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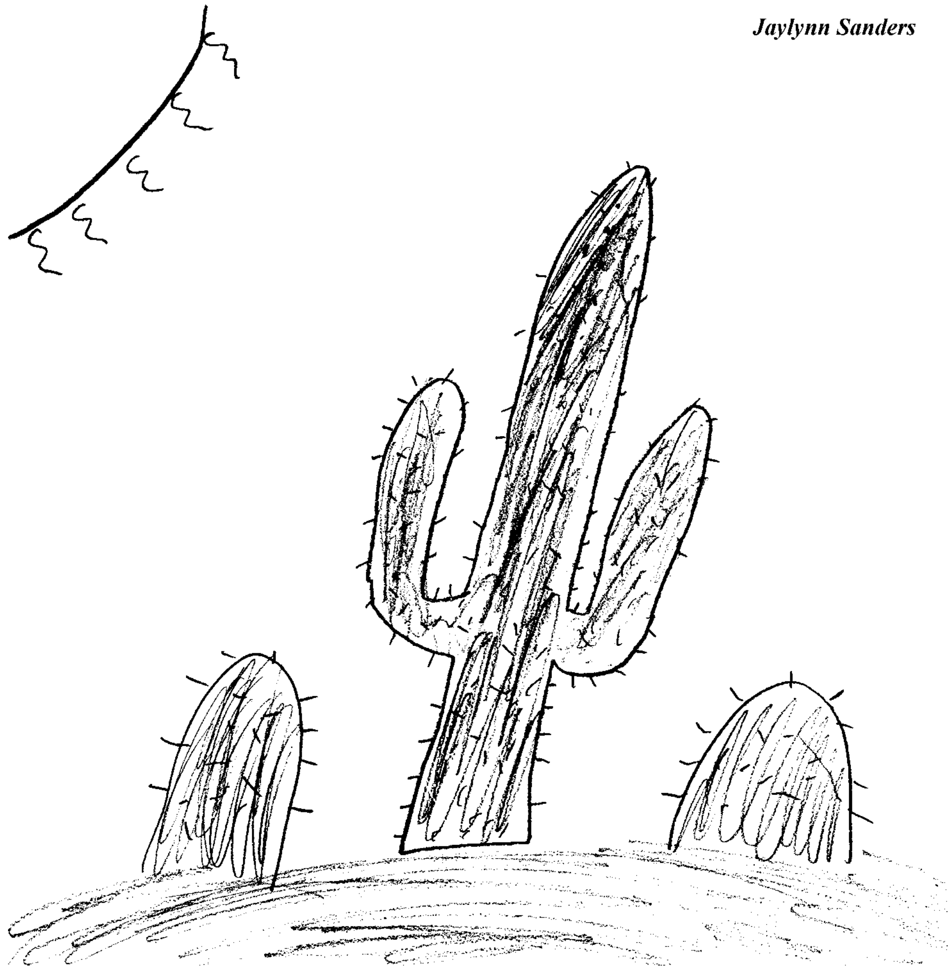

Jaylynn Sanders

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Open Meetings

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

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

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 512-463-5561. Or request a copy by email: register@sos.state.tx.us

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

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

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

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

Additional information about state government may be found here:
http://www.texas.gov

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Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

THE ATTORNEY GENERAL

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

An index to the full text of these documents is available from the Attorney General's Internet site http://www.oag.state.tx.us.

Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

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

Requests for Opinions

RQ-0985-GA

Requestor:

The Honorable J. Steve Houston

Brewster County Attorney

107 West Avenue E, #7

Alpine, Texas 79830

Re: Whether two bills that amend §36.121 of the Water Code, which relates to the rulemaking power of groundwater conservation districts, are in irreconcilable conflict (RQ-0985-GA)

Briefs requested by August 24th, 2011

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

TRD-201102814
Jay Dyer
Deputy Attorney General
Office of the Attorney General
Filed: July 26, 2011

PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 55. CHILD SUPPORT ENFORCEMENT

SUBCHAPTER D. FORMS FOR CHILD SUPPORT ENFORCEMENT

1 TAC §§55.116, 55.118 - 55.120

The Office of the Attorney General, Child Support Division proposes amendments to 1 TAC §§55.116 and 55.118 - 55.120, regarding forms for child support enforcement. The proposed amendments to §§55.116 and 55.118 - 55.120 reflect revisions to the National Medical Support Notice, the Income Withholding for Support, and the Notice of Lien. The revisions to the forms were made by the U.S. Department of State Health Services, Office of Child Support Enforcement. These standardized forms are for use by all state Title IV-D agencies.

Alicia G. Key, Deputy Attorney General for the Child Support Division, has determined that for the first five years the amended sections as proposed are in effect, there will be no significant fiscal implications for state or local government.

Ms. Key has also determined that for each year of the first five years the amended sections as proposed are in effect, the public benefit as a result of the amended sections will be compliance forms authorized by state and federal statutes.

Ms. Key has also determined that for the first five years the amended sections as proposed are in effect, there will be no significant fiscal implications for small businesses or individuals. In addition, there will be no local employment impact as a result of the amended sections as proposed.

Comments on this proposed amendments should be submitted to John O'Connell, Deputy Director, Legal Counsel Division, Child Support Division, Office of the Attorney General, (physical address) 5500 East Oltorf, Austin, Texas 78741 or (mailing address) P.O. Box 12017, Mail Code 044, Austin, Texas 78711-2017.

The proposed amendments are authorized by Texas Family Code §§154.186, 157.313, and 158.106.

The proposed amendments affect Texas Family Code Chapters 154, 157 and 158.

§55.116. Notice of Administrative Writ of Withholding and the Income Withholding for Support.

(a) This form is sent to the obligor by the Title IV-D agency, or a domestic relations office, informing the obligor that withholding has commenced and providing procedures for contesting the withholding.

Figure: 1 TAC §55.116(a)

[~~Figure: 1 TAC §55.116(a)~~]

(b) This form is issued by the Title IV-D agency or domestic relations office to initiate withholding for the enforcement of an existing order.

Figure: 1 TAC §55.116(b)

[~~Figure: 1 TAC §55.116(b)~~]

§55.118. Income Withholding for Support.

This form is federally mandated for use in IV-D and non IV-D cases. It is used as a judicial withholding document, when issuing an original withholding order, amended withholding order, or to terminate withholding.

Figure: 1 TAC §55.118

[~~Figure: 1 TAC §55.118~~]

§55.119. Forms for Notice of Lien, for Release of Child Support Lien, and for Partial Release of Child Support Lien.

(a) The following form is to be filed with the county clerk of a county in which real or personal property of the obligor is believed to be located in accordance with the Texas Family Code, Chapter 157, Subchapter G. Notice of the lien may be given to any person known to be in possession of real or personal property of the obligor, and if such notice is given the property may not be paid over, released, sold, transferred, encumbered, or conveyed without incurring the penalties provided by the Texas Family Code, §157.324.

Figure: 1 TAC §55.119(a)

[~~Figure: 1 TAC §55.119(a)~~]

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

§55.120. National Medical Support Notice, Request for Review of National Medical Support Notice, Termination of National Medical Support Notice.

(a) The National Medical Support Notice is federally mandated for use in IV-D cases and may be used in any other suit in which an obligor is ordered to provide health insurance coverage for a child.

Figure: 1 TAC §55.120(a)

[~~Figure: 1 TAC §55.120(a)~~]

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

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

Filed with the Office of the Secretary of State on July 20, 2011.

TRD-201102755

Jay Dyer

Deputy Attorney General

Office of the Attorney General

Earliest possible date of adoption: September 4, 2011

For information regarding this publication, contact Zindia Thomas, Agency Liaison, at (512) 936-9901.

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CHAPTER 58. LEGAL SUFFICIENCY REVIEW OF COMPREHENSIVE DEVELOPMENT AGREEMENTS

The Office of the Attorney General (OAG) proposes new Chapter 58, §§58.1 - 58.7, relating to Attorney General legal sufficiency review of comprehensive development agreements (CDAs).

The proposal will establish new rules relating to administration of the legal sufficiency reviews by the OAG of CDAs in accordance with Texas Transportation Code §371.051, describing submission procedures, legal sufficiency review, and related examination fees. The rules are proposed under the authority of Texas Transportation Code §371.051 as amended by Senate Bill 731 during the regular legislative session of the Eighty-second Legislature. *See* 2011 Texas Senate Bill No. 731, Texas Eighty-Second R.S. (May 27, 2011), Enrolled Version (effective June 17, 2011), http://www.legis.state.tx.us/tlodocs/82R/billtext/pdf/SB00731F.pdf#navpanes=0. Section 371.051 authorizes the OAG to set examination fees and adopt rules associated with the legal sufficiency review of CDAs.

