: the appointments are to be considered at the TNRCC Commission Agenda meeting in August.

Questions regarding the Council can be directed to Mr. Trim at (512) 239-6708 (phone), or E- mail address: gtrim@tnrcc.state.tx.us.

TRD-200002251
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: March 29, 2000

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Notice of Water Quality Applications.

The following notices were issued during the period of March 20, 2000 through March 28, 2000.

The following require the applicants to publish notice in the newspaper. The public comment period, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P O Box 13087, Austin Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THIS NOTICE.

CITY OF BAYTOWN has applied for a renewal of TNRCC Permit No. 10395-008, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 4,000,000 gallons per day. The plant site is located at the crossing of Interstate Highway 10 and Spring Gully, due south of Interstate Highway 10 and on the east side of Spring Gully within the City of Baytown in Harris County, Texas.

BOLING INDEPENDENT SCHOOL DISTRICT has applied for a renewal of Permit No. 13710-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 11,250 gallons per day via two low-pressure dose drain fields with a minimum area of 44,867 square feet. The draft permit authorizes the disposal of 11,217 gallons per day as there was not sufficient drain field area available. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facilities and disposal site are located north of the intersection of Avenue E and 5th Street, approximately 2.0 miles east of Farm-to-Market Road 1301 and approximately 2.5 miles southeast of the City of Boling in Wharton County, Texas.

CITY OF BOVINA has applied for a renewal of Permit No. 10213-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 120,000 gallons per day via surface irrigation of 22 acres of non-public access agricultural land. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facilities and disposal area are located at 501 East Street, east of 1st Street, north of State Highway 86 and on the west side of the closed City of Bovina landfill in the City of Bovina in Parmer County, Texas.

CACHAREL TEXAS HAWAII, LTD. has applied for a new permit, Proposed Permit No. 14046-001, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 7,900 gallons per day via subsurface drainfields with a minimum area of 80,000 square feet. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facilities and disposal site are located approximately 800 feet east-northeast of the intersection of Nine Mile Bridge Road and Ten Mile Bridge Road at the north and east side of the Country Oaks Mobile Home Park in Tarrant County, Texas.

DUKE ENERGY HIDALGO, L.P. has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. 04138, to authorize the discharge of cooling tower blowdown and previously monitored effluent at a daily average flow not to exceed 530,000 gallons per day via Outfall 001. The applicant proposes to operate an electrical power generation plant utilizing combined cycle combustion turbines . The plant site is located at 4001 North Seminary Road, at the northwest corner of the intersection of Monte Cristo Road (Farm-to- Market Road 1925) and Seminary Road, in the City of Edinburg, Hidalgo County, Texas.

CITY OF FAIRFIELD has applied for a renewal of TNRCC Permit No. 10168-002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day. The plant site is located approximately 4,000 feet east of U.S. Highway 75 and approximately 6,000 feet south of U.S. Highway 84 in Freestone County, Texas.

FIG TREE R.V. RESORT, L.C. has applied for a renewal of TNRCC Permit No. 12817- 001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 24,000 gallons per day. The plant site is located approximately six miles west of the City of Harlingen, 2,300 feet east of the intersection of U.S. Highway 83 and Bass Boulevard, north of the right-of-way of Traxler Way in Cameron County, Texas.

GULF MARINE INSTITUTE OF TECHNOLOGY has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. 04095, to authorize discharge from an offshore aquaculture facility. The applicant proposes to operate a fish hatchery and an aquaculture facility using fish cages and oyster racks. The plant site is located nine miles off the Matagorda Peninsula/ Matagorda Ship Channel in the Gulf of Mexico, Latitude 28ø 18' 27.3" North and Longitude 96ø 13' 41.3" West, and 12.5 miles southeast of the City of Port O'Conner, Matagorda County, Texas.

H. H. SEWER SYSTEM, INC. has applied for a renewal of TNRCC Permit No. 13145-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 50,000 gallons per day. The plant site is located approximately 4,000 feet north of the intersection of State Highway 156 and Farm-to-Market Road 224, approximately 4.2 miles southeast of the intersection of U.S. Highway 190 and State Highway 156 in San Jacinto County, Texas.

HARRIS COUNTY has applied for a renewal of TNRCC Permit No. 12213-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 20,000 gallons per day. The plant site is located in Harris County Alexander Deussen Park approximately 1/3 of the way up from the south boundary, in approximate middle of the park, in the south of Lake Houston in Harris County, Texas.