In 2007, the 80th Legislature enacted §371.051 of the Texas Transportation Code, which provides that: "A toll project entity may not enter into a comprehensive development agreement unless the attorney general reviews the proposed agreement and determines that it is legally sufficient." Accordingly, the OAG conducts legal sufficiency reviews that examine whether a proposed CDA complies with the law.

However, when Texas Transportation Code §371.051 was enacted, no additional resources were appropriated to the OAG to offset the cost associated with conducting the statutorily mandated review and approval of proposed CDAs. After all state agencies' budgets were reduced due to a budget shortfall, §371.051 was amended to authorize the OAG to impose a "reasonable fee" for determining whether CDAs meet the necessary legal sufficiency requirements. Section 371.051(f) authorizes the toll project entities seeking legal approval from the OAG to "collect or seek reimbursement" of the examination fee. . . . from the private participant." Accordingly, pursuant to newly-granted authority under §371.051(g), the OAG proposes a new Chapter 58, which will establish rules governing the legal sufficiency reviews of CDAs.

Within the OAG, the agency's General Counsel Division will be responsible for conducting legal sufficiency reviews of proposed CDAs. The OAG's General Counsel Katherine Cary has determined that for each year of the first five years following the adoption of the rules, Chapter 58 will benefit toll project entities and other affected parties by establishing uniform administrative requirements and procedures for the review of proposed CDAs. The proposed rules will also stipulate the fees associated with the OAG's legal sufficiency review. The general public will benefit from the proposed rules because it will require that CDA proposals be submitted in a complete and final form, require that the OAG conduct its review within a specified time period, and allow the state to collect examination fees for its legal work, which will be used to support the operations of the state.

Mrs. Cary has determined that during each year of the first five years following the adoption of Chapter 58, the fiscal impact to state is estimated to be a positive impact of no more than $1,209,634 per fiscal year. This positive fiscal impact to the state reflects a legal sufficiency review schedule consistent with the amount established by the Texas Legislature in the General Appropriations Act. *See* art. I, OAG Rider No. 27, 2011 Texas House Bill 1, General Appropriations Act for 2012-2013 fiscal biennium, Eighty-second R.S. (May 28, 2011), Conference Committee Report (effective September 1, 2011), http://www.lbb.state.tx.us/Bill_82/4_Conference/prtHB1_Conference_2011_SIG_Engross.pdf. Mrs. Cary has concluded that these economic costs are necessary to meet the examination fee's legislative purpose as expressed in the General Appropriations Act, which is to provide approximately $1 million in General Revenue funding for the OAG's legal and administrative operating budget. Accordingly, there is no need to consider less costly alternatives to the rules.

Mrs. Cary has further determined that there may be a foreseeable fiscal impact to local governments that is likely to result from adoption of the rules. However, any impact is expected to be mitigated because local governments that may also be toll project entities are authorized to collect or seek reimbursement of the examination fees from the private participant(s) in accordance with Texas Transportation Code §371.051(f). Because the very nature of a CDA, as that term is used in Chapters 223 and 370 of the Texas Transportation Code and other relevant statutes, contemplates the involvement of private participant(s) in the design, development, financing, construction, operation, repair, extension, or expansion of toll projects, a private participant will always be involved. As a result, the cost of the state's legal sufficiency review will not be borne by state and local taxpayers, but rather by private developers who propose to partner with toll project entities on a CDA.

Consistent with Article I, OAG Rider No. 27 of the General Appropriations Act for the 2012-2013 biennium and Texas Transportation Code §371.051(g)'s requirement that the OAG set fees "in a reasonable amount," the OAG's General Counsel recommended the following fee amount after conducting a thorough review. First, the General Counsel examined outside counsel invoices submitted to the state by outside attorneys that previously conducted similar legal reviews for toll project entities. Second, the General Counsel reviewed the number of billable hours attorneys in the General Counsel Division devoted to previous CDA legal sufficiency reviews. Under both calculations, based upon fee amounts charged by the private sector, the General Counsel concluded that a $100,000 fee fell well within the "reasonable amount" stipulated by the Legislature. Based upon a $100,000 fee, the total dollar amount the OAG is projected to receive for conducting legal sufficiency reviews is less than the amount initially projected in the agency's August 2010 Legislative Appropriations Request.

For each year of the first five years following the enactment of Chapter 58, the foreseeable economic cost to persons or entities required to comply with the rules, which includes various business enterprises engaged in the acquisition, design, development, financing, construction, reconstruction, extension, expansion, maintenance or operation of highway toll projects in Texas, is estimated to be $100,000 for each CDA reviewed by the OAG. This estimate is consistent with the requirements of Texas

Transportation Code §371.051(g) for the reasons mentioned in the previous paragraph and because it reflects an estimate of the reasonable attorney's fees charged for similar services in the private sector.

Finally, Mrs. Cary has determined that the enactment of Chapter 58 is not likely to have a direct adverse economic impact on micro-business, small business or local employment because toll project entities, which are required to pay the fees required under Texas Transportation Code §371.051, are governmental entities that do not meet the definition of a micro-business or small business entity in accordance with Texas Government Code §2006.001. Thus, an economic impact statement is not required. Additionally, a reasonable inquiry conducted by the OAG did not result in the identification of any small businesses or micro-businesses capable of meeting the qualifications and financial prerequisites necessary to serve as the primary private participant in a CDA for a toll project with a toll project entity. Even if micro-business or small businesses may be economically impacted by the proposed rules, the OAG has developed these rules in accordance with legislative mandates to conduct a legal sufficiency review of CDAs, and to charge a nonrefundable examination fee for such legal reviews in amounts necessary to meet revenue goals established by the Texas Legislature. Consequently, any variance from the proposed rules would be inconsistent with these legislative mandates, and no alternative regulatory methods need to be considered.

The OAG seeks comments related to the proposed rules regarding the administration of the legal sufficiency reviews and proposed fees for OAG review of CDAs in accordance with Texas Transportation Code §371.051. Comments should relate to subject matter of the proposed rules, should be organized in a manner consistent with the organization of the proposed rules, and should identify the specific section of the proposed rules to which the comment relates.

Written comments on the proposal may be submitted for 30 days, by mail or email, following the publication of this notice to Katherine Cary, General Counsel, Office of the Attorney General, P.O. Box 12528, Austin, Texas 78711-2528, CDA.RuleComment@oag.state.tx.us.

SUBCHAPTER A. PURPOSE AND DEFINITIONS

1 TAC §§58.1 - 58.3

Sections 58.1 - 58.3 are proposed in accordance with Texas Transportation Code §371.051(g), which requires the OAG to set the legal sufficiency review fee in a reasonable amount and the procedures for the legal sufficiency reviews of CDAs.

The proposed rules do not affect any other statutes.

§58.1. Purpose.

(a) This chapter implements §371.051 of the Texas Transportation Code, which provides that a toll project entity may not enter into a comprehensive development agreement for toll projects unless the attorney general reviews the proposed agreement and determines that it is legally sufficient.

(b) The purpose of this chapter is to:

(1) Describe the legal sufficiency review conducted by the Office of the Attorney General;

(2) Establish minimum requirements for the submission of a transcript of proceedings relating to a proposed comprehensive development agreement;

(3) Set forth the general procedures for the completion of a legal sufficiency review by the Office of the Attorney General; and

(4) Establish and provide for the assessment and collection of examination fees required for legal sufficiency reviews of comprehensive development agreements.

(c) This chapter applies to all comprehensive development agreements proposed on or after June 17, 2011 for toll projects described by Texas Transportation Code §201.001(b), regardless of whether the toll project is part of the state highway system or otherwise subject to the jurisdiction of the Texas Transportation Commission and/or Texas Department of Transportation.

§58.2. Definitions.

(a) The following words and terms, when used in this chapter, shall have the following meanings as provided by Texas Transportation Code §201.001:

(1) Comprehensive development agreement or CDA.

(2) Department.

(b) Toll Project and Toll Project Entity shall have the meaning given by Texas Transportation Code §371.001.

(c) Private Participant or Private Entity. When referenced in this chapter, a private participant or a private entity means a private, non-governmental, enterprise that is a party to a comprehensive development agreement for the acquisition, design, development, financing, construction, reconstruction, extension, expansion, maintenance or operation of a toll project. This term does not include a toll project entity.

(d) Transcript or Transcript of Proceedings. When referenced in this chapter, transcript and/or transcript of proceedings means the documents, certifications, and other information deemed necessary by the Office of the Attorney General, in its sole discretion, to be submitted by a toll project entity to support a determination that a comprehensive development agreement is legally sufficient for the purposes of Texas Transportation Code §371.051.

(e) OAG. When referenced in this chapter, OAG refers to the Office of the Attorney General.

(f) Any terms used in this chapter that are not specifically defined by this section will be construed according to their plain and common meaning unless a contrary intention is apparent from the context.

§58.3. Legal Sufficiency Review.