CITY OF HOUSTON has applied for a renewal of TNRCC Permit No. 10495-119, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 23,100,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 23,100,000 gallons per day. The plant site is located on the southeast side of U.S. Highway 59 South and 0.5 mile south of Bissonett Road, between White Chapel Lane and Keegans Bayou in Harris County, Texas.

NORTH TEXAS MUNICIPAL WATER DISTRICT has applied for a renewal of TNRCC Permit No. 10384-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 2,000,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,000,000 gallons per day. The plant site is located at 806 Alanis Drive, approximately 0.4 mile southeast of State Highway 78, approximately 0.57 mile south of the crossing of Muddy Creek by State Highway 78, and 1.25 miles southwest of the City of Wylie central business district in Collin County, Texas.

CITY OF SAN PERLITA has applied for a new permit, Proposed Permit No. 14076-001 (replaces expired Permit No. 12391-001), to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day via evaporation/ percolation using a total of 8.87 acres of surface area. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facilities and disposal site are located west of the intersection of First Avenue and Seminole Avenue and 3000 feet west-southwest of the intersection of Farm-to-Market Road 2209 and Farm-to-Market Road 3142, adjacent to the City of San Perlita in Willacy County, Texas.

CITY OF SOUTHLAKE has applied for a renewal of TNRCC Permit No. 11736-003, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 43,000 gallons per day. The plant site is located approximately 2,600 feet due west of the intersection of State Highways 26 and 114 in Tarrant County, Texas.

CITY OF SOUTHLAKE has applied for a renewal of TNRCC Permit No. 11736-004, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 37,000 gallons per day. The plant site is located approximately 2,000 feet north-northwest of the intersection of Lonesome Dove Avenue and Burney Lane, approximately 3 miles north-northwest of the intersection of State Highway 114 (Northwest Parkway) and Farm- to-Market Road 1709 in Tarrant County, Texas.

CITY OF SPUR has applied for a renewal of Permit No. 10289-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 295,000 gallons per day via evaporation and surface irrigation of 130 acres of non-public access land seeded with alfalfa. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facilities and disposal area (W.E. Williamson Farm) are located south of Seventh Street, approximately 1,600 feet east of Farm-to-Market Road 261 in Dickens County, Texas.

CITY OF TAFT has applied for a renewal of TNRCC Permit No. 10705-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 900,000 gallons per day. The plant site is located approximately 1.4 miles east-northeast of the intersection of Farm-to-Market Road 631 and Rincon Road, northeast of the City of Taft in San Patricio County, Texas

U.S. ARMY CORPS OF ENGINEERS has applied for a renewal of Permit No. 12254-002, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 2,500 gallons per day via total evaporation. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facilities and disposal area are located on the west side of Wilson H. Fox Park, on the south side of Granger Lake, approximately 1.5 miles north and 3 miles west of the intersection of Farm-to-Market Road 1063 and Farm-to-Market Road 1331 in Williamson County, Texas.

TRD-200002239
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: March 28, 2000

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Notice of Water Rights Application

RONNIE STEPHENS AND MARTHA STEPHENS, applicants, seek a permit pursuant to Texas Water Code (TWC) §11.121 and Texas Natural Resource Conservation Commission Rules 30 TAC §§295.1, *et seq*. The applicants seek authorization to maintain a dam and reservoir on the Leon River, tributary of the Little River, tributary of the Brazos River, Brazos River Basin, Comanche County and to divert contracted water from the reservoir for irrigation purposes. The reservoir impounds 3.3 acre-feet of water and has a surface area of 2.75 acres. The reservoir is located 4 miles north- northwest of Gustine, Texas and the centerline of the dam is N18.91 øE, 1525 feet from the southeast corner of the James Wilhelm Survey, Abstract No. 986, Comanche County, also being 31.900øN Latitude and 98.434ø W Longitude. No appropriation of state water is requested in this application. All water impounded in the aforesaid reservoir and subsequently diverted for irrigation use is water purchased by applicant from the North Leon River Irrigation Corporation (NLRIC), who has a contract with the Brazos River Authority for the release and use of water from the upstream Lake Proctor on the Leon River. The current contract between the applicant and the NLRIC allows

use of not to exceed 850 acre-feet of water per annum through the 2003 calendar year.

The TNRCC may grant a contested case hearing on this application if a written hearing request is filed within 30 days from the date of newspaper publication of this notice. The Executive Director may approve the application unless a written request for a contested case hearing is filed within 30 days after newspaper publication of this notice.