(a) Scope. The legal sufficiency review of a proposed comprehensive development agreement (CDA) by the Office of the Attorney General (OAG) under Texas Transportation Code §371.051 is a limited review that seeks to determine whether a proposed CDA substantially satisfies the applicable procedural, statutory, and regulatory requirements such that a court would have some basis on which to sustain the authority of the toll project entity to enter into the CDA.

(b) Excluded Matters. A legal sufficiency review does not generally address any matters related to the viability or advisability of the CDA or the underlying project. As such, the investigation, evaluation, consideration, and assessment of matters including, but not limited to, the following are generally outside of the scope of the legal sufficiency review:

(1) policy determinations regarding the proposed CDA;

(2) consideration of business advisability and business risks associated with the proposed CDA;

(3) the technical adequacy or advisability of specific terms of a proposed CDA;

(4) the particular business, legal, or financial risks to any counter-party to a CDA;

(5) technical specifications of the proposed CDA; and

(6) the viability, timing, or financial risks associated with the proposed CDA.

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 July 25, 2011.

TRD-201102801

Jay Dyer

Deputy Attorney General

Office of the Attorney General

Earliest possible date of adoption: September 4, 2011

For further information regarding this publication, please contact Zindia Thomas, Agency Liaison, at (512) 936-9901.

SUBCHAPTER B. PROCEDURES FOR OBTAINING LEGAL SUFFICIENCY REVIEW OF PROPOSED COMPREHENSIVE DEVELOPMENT AGREEMENTS

1 TAC §§58.4 - 58.6

Sections 58.4 - 58.6 are proposed in accordance with Texas Transportation Code §371.051(g), which requires the OAG to set the legal sufficiency review fee in a reasonable amount and the procedures for the legal sufficiency reviews of CDAs.

The proposed rules do not affect any other statutes.

§58.4. General Procedures and Requirements for Review.

(a) Toll project entities must submit one hard copy and one machine-readable/searchable electronic copy of the transcript of proceedings in a standard electronic format.

(b) The required transcript of proceedings should be sent to the General Counsel Division of the Office of the Attorney General at its Austin office location by one of the following methods: United States Postal Service first-class mail in a properly addressed and sufficiently stamped envelope or box; or by courier or overnight delivery service in a properly addressed and prepaid envelope or box. The address for delivery by United States Postal Service mail is: General Counsel Division, Office of the Attorney General, Mail Code 074, P.O. Box 12548, Austin, Texas 78701-2548, Attn: CDA Review. The address for courier or overnight delivery service is: General Counsel Division, Office of the Attorney General, Room 102; Mail Code: 074, 300 W. 15th Street, Austin, Texas 78701, Attn: CDA Review.

(c) The OAG will seek to complete the legal sufficiency review no later than the 60th business day after the date the examination fee and the complete transcript of proceedings are properly received as required by Texas Transportation Code §371.051(b).

(d) The legal sufficiency determination will be issued in writing and sent to the toll project entity. The legal sufficiency determination is public information and is subject to disclosure.

(e) If the OAG cannot provide a legal sufficiency determination within the 60-business-day period, the OAG will notify the toll project entity in writing of the reason for the delay and may, in its sole discretion, extend the review period for not more than an additional 30 business days.

(f) The computation of the 60-business-day review period under Texas Transportation Code §371.051(d) does not begin until the OAG determines that it has received a complete transcript and any fee required in accordance with §58.7 of this chapter. The toll project entity will be notified in writing of the date upon which the OAG received the complete transcript and review fee.

(g) The OAG will not make a legal sufficiency determination without receiving documents, certifications, and other information from the toll project entity that are deemed necessary by the OAG, in its sole discretion, to support a determination that a comprehensive development agreement is legally sufficient for the purposes of Texas Transportation Code §371.051, including the payment of any examination fees required under §58.7 of this chapter.

(h) The OAG may request one or more conferences or teleconferences with authorized members or representatives of the Department or the toll project entity as may be necessary to obtain additional information and seek clarification regarding the contents of the proposed comprehensive development agreement. Additionally, the OAG may request clarification, briefing, or additional supporting documentation as deemed necessary by the OAG to support a determination of legal sufficiency.

(i) If, after consultation with the Department or the toll project entity as appropriate, the OAG determines, in its sole discretion, that the comprehensive development agreement is, or is not, legally sufficient, the OAG will issue a written determination to that effect.

§58.5. Redetermination Review.

(a) If the OAG issues a determination that a proposed CDA is not legally sufficient, a toll project entity may supplement the transcript of proceedings or amend the CDA to facilitate a redetermination by the OAG of the prior legal sufficiency determination.

(b) The general procedures and requirements for review as set forth in §58.4 of this chapter apply to a redetermination review, except to the extent that the OAG may agree in writing to waive the requirement to submit the complete transcript of proceedings. A request for a waiver of the transcript requirements should be made in writing by the toll project entity and the OAG will respond to the waiver request in writing.

(c) There is no limit on the number of times that a toll project entity may supplement the transcript or amend the CDA to facilitate a redetermination review.

(d) The OAG reserves the right not to issue a redetermination of legal sufficiency in the event that the OAG determines that:

(1) a toll project entity's submission of supplemental information or amendments to the CDA fails to substantively correct legal sufficiency issues raised by the OAG; or

(2) a toll project entity submits supplemental information or amendments to the CDA that substantially change or modify the fundamental terms of the CDA or the underlying toll project in such a manner as to constitute a different or new CDA.

(e) The examination fee required in accordance with §58.7 of this chapter is required for completion of a redetermination review, and is due at the time the toll project entity submits its request for redetermination.

§58.6. Transcript Requirements.

(a) Form of the Transcript of Proceedings. The transcript submitted to the OAG must conform to the following requirements unless such requirements are expressly negated under applicable law:

(1) each transcript shall be submitted in a loose-leaf binder or expanding file folder;

(2) transcript page size shall not exceed 8-1/2 by 11 inches, and each line of each page should be entirely legible (oversize documents, such as maps and charts, should be folded within the 8-1/2 by 11 inch requirement);

(3) all transcripts shall contain a table of contents keyed to right side tab numbers;

(4) each transcript shall be arranged in chronological order or in some other consistent, logical arrangement that will permit an efficient review and shall be labeled in a manner consistent with the table of contents; and

(5) the machine-readable/searchable electronic copy of the transcript of proceedings should be in the format of a single file containing all information and exhibits in the hard copy transcript presented in the order they appear in the hard copy, and should be provided on a CD or DVD clearly labeled with the name of the toll project entity, project name, and project location.

(b) Contents of Transcript. The transcript shall include the following, as applicable:

(1) the contact name(s), address(es), e-mail address(es), and phone number(s) for the appropriate representative(s) of the toll project entity to whom the legal sufficiency determination should be issued, and to whom all other inquiries, notifications, and correspondence regarding the proposed CDA should addressed;

(2) a written overview of the CDA that includes:

(A) a summary description of the project;

(B) identification of each entity that is a signatory to the CDA and to each ancillary agreement;

(C) citation to the applicable statutes and rules that establish the legal authority for each signatory to enter into the CDA and each ancillary agreement;

(D) a description of the procurement process used;

(E) a summary description of the CDA and its key terms;

(F) an overview of the method of finance for the CDA, including a summary description of each financial document included in the transcript of proceedings;

(G) a summary that includes any other information that may be material to the legal sufficiency determination;

(3) a list identifying the various approvals required as a condition precedent to the CDA and each ancillary agreement, including the sequence and record of dates when such approvals occurred or are expected to occur;

(4) citations to the applicable statutes, rules or other legal authority defining the procurement method and requirements for the CDA and each ancillary agreement;

(5) citations to the applicable statutes, rules or other legal authority requiring public notice, or public hearings as part of the procurement process, accompanied by documentation evidencing compliance with all such requirements;

(6) a machine-readable/searchable electronic copy of any Request for Qualifications (RFQ), Request for Detailed Proposals (RFDP), or other applicable document soliciting offers to contract for the CDA and ancillary agreements;

(7) citations to the applicable statutes, rules or other legal authority requiring public notice or public hearings required as a condition precedent to execution of the CDA and any ancillary agreements, accompanied by documentation evidencing compliance with all such requirements;

(8) a copy of the CDA;

(9) copies of any ancillary agreements to the CDA;

(10) evidence of signature authority for those executing documents on behalf of the toll project entity;

(11) to the extent that any funds are used with the project that were made available as the result of the American Recovery and Reinvestment Act of 2009 (Pub.L. 111-5), evidence of compliance with all applicable state and federal law, rules, and regulations related to the use of such funds;

(12) copies of all opinion(s) of counsel given in connection with the transaction, which may be drafts in substantially final form;

(13) the toll project entity's general certification of the following:

(A) certification of the toll project entity's authority to enter into the CDA and ancillary agreements;

(B) certification that documents submitted by the toll project entity constitute legal, valid, and binding obligations of the entity enforceable in accordance with their terms;

(C) certification that the terms of the transcript documents and the performance of toll project entity's obligations thereunder are not in conflict with and do not constitute a breach of or a default under the constitution or the laws of the United States or the State of Texas, or the terms and provisions of any instrument or restriction to which toll project entity is presently a party to or by which the toll project entity is presently subject;

(D) certification that the toll project entity has received all permits and approvals of any governmental authority, board, agency or commission having jurisdiction that are required to be obtained by the toll project entity prior to the execution, delivery and performance by toll project entity of the transcript documents;

(E) certification that the toll project entity has complied with all applicable publication and procurement requirements associated with the transcript documents, including but not limited to, any applicable requirements for the use of competitive procurement methods;

(F) certification that the toll project entity will retain ownership to the project under the terms of the transcript documents as required by law, and providing citation to the applicable provision(s) of the Texas Transportation Code;

(G) certification that the transcript documents are being entered into and the underlying project is being undertaken in compliance with applicable provision(s) of the Texas Transportation Code, providing citations and including an explanation of why the CDA is authorized under any applicable statutory moratorium;

(H) certification that there is no action, suit, hearing, proceeding, inquiry, investigation or litigation of any nature, at law or in equity, before or by any court, public board, agency or body, pending or threatened against or affecting the toll project entity (or to the best of

the authorized signatory's knowledge any basis therefore) wherein an unfavorable decision, ruling or finding would, in any way, materially adversely affect:

(i) the creation, organization, existence or powers of the toll project entity or the title or authority of the officers and commissioners of the toll project entity;

(ii) the transactions contemplated by the transcript documents; or

(iii) the validity or enforceability of the transcript documents;

(I) certification that the authorization, approval and execution of the transcript documents, and all other proceedings of the toll project entity relating to the transcript documents, have been performed in accordance with all applicable open meetings laws and all other applicable laws, rules and regulations of the State of Texas;

(J) the identification of the duly appointed and qualified incumbents of the offices of the toll project entity and certification that the persons named were, on the date or dates of all actions taken in connection with the execution of the transcript documents and any related documents, the duly appointed and qualified incumbents of the offices of the toll project entity;

(K) certification that as of the date of the certificate, the transcript documents are substantially in the form approved by the governing body of toll project entity; and

(L) certification to the Attorney General of the State of Texas that, as of the date of the general certificate, and as of the date of his completion of the legal sufficiency review and all other matters certified therein, the contents of the transcript of proceedings shall be deemed for all purposes to be true, accurate and correct on and as of that date, and as of the delivery date of the transcript of proceedings, unless the toll project entity through an officer shall notify the OAG in writing to the contrary prior to either of such dates.

(c) The OAG may require a toll project entity to timely provide such other information as may be deemed necessary by the OAG, in its sole discretion, to support a determination that a comprehensive development agreement is legally sufficient for the purposes of Texas Transportation Code §371.051.

(d) Toll project entities anticipating the OAG's review of a CDA that may contain novel or uncommon characteristics or transactions that could be likely to require variance from these requirements are required to contact the OAG to discuss the possible variances prior to submission of the transcript of proceedings.

(e) The transcript requirements described by this section may be waived or modified by the OAG, in its sole discretion, to the extent the OAG is satisfied that the OAG can issue an appropriate legal sufficiency determination.

(f) The transcript of proceedings and other information submitted to the OAG by a toll project entity are subject to the Texas Public Information Act, Chapter 552 of the Texas Government Code ("the Act"). All transcripts and other information shall be presumed to be subject to disclosure unless a specific exception to disclosure under the Act applies. If it is necessary for a toll project entity to include proprietary or otherwise confidential information in its submission, that particular information should be clearly identified and reference shall be made to the specific exception to disclosure in the Act. A blanket claim that the entire transcript is protected from disclosure because it may contain some proprietary information is not acceptable, and will not render the entire transcript confidential. Any information, which is not clearly identified as proprietary or confidential shall be deemed to be subject to disclosure pursuant to the Act.

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

Filed with the Office of the Secretary of State on July 25, 2011.

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Jay Dyer
Deputy Attorney General
Office of the Attorney General
Earliest possible date of adoption: September 4, 2011
For further information regarding this publication, please contact Zindia Thomas, Agency Liaison, at (512) 936-9901.

SUBCHAPTER C. REQUIRED EXAMINATION FEE

1 TAC §58.7

Section 58.7 is proposed in accordance with Texas Transportation Code §371.051(g), which requires the OAG to set the legal sufficiency review fee in a reasonable amount and the procedures for the legal sufficiency reviews of CDAs.

The proposed rule does not affect any other statutes.

§58.7. Fee Requirements.

(a) A transcript of proceedings for a legal sufficiency review of a proposed comprehensive development agreement must be accompanied by a non-refundable examination fee as required by Texas Transportation Code §371.051. The examination fee is due and payable at the time the toll project entity submits its transcript of proceedings to the OAG for review in accordance with Subchapter B of this chapter.

(b) The examination fee required for the legal sufficiency review shall be $100,000 for each CDA submitted to the OAG for a legal sufficiency determination review, and for each CDA submitted to the OAG for a redetermination review.

(c) A toll project entity is entitled to collect or seek reimbursement of the full amount of the examination fee from the private participant under the proposed comprehensive development agreement as authorized by Texas Transportation Code §371.051(f).

(d) If the toll project entity submits multiple proposed comprehensive development agreements or supplements relating to the same toll project for review, the entity shall pay the required examination fee for each proposed comprehensive development agreement.

(e) The examination fee required by this section applies only to a comprehensive development agreement submitted to the OAG on or after June 17, 2011.

(f) Warrants or checks should be payable to The Office of the Attorney General.

(g) No waivers or exceptions to the fee requirement are authorized by Texas Transportation Code §371.051.

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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Jay Dyer
Deputy Attorney General
Office of the Attorney General
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TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 53. HOME PROGRAM RULE
SUBCHAPTER B. AVAILABILITY OF FUNDS, APPLICATION REQUIREMENTS, AND REVIEW AND AWARD PROCEDURES

10 TAC §53.23, §53.26

The Texas Department of Housing and Community Affairs (the "Department") proposes amendments to 10 TAC Chapter 53, Subchapter B, §53.23 and §53.26. These amendments are proposed in order to temporarily suspend match requirements for the Homeowner Rehabilitation Assistance and Homebuyer Assistance Program Activities, and clarify the "Extremely Low-Income Household' requirement for households assisted with disaster relief funds.

Mr. Timothy K. Irvine, Acting Director, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the sections as proposed.

Mr. Irvine 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 enforcing the sections will be enhanced compliance with formalized policy, all contractual and statutory requirements.

There will be no effect on small businesses or persons. There is no anticipated economic cost to persons who are required to comply with the amendments as proposed. The proposed amendments will not impact local employment.

The public comment period will be held between August 5, 2011 and August 15, 2011 to receive input on these amendments. Written comments may be submitted to Texas Department of Housing and Community Affairs, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by e-mail to the following address: tdhcarulecomments@tdhca.state.tx.us, or by fax to (512) 475-0220. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. AUGUST 15, 2011.

These amendments are proposed pursuant to the authority of §2306.1091(b) of the Texas Government Code, which provides the Department the authority to adopt rules governing the administration of the Department and its programs.

The proposed amendments affect no other code, article or statute.

§53.23. Reservation System Participant Review Process.

(a) In order for an Applicant to participate in the reservation system, the Department must review and approve an Application to become a Reservation System Participant (RSP). Applications will be reviewed and presented to the Executive Director for approval in the order they are received. [~~Any such approval will be subject to ratification by the Board prior to Commitment of Funds.~~]

(b) Applications for recertification may be submitted ninety (90) days prior to the end of the RSP agreement term and will be required to demonstrate that all Application requirements are met.

(c) Administrative Deficiencies must be cured within ten (10) business days of the date of the deficiency notice. If Administrative Deficiencies are not clarified or corrected within ten business days from the deficiency notice date, the Application may be terminated.

§53.26. Reservation System Participant (RSP) Agreements.

(a) Terms of agreement. RSP agreements will have a twenty-four (24) month term for all Program Activities. Execution of an RSP agreement does not guarantee the availability of funds under a reservation system.

(b) Limits on Number of Reservations. The number of Homeowner Rehabilitation, Homebuyer Assistance or Single Family Development reservations for an RSP is limited to five (5) per county within the RSP's Service Area at any given time. The number of Tenant-Based Rental Assistance reservations for an RSP is limited to thirty (30) at any given time.

(c) Extremely Low-Income Households. Except for Households served with disaster relief, HBA or SFD funds, each RSP will be required to serve at least one (1) Household at or below 30% of AMFI out of every four (4) Households submitted and approved for assistance.