To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" (4) a brief and specific description of how you would be affected by the application in a way not common to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit any proposed conditions to the requested amendment which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TNRCC Office of the Chief Clerk at the address provided in the information section below. If a hearing request is filed, the Executive Director will not issue the requested amendment and may forward the application and hearing request to the TNRCC Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TNRCC, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103 at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TNRCC can be found at our web site at: www.tnrcc.state.tx.us.

TRD-200002235
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: March 28, 2000

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Notice of Water Rights Application

HILLWOOD DEVELOPMENT CORPORATION, 13600 Heritage Parkway, Fort Worth, Texas 76122, applicant, seeks a permit pursuant to §11.143, Texas Water Code, and Texas Natural Resource Conservation Commission Rules 30 TAC §§295.1, *et seq*. The applicant seeks authorization to modify and maintain five existing dams and reservoirs for recreational use on Marshall Branch and unnamed tributaries of Marshall Branch, tributary of the Trinity River, Trinity River Basin in Denton and Tarrant Counties. The applicant has indicated that the reservoirs were constructed in accordance with Texas Water Code §11.142 and are described as follows: 1. Lake Turner is located on Marshall Branch, 20 miles south of Denton in Denton County and impounds 199 acre-feet of water with a surface area of 6 acres. The centerline of the dam is N 21øW, 2790 feet from the southwest corner of the Jesse B. Sutton Survey, Abstract No. 1154, Denton County, also being 32.988øN Latitude and 97.505øW Longitude. 2. Dove Lake is located on an unnamed tributary of Marshall Branch (referred to as Dove Road Tributary) 20 miles south of Denton in Denton County and impounds 36.14 acre-feet of water with a surface area of 4.65 acres. The centerline of the dam is N 43øW, 1320 feet from the southwest corner of the Jesse B. Sutton Survey, Abstract No. 1154, Denton County, also being 32.983øN Latitude and 97.205øW Longitude. 3. Lake MB-3 is located on an unnamed tributary of Marshall Branch (referred to as Tributary MB-3) 25 miles north of Fort Worth in Tarrant County and impounds 1.30 acre-feet of water with a surface area of 0.61 acres. The centerline of the dam is S 86øE, 900 feet from the southwest corner of the Richard Eades Survey, Abstract No. 492, Tarrant County, also being 32.986ø N Latitude and 97.217øW Longitude. 4. Lake MB 3A is located on an unnamed tributary of Marshall Branch (referred to as Tributary MB-3) 25 miles north of Fort Worth in Tarrant County and impounds 2.61 acre-feet of water with a surface area of 0.81 acres. The centerline of the dam is S 68øE, 1900 feet from the northwest corner of the Jesse Gibson Survey, Abstract No. 592, Tarrant County, also being 32.983øN Latitude and 97.217øW Longitude. Lake MB-3A is downstream of Lake MB-3. 5. Golf Course Creek Lake is located on an unnamed tributary of Marshall Branch (referred to as Golf Course Creek) 24 miles northeast of Fort Worth in Denton County and impounds 9.67 acre-feet of water with a surface area of 1.92 acres. The centerline of the dam is N 44øE, 1200 feet from the southwest corner of the Memucan Hunt Survey, Abstract No. 756, Tarrant County, also being 32.988ø N Latitude and 97.2ø W Longitude.

Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below by April 26, 2000. A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application.

The TNRCC may grant a contested case hearing on this application if a written hearing request is filed by April 26, 2000. The Executive Director can consider an approval of the application unless a written request for a contested case hearing is filed by April 26, 2000. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" (4) a brief and specific description of how you would be affected by the application in a way not common to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit any proposed conditions to the requested amendment which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TNRCC Office of the Chief Clerk at the address provided in the information section below. If a hearing request is filed, the Executive Director will not issue the requested amendment and may forward the application and hearing request to the TNRCC Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TNRCC, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103 at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TNRCC can be found at our web site at www.tnrcc.state.tx.us.

TRD-200002236
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: March 28, 2000

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Texas Parks and Wildlife Department

Notice to Vendors

The Texas Statewide Radio Task Force (RTF), acting through Texas Parks and Wildlife (TPW), is seeking proposals from qualified firms to assist the RTF in determining the feasibility of a common statewide radio communication system(s) and to help in the design of such system(s).

Current separate state radio communication systems are owned and operated by Texas Parks and Wildlife, Texas Department of Public Safety, Texas Department of Transportation, Texas Department of Criminal Justice, Texas Youth Commission, Texas Forest Service, Lower Colorado River Authority, General Land Office, Texas Adjutant General, and Texas Alcoholic Beverage Commission.

The objectives of the study are: (1) to review the current state agencies radio communication systems and needs; (2) to determine feasibility of a common statewide system(s); (3) to assist in designing a common system(s) that: (A) meets agencies needs; (B) is cost efficient; (C) is maintainable; (D) has capability for future enhancements/growth; and (E) maximizes use of existing systems equipment; and (4) to document findings and recommendations, including estimated costs of system(s) and to present these finding and recommendations to the RTF.

The budget for this project is approximately $225,000.

The department will consider the knowledge, qualifications and experience level of the project team as well as project costs. Proposals will be evaluated based upon: (1) project costs; (2) demonstrated capabilities of the company and team members to conduct detailed system analyses of alternatives on large, communication systems; (3) understanding of radio communication systems and knowledge of current radio hardware and software technologies as well as the installation of radio equipment/systems; (4) demonstrated understanding of FCC regulations; and (5) HUB participation.

If you are interested and wish to receive a written copy of the RFP, call Marty Tarin at (512)389-4839 and it will be mailed to you, or come in person and pick one up from the Contracting Section at 4200 Smith School Road, Austin, Texas.

Questions pertaining to this RFP should be addressed to Mr. Jack Branham at Texas Parks and Wildlife, 4200 Smith School Road, Austin, Texas, 78744. Mr. Branham can also be contacted at (512)389-4618 or by e-mail at jack.branham@tpwd.state.tx.us.

Proposals must be received no later than 3:00 PM, May 4, 2000.

TRD-200002247
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Filed: March 29, 2000

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Texas Department of Protective and Regulatory Services

Notice of Public Meeting and Request for Comments-Foster Care Independence Act of 1999

The Texas Department of Protective and Regulatory Services (PRS) will conduct a public meeting to discuss implementation of the Foster Care Independence Act of 1999 (HR 3443) and to request input from the public. The Act requires that states consult with public and private organizations as well as youth and other interested parties in developing a state plan for effective strategies to assist youth leaving foster care. The meeting will be held on April 20, 2000, beginning at 2:30 p.m. in the Public Hearing Room on the first floor of the John H. Winters Building, 701 W. 51st Street, Austin, Texas 78751.

The Foster Care Independence Act of 1999, signed into law in December, 1999, expands assistance to youth transitioning from foster care to independent living. The National Foster Care Awareness Project developed a booklet "Frequently Asked Questions About the Foster Care Independence Act of 1999" which can be found on the Benton Foundation website: www.connectforkids.org.

Refer questions concerning the Foster Care Independence Act to Janet Luft, State Preparation for Adult Living Program Specialist, (512) 438-5442. Persons who are unable to attend the public meeting may send comments and suggestions to Ms. Luft at TDPRS, Mail Code E-557, P.O. Box 149030, Austin, Texas 78714-9030 or via e-mail: luftj@tdprs.state.tx.us. Comments may be submitted by fax to (512) 438-3782. Persons with disabilities planning to attend this meeting who may need auxiliary aids or services may contact Ms. Luft at (512) 438-5442 by April 17, 2000, so that appropriate arrangements can be made.

TRD-200002254
C. Ed Davis
Deputy Commissioner for Legal Services
Texas Department of Protective and Regulatory Services
Filed: March 29, 2000

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Public Utility Commission of Texas

Notice 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 (commission) of an application on March 21, 2000, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Tempest Communications Company for a Service Provider Certificate of Operating Authority, Docket Number 22309, before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service.

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 April 12, 2000. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200002106
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: March 23, 2000

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Notice 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 (commission) of an application on March 22, 2000, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of U.S. Metroline Services, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 22311 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, Digital Subscriber Line, ISDN, T1-Private Line, Switch 56 KBPS, Frame Relay, Fractional T1, long distance, and extended metro services.

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 April 12, 2000. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200002230
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: March 28, 2000

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Notice 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 (commission) of an application on March 24, 2000, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Phonoscope, Ltd. for a Service Provider Certificate of Operating Authority, Docket Number 22321 before the Public Utility Commission of Texas.