(d) Match. The requirements of this subsection are waived until August 31, 2012 [~~2011~~]. An RSP must meet the tiered Match requirements per Program Activity for at least every fourth Household submitted and approved for assistance. For example, if Match is not provided for the first three (3) Households assisted by an RSP, the Match provided to the fourth Household must meet the Match requirement for all four (4) Households.

(e) Completion of Construction. For Activities involving construction, an RSP must complete construction and submit all requests for disbursement within nine (9) months from the Commitment of Funds for the Activity.

(f) Extensions. The Division Director may approve one three (3) month time extension to the Commitment of Funds to allow for the completion of construction and submission of requests for disbursement.

(g) An RSP must remain in good standing with the Department, the State of Texas, and HUD. If an RSP is not in good standing, participation in the reservation system will be suspended and may result in termination of the RSP agreement.

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 July 22, 2011.

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Timothy K. Irvine
Acting Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: September 4, 2011
For further information, please call: (512) 475-3916

SUBCHAPTER C. HOMEOWNER REHABILITATION ASSISTANCE (HRA) PROGRAM ACTIVITY

10 TAC §53.30

The Texas Department of Housing and Community Affairs (the "Department") proposes an amendment to 10 TAC Chapter 53, Subchapter C, §53.30, concerning the Homeowner Rehabilitation Assistance Program. This amendment is proposed in order to temporarily suspend match requirements for the Homeowner Rehabilitation Assistance Activity.

Mr. Timothy K. Irvine, Acting Director, has determined that for the first five-year period the proposed section is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the amended section as proposed.

Mr. Irvine has also determined that for each year of the first five years the amended section is in effect the public benefit anticipated as a result of enforcing the section will be enhanced compliance with formalized policy, all contractual and statutory requirements.

There will be no effect on small businesses or persons. There is no anticipated economic cost to persons who are required to comply with the amended section as proposed. The proposed amended section will not impact local employment.

The public comment period will be held between August 5, 2011 and August 15, 2011 to receive input on this amendment. Written comments may be submitted to Texas Department of Housing and Community Affairs, 2011 Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by e-mail to the following address: tdhcarulecomments@tdhca.state.tx.us, or by fax to (512) 475-0220. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. AUGUST 15, 2011.

This amendment is proposed pursuant to the authority of §2306.1091(b) of the Texas Government Code, which provides the Department the authority to adopt rules governing the administration of the Department and its programs.

The proposed amendment affects no other code, article or statute.

§53.30. Homeowner Rehabilitation Assistance (HRA) Program Threshold and Selection Criteria.

All Applicants and Applications must submit or comply with the following:

(1) The requirements of this subsection are waived until August 31, 2012 [~~2011~~]. An itemized schedule of the proposed Match and evidence to support the Applicant's ability to provide the required Match. For Applications submitted to become an RSP, the Department may withhold disbursements if after every four reservations sufficient Match documentation has not been provided. The Department shall use population figures from the most recently available U.S. Census to determine the applicable tier for an Application. The Department may incentivize or provide preference to Applicants committing to provide additional Match above the requirement of this subsection. Such incentives may be established in the form of a threshold or selection criteria and may be different for each Program Activity. Except for Applications for disaster relief, Match shall be required based on the following tiers:

(A) zero percent of Project funds if serving a city of less than 3,000 Persons or an unincorporated area of a county with less than 20,000 Persons;

(B) ten percent of Project funds if serving a city of between 3,001 and 5,000 Persons or an unincorporated area of a county of between than 20,001 and 75,000 Persons; and

(C) twelve and one-half percent of Project funds for all other applications.

(2) Documentation of a commitment of at least $80,000 or for a Contract award 80% of the award amount, whichever is less, in cash reserves to facilitate administration of the program and to ensure the capacity to cover costs prior to reimbursement or costs determined to be ineligible for reimbursement. Evidence of this commitment and the amount of the commitment must be included in the Applicant's resolution. To meet this requirement, Applicants must submit:

(A) Financial statements indicating adequate local unrestricted cash or cash equivalents to utilize as cash reserves and a letter from the Applicant's bank(s) or financial institution(s) indicating that current account balances are sufficient; or

(B) Evidence of an available line of credit or equivalent in an amount equal to or exceeding the above requirement; or

(C) The CPA opinion letter from the most recent audit and a statement from the CPA that indicates, based on past experience with grant programs and past audits, the applicant has in place the best practices and financial capacity necessary in order to effectively administer a HOME Program award.

(3) Housing construction plans must be certified by a licensed architect. The Department may procure and make architect certified plans available.

(A) The Department will reimburse only for the first time a set of architectural plans are used unless any subsequent site specific fees are paid to a Third Party architect, or a licensed engineer; and

(B) A NOFA may include incentives or otherwise require architectural plans to incorporate "green building" elements.

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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Timothy K. Irvine
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Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-3916

SUBCHAPTER D. HOMEBUYER ASSISTANCE (HBA) PROGRAM ACTIVITY

10 TAC §53.40

The Texas Department of Housing and Community Affairs (the "Department") proposes an amendment to 10 TAC Chapter 53, Subchapter D, §53.40, concerning Homebuyer Assistance (HBA) Threshold and Selection Criteria. This amendment is

proposed in order to temporarily suspend match requirements for the HBA Program Activity.

Mr. Timothy K. Irvine, Acting Director, has determined that for the first five-year period the proposed amended section is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the section as proposed.

Mr. Irvine has also determined that for each year of the first five years the proposed amended section is in effect the public benefit anticipated as a result of enforcing the section will be enhanced compliance with formalized policy, all contractual and statutory requirements.

There will be no effect on small businesses or persons. There is no anticipated economic cost to persons who are required to comply with the amended section as proposed. The proposed amended section will not impact local employment.

The public comment period will be held between August 5, 2011 and August 15, 2011 to receive input on this amendment. Written comments may be submitted to Texas Department of Housing and Community Affairs, 2011 Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by e-mail to the following address: tdhcarulecomments@tdhca.state.tx.us, or by fax to (512) 475-0220. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. AUGUST 15, 2011.

This amendment is proposed pursuant to the authority of §2306.1091(b) of the Texas Government Code, which provides the Department the authority to adopt rules governing the administration of the Department and its programs.

The proposed amendment affects no other code, article or statute.

§53.40. Homebuyer Assistance (HBA) Threshold and Selection Criteria.

All Applicants and Applications must submit or comply with the following:

(1) The requirements of this subsection are waived until August 31, 2012 [2011]. An itemized schedule of the proposed Match and evidence to support the Applicant's ability to provide the required Match. The Department may not require such support at the time an Application is submitted when the funds are made available under a reservation system. Except for Applications for disaster relief and Persons with Disabilities set-asides, the amount of Match required must be at least 5% of Project funds requested. The Department may incentivize or provide preference to Applicants committing to provide additional Match above the requirement of this subsection. Such incentives may be established in the form of a threshold or selection criteria and may be different for each Program Activity.

(2) Documentation of a commitment of at least $80,000 or for a Contract award 100% of the award amount, whichever is less, in cash reserves to facilitate administration of the program and to ensure the capacity to cover costs prior to reimbursement or costs determined to be ineligible for reimbursement. Evidence of this commitment and the amount of the commitment must be included in the Applicant's resolution. To meet this requirement, Applicants must submit:

(A) Financial statements indicating adequate local unrestricted cash or cash equivalents to utilize as cash reserves and a letter from the Applicant's bank(s) or financial institution(s) indicating that current account balances are sufficient; or

(B) Evidence of an available line of credit or equivalent in an amount equal to or exceeding the above requirement; or

(C) The CPA opinion letter from the most recent audit and a statement from the CPA that indicates, based on past experience with grant programs and past audits, the applicant has in place the best practices and financial capacity necessary in order to effectively administer a HOME Program award.

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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Timothy K. Irvine
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CHAPTER 80. MANUFACTURED HOUSING

The Manufactured Housing Division of the Texas Department of Housing and Community Affairs (the "Department") proposes to amend 10 Texas Administrative Code Chapter 80, §§80.3, 80.4, 80.21, 80.31 - 80.34, 80.38, 80.40, 80.80, and 80.90 - 80.93, relating to the regulation of the manufactured housing program. The rules are revised to comply with House Bill 1510 (82nd Legislature, 2011 regular session) that amends the Manufactured Housing Standards Act; to remove references to §80.100, Subchapter I; and for clarification purposes.

Section 80.3(k)(4): Proposal to remove the reference to §80.100, Subchapter I, relating to forms because the subchapter is proposed for repeal since there is no statutory requirement for the forms to be part of the rules.

Section 80.4: Proposal to correct the cite reference from §1201.205(e) to §1201.251(e).

Section 80.21(e)(3): Proposal to remove the reference to §80.100, Subchapter I, relating to forms because the subchapter is proposed for repeal since there is no statutory requirement for the forms to be part of the rules.