Applicant intends to provide private network services, customized services, dark fiber services, direct connection to long distance, dedicated access service, high speed data service, dedicated and switch video conference service and distance learning education service, business CATV service, high quality video links, and full broadcast quality digital video up-link and down-link satellite service.

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 April 12, 2000. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200002234
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: March 28, 2000

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Notice of Application of Alenco Communications, Inc. to Offer Optional, One-way, Extended Area Service

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of a joint agreement on March 10, 2000, seeking approval of one-way, optional, Extended Area Service (EAS) between the Dolores, Modeana and West Marietta Exchanges and to the Laredo Exchange, pursuant to P.U.C. Substantive Rule §23.49(b)(8).

Project Title and Number: Application of Alenco Communications, Inc. doing business as ACI and Southwestern Bell Telephone Company, *et.al.*, to Provide Optional, One- Way, Extended Area Service (EAS) between the Dolores, Modeana, and West Marietta Exchanges and to the Laredo Exchange, pursuant to P.U.C. Substantive Rule §23.49(b)(8). Docket Number 22264.

The Joint Petition and Agreement: The proposed plan is an optional offering in which subscribing Alenco Communications, Inc. subscribers in the Dolores, Modeana, and West Marietta Exchanges will be able to call each other's exchanges and the Laredo Exchange.

The joint applicants have requested that the joint agreement filing be processed administratively pursuant to P.U.C. Substantive Rule §23.49(b)(8). Persons who wish to intervene in the proceeding or comment upon 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 Division at (512) 936-7120 by June 6, 2000. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200002110
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: March 23, 2000

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Notice 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 (commission) of an application on March 22, 2000, to amend a certificate of convenience and necessity pursuant to §§14.001, 37.051, and 37.054, 37.056, 37.057 of the Public Utility Regulatory Act, Texas Utilities Code Annotated (Vernon 1998) (PURA). A summary of the application follows.

Docket Style and Number: Application of Central Power and Light Company (CPL) to Amend A Certificate of Convenience and Necessity for a Proposed Transmission Line Within San Patricio County. Docket Number 22312.

The Application: CPL proposes to construct an approximately 3.2 mile new double-circuit 138kV transmission line. The purpose of the project is to allow an additional path for new generation into the CPL system and maintain compliance with electrical system planning criteria. The proposed project, located in San Patricio County, extends from the Lon C. Hill/Rincon 138 kV transmission line to the existing Whitepoint Substation. CPL's Existing Whitepoint Substation is located on the west side of Midway Road just south of County Road (CR) 76 in San Patricio County, Texas between Portland and Taft. The proposed 138 kV double circuit transmission line will exit CPL's Whitepoint Substation to the north towards the Midway pump facilities. The line will then turn west and then north

again around the Midway Pump facilities and cross County Road (CR) 76 and Alcalde Road (CR 78) to a point on the north side of Alcalde Road. The line will then turn in a northwesterly direction and extend along and parallel to the north side of Alcalde Road for approximately 2.1 miles and crossing CR 77 and CR 75 to a point. The line will then cross to the south side of Alcalde Road and continue in a northwesterly direction on the south side and parallel to Alcalde Road for approximately .3 mile until it reaches CPL's existing Lon C. Hill/Rincon 138 kV transmission line just south of Taft. Twelve alternative transmission line segments were identified which, in combination, resulted in four potential transmission line routes. Copies of the amended application and additional associated maps are available for reviewing at the CPL office located at 539 North Carancahua in Corpus Christi. Arrangements to view or obtain a map may be made by contacting Ralph Underbrink at (361) 881-5542.

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 or (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. The deadline for intervention in the proceeding will be established, but will be no earlier than May 8, 2000. The commission should receive a letter requesting intervention on or before that date.

TRD-200002231
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: March 28, 2000

♦ ♦ ♦

Notice 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 (commission) of an application on March 23, 2000, to amend a certificate of convenience and necessity pursuant to §§14.001, 37.051, and 37.054, 37.056, 37.057 of the Public Utility Regulatory Act, Texas Utilities Code Annotated (Vernon 1998) (PURA). A summary of the application follows.

Docket Style and Number: Application of Brazos Electric Power Cooperative, Inc. (Brazos) to Amend A Certificate of Convenience and Necessity for a Proposed Transmission Line within Johnson County. Docket Number 22314.

The Application: The proposed 69 kV transmission line will be constructed adjacent to Brazos' existing 138 kV transmission line for all but approximately 450 feet (137 km) west of the Shady Grove substation. Brazos' route originates at the existing Brazos Shady Grove Substation located approximately 0.8 miles (1.2 km) northeast of the intersection of Garner Road and Shady Grove Road in Parker County. From the substation, the proposed transmission line will proceed west for approximately 3,717 feet, turn southwest and cross Garner Road and proceed for approximately 1,842 feet, turn west, and proceed for approximately 6,864 feet at which point the proposed transmission line will terminate at the existing West Weatherford substation located approximately 0.4 miles northeast of the intersection of Clark Lake Road and Hott Lane in Parker County, Texas. Persons with questions about this project should contact David E. McDaniel (254) 750-6324 or Albin A. Petter (254) 750-6334.

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 or (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. The deadline for intervention in the proceeding will be established, but will be no earlier than May 15, 2000. The commission should receive a letter requesting intervention on or before that date.

TRD-200002233
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: March 28, 2000

♦ ♦ ♦

Notice of Intent to File Pursuant to P.U.C. Substantive Rule §26.215

Notice is given to the public of the notice of intent to file, with the Public Utility Commission of Texas (commission), a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.215 on or about April 6, 2000.

Docket Title and Number. GTE Southwest, Inc.'s Application for Approval of LRIC Study for Enhanced Call Forwarding Pursuant to P.U.C. Substantive Rule §26.215. Docket Number 22327.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 22327. Written comments or recommendations should be filed no later than 45 days after the filing date of a sufficient LRIC study and should be filed at the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Office of Customer Protection at (512) 936-7120. Hearing and speech- impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200002259
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: March 29, 2000

♦ ♦ ♦

Public Notice of Filing Pursuant to P.U.C. Substantive Rule §26.215

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission), of a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.215.

Docket Title and Number. Docket Number 22186. GTE Southwest, Inc.'s Application for Approval of LRIC Study for SS7 Transport (Hubbing) Pursuant to P.U.C. Substantive Rule §26.215 on February 25, 2000. The LRIC study filed is inclusive of both GTE Southwest, Inc. and Contel of Texas, Inc.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 22186. Written comments or recommendations should be filed no later than 45 days after the date of sufficiency, or May 4, 2000, and should be filed at the Public Utility Commission of Texas, 1701 North Congress

Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200002107
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: March 23, 2000

♦ ♦ ♦

Public Notice for Request for Comments Regarding Annual Report of Workforce Diversity Form

The Public Utility Commission of Texas (PUC or commission) has initiated Project Number 22166, *Rulemaking to Establish Procedures for Telecommunications Utilities' Annual Report of Workforce Diversity, and to Amend PUC Substantive Rule §26.79, Equal Opportunity Reports, and §26.80, Annual Report of Historically Underutilized Businesses;* and Project Number 22167, *Rulemaking to Establish Procedures for Electric Utilities' Annual Report of Workforce Diversity, and to Amend PUC Substantive Rule §25.79, Equal Opportunity Reports, and §25.80, Annual Report of Historically Underutilized Businesses*. These rules were approved for publication at the commission's March 23, 2000 Open Meeting. A form for implementing the workforce diversity reporting requirements is also being developed under these project numbers. The form is available through the commission's Central Records or through the commission's website under Project Numbers 22166 and 22167.

The commission will hold a public hearing on the proposed rulemakings on Thursday, May 4, 2000, at 9:30 a.m. in the Commissioners' Hearing Room, located in the William B. Travis Building at 1701 North Congress Avenue, Austin, Texas 78701. The forms will also be discussed at this public hearing.

Comments on the proposed form may be filed by submitting 16 copies to the commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326 within 30 days of the date of publication of this notice. Reply comments may be filed within 45 days. All comments should reference Project Number 22166 for Telecommunications and Project Number 22167 for Electric.

Questions concerning the public hearing or this notice should be referred to Patricia Zacharie, Office of Regulatory Affairs - Legal Division, (512) 936-7296. Hearing and speech- impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200002151
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: March 24, 2000

♦ ♦ ♦

Public Notice of Interconnection Agreement

On March 20, 2000, Southwestern Bell Telephone Company and Buena Communications, collectively referred to as applicants, filed a joint application for approval of interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998) (PURA). The joint application has been designated Docket Number 22304. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing ten copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 22304. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by April 13, 2000, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 22304.