Section 80.21(e)(4): Proposal to remove the reference to §80.100, Subchapter I, relating to forms because the subchapter is proposed for repeal since there is no statutory requirement for the forms to be part of the rules.

Section 80.31(c): Proposal to remove the reference to §80.100, Subchapter I, relating to forms because the subchapter is proposed for repeal since there is no statutory requirement for the forms to be part of the rules.

Section 80.32(g): Proposal to remove the reference to §80.100, Subchapter I, relating to forms because the subchapter is proposed for repeal since there is no statutory requirement for the forms to be part of the rules.

Section 80.32(p): Proposal to remove the subsection because it is in conflict with §1201.151(a) of the Standards Act.

Sections 80.32(p) through (v): The subsections are re-lettered because of the proposal to remove subsection (p).

Section 80.32(s): Proposal to remove the reference to §80.100, Subchapter I, relating to forms because the subchapter is pro-

posed for repeal since there is no statutory requirement for the forms to be part of the rules.

Section 80.33(k)(3): Proposal to remove the reference to §80.100, Subchapter I, relating to forms because the subchapter is proposed for repeal since there is no statutory requirement for the forms to be part of the rules.

Section 80.34(a): Proposal to remove the reference to §80.100, Subchapter I, relating to forms because the subchapter is proposed for repeal since there is no statutory requirement for the forms to be part of the rules.

Section 80.38(a): Proposal to remove the reference to §80.100, Subchapter I, relating to forms because the subchapter is proposed for repeal since there is no statutory requirement for the forms to be part of the rules.

Section 80.38(b)(2): Proposal to remove the reference to §80.100, Subchapter I, relating to forms because the subchapter is proposed for repeal since there is no statutory requirement for the forms to be part of the rules.

Section 80.40(a): Proposal to remove the reference to §80.100, Subchapter I, relating to forms because the subchapter is proposed for repeal since there is no statutory requirement for the forms to be part of the rules.

Section 80.80(a): Proposal to remove the reference to §80.100, Subchapter I, relating to forms because the subchapter is proposed for repeal since there is no statutory requirement for the forms to be part of the rules.

Section 80.90(f)(1)(A) and (C): Proposing amendments to comply with amendments to the Manufactured Housing Standards Act in HB 1510 (82nd Legislature, 2011 regular session).

Section 80.91(b) and (c): Proposal to remove subsection (b) to comply with amendments to the Manufactured Housing Standards Act in HB 1510 (82nd Legislature, 2011 regular session) and re-letter subsection (c) to (b).

Section 80.92(a): Proposal to remove the reference to §80.100, Subchapter I, relating to forms because the subchapter is proposed for repeal since there is no statutory requirement for the forms to be part of the rules.

Section 80.93(a): Proposal to remove the reference to §80.100, Subchapter I, relating to forms because the subchapter is proposed for repeal since there is no statutory requirement for the forms to be part of the rules.

Section 80.93(c): Proposal to add new subsection to comply with amendments to the Manufactured Housing Standards Act in HB 1510 (82nd Legislature, 2011 regular session).

Section 80.93(d): Re-letter the current subsection (c) to (d).

Section 80.93(e): Re-letter the current subsection (d) to (e) and propose to remove the reference to §80.100, Subchapter I, relating to forms because the subchapter is proposed for repeal since there is no statutory requirement for the forms to be part of the rules.

Joe A. Garcia, Executive Director of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs, has determined that for the first five-year period that the proposed rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering these sections. There will be no effect on small or micro-businesses because of the proposed amendments. There are no anticipated economic costs to persons who are required to comply with the proposed rules.

Mr. Garcia also has determined that for each year of the first five years that the proposed rules are in effect the public benefit as a result of enforcing the amendments will be to provide clarification of procedures and to comply with the Manufactured Housing Standards Act.

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

If requested, the Department will conduct a public hearing on this rulemaking, pursuant to the Administrative Procedure Act, Texas Government Code §2001.029. The request for a public hearing must be received by the Department within 15 days after publication.

Comments may be submitted to Mr. Joe A. Garcia, Executive Director of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs, P.O. Box 12489, Austin, Texas 78711-2489 or by e-mail at mhproposedrulecomments@tdhca.state.tx.us. The deadline for comments is no later than 30 days from the date that these proposed rules are published in the *Texas Register.*

SUBCHAPTER A. CODES, STANDARDS, TERMS, FEES AND ADMINISTRATION

10 TAC §80.3, §80.4

The amended sections are proposed under §1201.052 of the Texas Occupations Code, which provides the Director with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and §1201.053 of the Texas Occupations Code, which authorizes the board to adopt rules as necessary and the director to administer and enforce the manufactured housing program through the Manufactured Housing Division.

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

§80.3. Fees.

(a) - (j) (No change.)

(k) Fees Relating to Statements of Ownership and Location. Each fee shall accompany the required documents delivered or mailed to the Department at its principal office in Austin.

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

(4) When multiple applications are submitted, the Form M set forth on the Department's website [~~in Subchapter I of this chapter (relating to Forms)~~] must be completed and attached to the front of the applications to identify each application and reconcile the fee for each application with the total amount of the payment. Failure to provide this form, properly completed, will delay the application's being deemed complete for processing.

(5) (No change.)

(l) - (n) (No change.)

§80.4. Advisory Committee.

The Board shall designate the membership of an advisory committee of not more than 24 members, that meets the requirements of

§1201.251(d) of the Standards Act, and the committee shall report as specified §1201.251(e) [~~§1201.205(e)~~] of the Standards Act.

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

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SUBCHAPTER B. INSTALLATION STANDARDS AND DEVICE APPROVALS

10 TAC §80.21

The amended section is proposed under §1201.052 of the Texas Occupations Code, which provides the Director with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and §1201.053 of the Texas Occupations Code, which authorizes the board to adopt rules as necessary and the director to administer and enforce the manufactured housing program through the Manufactured Housing Division.

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

§80.21. Requirements for the Installation of Manufactured Homes.

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

(e) Site Preparation Responsibilities and Requirements:

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

(3) Whenever a licensed retailer intends to sell a used manufactured home, regardless of where it is located or is to be located, the retailer is required to give the consumer the Site Preparation Notice, for signature by the consumer, in the form set forth on the Department's website [~~in Subchapter I of this chapter (relating to Forms)~~] PRIOR to the execution of any binding sales agreement.

(4) Whenever a licensed installer proposes to move a used manufactured home, the installer is required to give the consumer the Site Preparation Notice, for signature by the consumer, in the form set forth on the Department's website [~~in Subchapter I of this chapter~~] PRIOR to entering into a binding agreement to move that home.

(f) - (i) (No change.)

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

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SUBCHAPTER C. LICENSEES' RESPONSIBILITIES AND REQUIREMENTS

10 TAC §§80.31 - 80.34, 80.38

The amended sections are proposed under §1201.052 of the Texas Occupations Code, which provides the Director with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and §1201.053 of the Texas Occupations Code, which authorizes the board to adopt rules as necessary and the director to administer and enforce the manufactured housing program through the Manufactured Housing Division.

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

§80.31. Manufacturers' Responsibilities and Requirements.

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

(c) A manufacturer shall use the Manufacturer's Certificate of Origin (MCO) prescribed by the Department set forth on the Department's website [~~in Subchapter I of this chapter (relating to Forms)~~] for homes sold to retailers in Texas, on the reverse side of which shall be the data plate.

(d) - (e) (No change.)

§80.32. Retailers' Responsibilities and Requirements.

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

(g) If a retailer relies on a third party, such as a title company or closing attorney, to file with the Department the required forms necessary to enable the Department to issue a Statement of Ownership and Location to a consumer, the retailer must provide an instruction letter to that third party, advising them of their responsibilities to make such filings and the required timeframes therefore. This does not relieve the retailer from responsibility. The retailer must retain with their sale records a copy of that instruction letter and all documentation provided to such third party to enable them to make such filings. This optional form is available on the Department's website [~~in Subchapter I of this chapter (relating to Forms)~~].

(h) - (o) (No change.)

[~~(p) A retailer may not negotiate or offer a deposit refund of less than is required by the Act. However, a retailer may, by written agreement with the consumer, retain the amount of the deposit used to pay legitimate third party costs actually incurred, such as credit report fees or courier fees.~~]

(p) [~~(q)~~] In order to comply with the provisions of §1201.107(d) of the Standards Act, a retailer or broker must:

(1) have a current, in effect surety bond issued in the most recent form promulgated by the Department; and

(2) the applicable sales agreement must identify the surety bond that applies to the transaction and contain the following statement: "The above-described surety bond applies to this transaction in the following manner: The bond is issued to the Texas Manufactured Homeowners' Recovery Trust Fund (the "Fund"), a fund described in the Texas Manufactured Housing Standards Act (Tex. Occ. Code, Chapter 1201) and administered by the Director. If the Fund makes a payment to a consumer, the Fund will seek to recover under the surety bond. The obligation of the Fund to compensate a consumer for damages subject to reimbursement by the Fund is independent of the Fund's right or

ability to recover from the above-described surety bond, but recoveries on surety bonds are an important part of the Fund's ability to maintain sufficient assets to compensate consumers. There can be no assurance that the Fund will have sufficient assets to compensate a consumer for a covered claim. Assuming it has sufficient assets to compensate a consumer for a covered claim, the liability of the Fund is limited to actual damages, not to exceed $35,000."