TRD-200002229
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: March 28, 2000

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Public Notice of Interconnection Agreement

On March 22, 2000, Southwestern Bell Telephone Company and Sprint Spectrum, L.P., collectively referred to as applicants, filed a joint application for approval of interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law

Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998) (PURA). The joint application has been designated Docket Number 22313. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing ten copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 22313. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by April 14, 2000, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 22313.

TRD-200002232
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: March 28, 2000

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Public Notice of Request for Comments Regarding the Revised Application for a COA or SPCOA and on the Proposed Annual Reporting Form

At the March 23, 2000, Open Meeting of the Public Utility Commission of Texas (commission), the commission approved publication of proposed amendments to substantive rules §26.109 relating to Standards for Granting of Certificates of Operating Authority (COAs) and §26.111 relating to Standards for Granting of Service Provider Certificates of Operating Authority (SPCOAs); and proposed new §26.114 relating to Suspension or Revocation of Certificates of Operating Authority (COAs) and Service Provider Certificates of Operating Authority (SPCOAs). The commission also approved soliciting comments on proposed revisions to the application for obtaining a COA or SPCOA and the proposed annual reporting form for COAs or SPCOAs. Project Number 21456, *Amendments to Substantive Rule §§26.107, 26.109, 26.111, 26.113 and New §26.114 Regarding Certification, Registration and Reporting Requirements in Relation to SB 560 and Miscellaneous Revisions* has been assigned to this proceeding. The proposed amendments to §26.109 and §26.111 and new §26.114 will be published in the *Texas Register.* The revised application and the proposed annual reporting form are available through the commission's Central Records or the commission's web site under Project Number 21456.

The commission will hold a public hearing on the proposed rulemakings and on the revised application and proposed annual reporting form on Wednesday, May 31, 2000, at 9:00 a.m. in Hearing Room Gee, located in the William B. Travis Building at 1701 North Congress Avenue, Austin, Texas 78701.

Comments on the revised application and proposed annual reporting form may be filed by submitting 16 copies to the commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326 within 30 days of the date of publication of this notice. Reply comments may be filed within 45 days. The commission requests specific comments on: (1) what minimal amount of information should be reported annually by COA and SPCOA holders to ensure continued financial and technical qualifications necessary to provide local telecommunications services; and (2) should annual reporting be required or would reporting every two years be sufficient? All comments should reference Project Number 21456.

Questions concerning this notice or the public hearing should be referred to Denise Taylor, Office of Customer Protection, (512) 936-7124, or Tamarian Stevens, Telecommunications Industry Analysis, (512) 936-7337. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200002215
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: March 27, 2000

♦ ♦ ♦

Selection of the Program Administrator for the Renewable Energy Credits Trading Program and Publication of Proposed Certification Form for Eligible Generators Using Renewable Technology

Subsection (g) of Substantive Rule §25.173 relating to the Goal for Renewable Energy states that no later than June 1, 2000, the Public Utility Commission of Texas (commission) shall approve an independent entity to serve as Program Administrator for the Renewable Energy Credits Trading Program (Program Administrator). During the workshops and task forces associated with the rulemaking process for §25.173, commission staff discussed the potential choices for the Program Administrator with a wide variety of stakeholders.

The commission proposes to appoint the Independent System Operator of the Electric Reliability Council of Texas (ERCOT ISO) to be Program Administrator. The ERCOT ISO would be authorized to subcontract portions of its responsibilities as Program Administrator to third parties, if the ERCOT ISO concludes that such an arrangement is cost-effective and would meet the requirements of §25.173. All subcontracting would be subject to approval by the commission.

Subsection (n) of §25.173 requires that the commission register and certify all renewable facilities that will produce either renewable energy credits (RECs) or REC offsets in the Renewable Energy Credits Trading Program. The commission proposes to amend the certification form to be used in the registration process. The proposed form is available on the Agency Information System under Project Number 22200 or at the following PUC web address: http://www.puc.state.tx.us/rules/rulemake/22200/22200.cfm.

The commission solicits comments on its proposals for Program Administrator and certification form. These comments shall be filed under Project Number 22200 with the commission no later than 3:00 p.m. on April 21, 2000, at the Central Records Office of the Public Utility Commission of Texas, 1701 North Congress Avenue, Austin, Texas 78711.

TRD-200002228
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: March 28, 2000

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Texas A&M University System, Board of Regents

Texas A&M University at Galveston - Request for Proposals

In accordance with Chapter 2254, Subchapter A, Texas Government Code, Texas A&M University at Galveston is soliciting proposals from firms or individuals for consulting services to review the Campus Master Plan of 1996 and make recommendations as to what steps are necessary to update the master plan.