(q) [~~(r)~~] A retailer shall maintain on a current basis a separate file for each salesperson sponsored by that retailer reflecting:

(1) that they are licensed in accordance with the Standards Act;

(2) the date of the initial licensing class that they attended and a copy of their certificate of completion;

(3) evidence of the successful completion of any required continuing education classes that they attended; and

(4) a copy of any written notice to the Department that sponsorship was terminated and the effective date thereof.

(r) [~~(s)~~] At each licensed location, including each branch location, a retailer shall display their current license for that location and the current license of each salesperson who works from that location.

(s) [~~(t)~~] At each licensed location, including each branch location, a retailer shall conspicuously display the Consumer Protection Information sign as set forth on the Department's website [~~in Subchapter I of this chapter~~].

(t) [~~(u)~~] Auction of Manufactured Housing to Texas Consumers.

(1) A person selling more than one home to one or more consumers through an auction in a twelve (12) month period must be licensed as a retailer, each individual acting as their agent must be licensed as a salesperson, and each specific location at which an auction is held must be licensed and bonded in accordance with the Standards Act.

(2) Acting as an auctioneer may be subject to the Texas Auctioneer Act, Occupations Code, Chapter 1802.

(3) The retailer must notify this Department in writing at least thirty (30) calendar days prior to the auction with such notice to contain the date, time, and physical address and location of a proposed auction or, if they recur on a scheduled basis, of the schedule.

(u) [~~(v)~~] The written warranty that the used manufactured home is habitable as per §1201.455 of the Standards Act, shall have been timely delivered if given to the homeowner at or prior to possession or at the time the applicable sales agreement is signed.

(v) [~~(w)~~] The written manufacturer's new home construction warranty per §1201.351 of the Standards Act, shall be timely delivered if given to the homeowner at or prior to the time of initial installation at the consumer's home site.

§80.33. Installers' Responsibilities and Requirements.

(a) - (j) (No change.)

(k) Each installer shall maintain the following books and records for each installation:

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

(3) if the used home is to be installed on a site that has evidence of ponding, run-off, or uncompacted soil, a signed form from the consumer, acknowledging the condition and accepting the risks, such form to be as set forth on the Department's website [~~in Subchapter I of this chapter (relating to Forms)~~] and §1201.255 of the Standards Act;

(4) - (8) (No change.)

(l) (No change.)

§80.34. Brokers' Responsibilities and Requirements.

(a) For each transaction where a broker is engaged to provide services, a broker shall retain the disclosure statement set forth on the Department's website [~~in Subchapter I of this chapter (relating to Forms)~~].

(b) (No change.)

§80.38. Right to Advance Copy of Certain Documents.

(a) A consumer may modify or waive the right to rescind the deadlines for disclosures before the execution of the contract if the consumer determines that the purchase transaction is needed to meet a bona fide emergency. To modify or waive the right, the consumer shall give the retailer a dated written statement that describes the emergency, specifically modifies or waives the notice periods, and bears the signature of all the consumers entitled to the disclosures and right of rescission. Printed forms for this purpose are prohibited, except as set forth on the Department's website [~~in Subchapter I of this chapter (relating to Forms)~~].

(b) Printed forms may be used to the rights as provided for in §1201.164 of the Standards Act only if:

(1) (No change.)

(2) The basic form set forth on the Department's website [~~in Subchapter I of this chapter~~] is used; and

(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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SUBCHAPTER E. LICENSING

10 TAC §80.40

The amended section is proposed under §1201.052 of the Texas Occupations Code, which provides the Director with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and §1201.053 of the Texas Occupations Code, which authorizes the board to adopt rules as necessary and the director to administer and enforce the manufactured housing program through the Manufactured Housing Division.

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

§80.40. Security Requirements.

(a) For purposes of meeting the security requirements of §1201.105 of the Standards Act, "other security" means a deposit in

a state or federally chartered bank or savings and loan association. If other security is posted, the other security must be maintained in or by a banking institution located in this state subject to a control agreement in the promulgated form set forth on the Department's website [~~in Subchapter I of this chapter (relating to Forms)~~]. Such deposits are hereinafter referred to as security. If such security is reduced by a claim, the license holder shall, within twenty (20) calendar days, make up the deficit as required by §1201.109(c) of the Standards Act. No advance notice is required by the Department to the license holder, but the Department shall verify of the deposit.

(b) - (f) (No change.)

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

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SUBCHAPTER G. MANUFACTURERS HOMEOWNERS' RECOVERY TRUST FUND

10 TAC §80.80

The amended section is proposed under §1201.052 of the Texas Occupations Code, which provides the Director with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and §1201.053 of the Texas Occupations Code, which authorizes the board to adopt rules as necessary and the director to administer and enforce the manufactured housing program through the Manufactured Housing Division.

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

§80.80. Administration of Claims under the Manufactured Homeowners' Recovery Trust Fund.

(a) The Director, before authorizing any party performing warranty work or providing other goods or services that are to be reimbursed from the Manufactured Homeowners' Recovery Trust Fund (the "Fund") to proceed, will require that an estimate be submitted on the form set forth on the Department's website [~~by the Department in Subchapter I of this chapter (relating to Forms)~~] properly completed and executed.

(b) - (f) (No change.)

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

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SUBCHAPTER H. STATEMENTS OF OWNERSHIP AND LOCATION

10 TAC §§80.90 - 80.93

The amended sections are proposed under §1201.052 of the Texas Occupations Code, which provides the Director with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and §1201.053 of the Texas Occupations Code, which authorizes the board to adopt rules as necessary and the director to administer and enforce the manufactured housing program through the Manufactured Housing Division.

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

§80.90. Issuance of Statements of Ownership and Location.

(a) - (e) (No change.)

(f) Updating of Statements of Ownership and Location on Manufactured Homes Transferred as Real Property.

(1) When a manufactured home has become real property because the owner completed the conversion process required by the Standards Act, the home may be sold, transferred, or encumbered as real property by the customary means used for real property transactions. As long as the home remains real property at the same location, ownership of the home is confirmed in the same manner as any other real property, rather than by verifying Department records. A new Statement of Ownership and Location does not have to be applied for until and unless:

(A) the [~~manufactured~~] home is moved from the [~~to a new~~] location specified on the statement of ownership and location;

(B) the current owner of the manufactured home wishes to convert it to personal property status; [~~or~~]

(C) the use of the property is changed to business use or salvaged; or

(D) [~~(C)~~] the manufactured home no longer meets the requirements to be classified as real property (such as the home being on property subject to a long term lease which is not assignable to the buyer or transferee).

(2) - (4) (No change.)

(g) - (i) (No change.)

§80.91. Issuance of a Texas Seal.

(a) (No change.)

[~~(b) A copy of the written disclosure required in §1201.455(a) must accompany the application for homes sold by a licensed retailer; and~~]

(b) [~~(c)~~] A Texas Seal can only be issued to a home meeting the definition of a HUD Code manufactured home or a mobile home.

§80.92. Inventory Finance Liens.

(a) A lien and security interest on manufactured homes in the inventory of a retailer, as well as to any proceeds of the sale of those

homes, is perfected by filing an inventory finance security form approved by this [~~the is~~] Department and in compliance with these sections. The required form is set forth on the Department's website [~~in Subchapter I of this chapter (relating to Forms)~~].

(b) (No change.)

§80.93. Recording Tax Liens on Manufactured Homes.

(a) Manually filed tax liens shall be filed with the Department using the form set forth on the Department's website [~~in Subchapter I of this chapter (relating to Forms)~~]. No other form will be accepted for the manual filing of tax liens. The form must be properly completed.

(b) (No change.)

(c) When releasing a tax lien recorded with the Department via a tax certificate or tax paid receipt, the documentation must demonstrate the tax lien filed has been satisfied for the correct home.

(d) [~~(c)~~] For tax liens recorded after June 18, 2005, but prior to the rules that were effective on January 29, 2006, those tax liens relating to tax years prior to 2001 will be disregarded and will not be treated as having been recorded.

(e) [~~(d)~~] A tax collector may file as a central tax collector under a single taxing entity ID number, in which case the liens recorded or released under that taxing entity ID number will extend to all liens created for tax obligations to the taxing entity for which the filer collects. In order, however, to file as a central collector, the filer must complete and provide to the Department the form set forth on the Department's website. [~~in Subchapter I of this chapter.~~] A single filing for multiple taxing entities must reflect the aggregate amount of the tax liabilities to which the filing relates.