Information concerning the Request For Proposal may be obtained by contacting Rex Janne, Director of Purchasing Services, Texas A&M University, P.O. Box 30013, College Station, TX 77842-0013, or at e-mail address *r-janne@tamu.edu*.

Selection Criteria will include competence, experience, knowledge and qualifications in the area of assessing and developing master plans for institutions of higher education. Proposals must be received on or before 2:00 p.m., April 17, 2000.

TRD-200002241
Vickie Burt Spillers
Executive Secretary to the Board
Texas A&M University System, Board of Regents
Filed: March 28, 2000

♦ ♦ ♦

Texas Department of Transportation

Correction of Error - Greenville Majors Field Airport Request for Qualifications

A Request for Qualifications to provide, in accordance with Government Code, Chapter 2254, Subchapter A, engineering and design services at the Majors Airport in Greenville, was published in the March 24, 2000, issue of the *Texas Register* (25 TexReg 2713). The following information is being published in order to correct an error that was contained in that notice.

The deadline for receipt of Form 439 (Qualification Statement) by the e-mail option is midnight, April 6, 2000, instead of September 30, 1999, as originally published.

If you have any questions, please contact Karon Wiedemann at (512) 416-4520.

TRD-200002246
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: March 29, 2000

♦ ♦ ♦

Request for Proposal for Aviation Professional Services

The Airport Sponsor listed below, through its agent, the Texas Department of Transportation (TxDOT), intends to engage Aviation Professional Services pursuant to Chapter 2254, Subchapter A, of the Government Code. TxDOT Aviation Division will solicit and receive proposals for professional services as described in the project scope for the project listed below:

Airport Sponsor: Waller County; TxDOT CSJ No. 0012WALER

Project Scope: Prepare a Site Analysis, Airport Master Plan, and an Environmental Impact Statement

DBE Goal: 5%

Project Manager: Linda Howard

Number of copies to submit: 8

The Proposal Shall Include:

1. Firm name, address, and phone number and name of person to contact regarding the proposal.

2. Proposed project management structure identifying key personnel and subconsultants (if any).

3. Qualifications and recent, relevant experience (past five years) of the firm, key personnel, and subconsultants relative to the performance of similar services for aviation planning projects.

4. Proposed project schedule, including major tasks and target completion dates.

5. Technical approach - a detailed discussion of the tasks or steps to accomplish the project.

6. List of in-state references including the name, address, and phone number of the person most closely associated with the firm's prior performance of similar airport planning projects.

7. Statement regarding an Affirmative Action Program.

8. Proposed Historically Underutilized Business (HUB) or Disadvantaged Business Enterprise (DBE) participation for each project above if appropriate.

Interested consultants should submit eight copies of brief proposals for the project consisting of the minimum number of pages sufficient to provide the above information. Proposals must be postmarked by U. S. Mail by midnight May 3, 2000 (CDST). Mailing address: TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483. Overnight delivery must be received by 4:00 p.m. (CDST) on May 5, 2000; overnight address: TxDOT, Aviation Division, 200 E. Riverside Drive, Austin, Texas, 78704. Hand delivery must be

received by 4:00 p.m. on May 5, 2000 (CDST); hand delivery address: 150 E. Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704.

The airport sponsor's duly appointed committee will review all proposals and may select three to five firms for interviews. The final consultant selection by the sponsor's committee will be made following the completion of the review of proposals and/or interviews.

The airport sponsor reserves the right to reject any or all proposals, and to re-open the consultant selection process.

If there are any questions, please contact Linda Howard, Director, Planning and Programming at the Aviation Division, Texas Department of Transportation, (512) 416-4540 or 1-800-68-PILOT.

TRD-200002245
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: March 29, 2000

♦ ♦ ♦

How to Use the Texas Register

Information Available: The 13 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following a 30-day public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Open Meetings - notices of open meetings.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 24 (1999) is cited as follows: 24 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "23 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 23 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For subscription information, see the back cover or call the Texas Register at (800) 226-7199.

Texas Administrative Code

The ***Texas Administrative Code*** (***TAC***) is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), LOIS, Inc. (1-800-364-2512 ext. 152), and West Publishing Company (1-800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15:

1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affected***. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 8, April 9, July 9, and October 8, 1999). If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

40 TAC §3.704.....950, 1820

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).

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