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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Joe A. Garcia
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Texas Department of Housing and Community Affairs
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SUBCHAPTER I. FORMS

10 TAC §80.100

(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 Housing and Community Affairs or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Manufactured Housing Division of the Texas Department of Housing and Community Affairs (Department) proposes the repeal of 10 TAC Chapter 80, §80.100 relating to forms because the forms are not required by statute to be part of the rules. It will be more efficient and quicker to implement new and revised forms without going through the rulemaking process.

Joe A. Garcia, Executive Director of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs, has determined that for the first five-year period that the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal. There will be no effect on small or micro-businesses because of the repeal. There are no anticipated economic costs to persons who are required to comply with the repeal.

Mr. Garcia has also determined that for each year of the first five years that the repeal is in effect the public benefit as a result of enforcing the repeal will be to provide new and revised forms to the public in a more expeditious manner.

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

If requested, the Department will conduct a public hearing on the repeal of this rule, pursuant to the Administrative Procedure Act, Texas Government Code §2001.029. The request for a public hearing must be received by the Department within 15 days after publication.

Comments may be submitted to Mr. Joe A. Garcia, Executive Director of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs, P.O. Box 12489, Austin, Texas 78711-2489 or by e-mail at mhproposedrulecomments@tdhca.state.tx.us. The deadline for comments is no later than 30 days from the date that the proposed repeal is published in the *Texas Register.*

The repeal is proposed under §1201.052 of the Texas Occupations Code, which provides the Director with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and §1201.053 of the Texas Occupations Code, which authorizes the board to adopt rules as necessary and the director to administer and enforce the manufactured housing program through the Manufactured Housing Division.

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

§80.100. Forms.

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 July 22, 2011.

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Texas Department of Housing and Community Affairs
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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 13. FINANCIAL PLANNING

SUBCHAPTER G. RESEARCH DEVELOPMENT FUND

19 TAC §§13.122 - 13.126

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §§13.122 - 13.126, concerning Research Development Fund (RDF). The proposed amendments are needed to streamline and clarify existing rules and to align rules with the Texas Education Code. The proposed amendments would allow institutions to classify competitively awarded state funds for research and development (R&D) as restricted research expenditures. The proposed revisions allow that competitively awarded grants and contracts funded by state appropriations and identified as for research would be allowed for the purpose of RDF allocation. The current rules do not allow institutions to classify any pass-through R&D funds as restricted research expenditures. The proposed amendments would allow pass-through funds to entities other than RDF-supported institutions to be classified as restricted research expenditures by the RDF institution. Current rules direct the Commissioner to appoint a standing advisory committee to review and recommend changes to RDF standards and accounting methods. The proposed amendments allow the Commissioner to appoint a committee on an as-needed basis, which better reflects the current role of the committee in addressing the requirements of the program.

Dr. MacGregor M. Stephenson, Assistant Commissioner for Academic Affairs and Research, has determined that for each year of the first five years the amendments are in effect, there will be no fiscal implications for state or local government as a result of enforcing the amendments as proposed.

Dr. Stephenson has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of administering the amendments will be a more accurate collection of restricted research expenditure data. State-funded research award programs that are competitive and peer-reviewed will appropriately be included as restricted research expenditures. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the amendments as proposed. There is no impact on local employment.

Comments on the proposed amendments may be submitted to Stacey Silverman, Senior Director of Academic Research and Grant Programs, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or stacey.silverman@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendments are proposed under the Texas Education Code, Chapter 62, Subchapter E, which creates the Research Development Fund and provides the Coordinating Board with the authority to create the standards and accounting methods for determining the amount of restricted research funds expended by each eligible institution per year, to convene a committee to approve those methods, and to provide verified information regarding the apportionment of the funds to each eligible institution.

The proposed amendments affect implementation of Texas Education Code, Subchapter E, §§62.091 - 62.098.

§13.122 Definitions.

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

[~~(1) Norman Hackerman Advanced Research Program, Advanced Technology Program--research programs administered by the Board under Texas Education Code, Chapters 142 and 143.~~]

(1) [~~(2)~~] Advisory Committee [~~committee~~]--The Coordinating Board's Restricted Research Advisory Committee.

(2) [~~(3)~~] Board or Coordinating Board--the Texas Higher Education Coordinating Board.

(3) [~~(4)~~] Clinical Trial Agreement--an externally sponsored agreement for the administration of a specifically mandated patient protocol (sometimes in multiple clinical sites involving other institutions), in which some costs typically are paid from patient charges or other sources.

(4) [~~(5)~~] Commissioner--Commissioner of Higher Education.

(5) [~~(6)~~] Comptroller--the Texas Comptroller of Public Accounts.

(6) [~~(7)~~] Demonstration Projects--projects in which the primary purpose is to apply previous Research and Development findings in new settings and to demonstrate their utility.

[~~(8) Departmental Research--research, development, and scholarly activities that are not organized research and, consequently, are not separately budgeted by an institution.~~]

(7) [~~(9)~~] Development--the systematic use of knowledge and understanding gained from research directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes.

(8) [~~(10)~~] Eligible Institution or Institution [~~institution or institution~~]--a general academic teaching institution, as defined by Texas Education Code, §61.003, other than The University of Texas at Austin, Texas A&M University, and Prairie View A&M University.

[~~(11) Higher Education Assistance Fund (HEAF)--a fund established in Article 7, §17, of the Texas Constitution to fund capital improvements and capital equipment for institutions not included in the Permanent University Fund.~~]

(9) [~~(12)~~] Indirect Costs--costs incurred for certain overhead related to administering a particular sponsored project, an instructional activity, or any other institutional activity. Indirect costs are synonymous with "facilities and administrative (F&A) costs."

(10) [~~(13)~~] Industrial Collaboration Agreements--agreements with universities, colleges, centers, or institutes under which funds are provided for collaborative R&D activities. The activity must be sponsored by private philanthropic organizations and foundations, for-profit businesses, or individuals.

[~~(14) Instruction--the teaching and training activities of an institution. This term includes all teaching and training activities, whether they are offered for credit toward a degree or certificate or on a non-credit basis, and whether they are offered through regular academic departments or separate divisions, such as a summer school division or an extension division.~~]

(11) [~~(15)~~] Multiple Function Awards--awards that have multiple goals, such as research, instruction, and public service.

[~~(16) Organized research--research and development activities of an institution that are separately budgeted by an institution.~~]

(12) [~~(17)~~] Other Sponsored Activities--programs and projects financed by federal [~~Federal~~] and non-federal [~~non-Federal~~] agencies and organizations may be R&D for RDF restricted research under certain conditions: [~~that involve the performance of work other than instruction and organized research. Examples of such programs and projects are health service projects and community service programs. Other Sponsored Activities may include travel grants, unless~~

for research activities; support for conferences or seminars; support for university public events; provision of non-instructional and economic services beneficial to individuals and groups external to the university such as testing or diagnostic services, surveys, urban planning and mapping, etc.; publications by the university press; support for student participation in community service projects; support for projects pertaining to library collections, acquisitions, bibliographies or cataloging, unless primarily for documented research purposes; or programs to enhance institutional resources, including computer enhancements, unless primarily for documented research purposes.]

(A) travel grants, only if in sole support of research activities;

(B) support for conferences or seminars, only if in sole support of research activities;

(C) support for projects pertaining to library collections, acquisitions, bibliographies or cataloging, only if their purpose is primarily for documented research activities; and

(D) programs to enhance institutional resources, including computer enhancements, etc., only if their purpose is primarily for documented research activities.

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

(13) [(19)] Pass-throughs [Pass-Throughs] to Sub-recipients--external [award] funds that are passed from one entity [("pass-through" entity)] to a [another entity] sub-recipient. The sub-recipient expends [administers the program, expending] the award funds on behalf of or in connection with the pass-through entity.

(14) [(20)] Research--a systematic study directed toward fuller scientific knowledge or understanding of the subject studied [and the training of individuals in research techniques where such activities utilize the same facilities as other research and development activities].

(15) [(21)] Research and Development (R&D)--all research activities, both basic and applied, and all development activities that are supported at universities, colleges, and other non-profit institutions. [R&D also includes activities involving the training of individuals in research techniques where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function. Curriculum development projects may be considered as R&D when the primary purpose of the project is to develop and test an instructional or educational model through appropriate research methodologies, such as data collection, evaluation, dissemination, and publication.]

(16) [(22)] Research Development Fund (RDF)--a method of allocating funds based on institutional restricted research expenditures and established outside the state treasury to promote increased research capacity at eligible general academic teaching institutions under Texas Education Code, §§62.091 - 62.098.

(17) [(23)] Restricted Funds [funds (restricted awards)]--funds for which some external agency or organization has placed limitations on the uses for which the funds may be spent.

(18) Restricted Gifts for R&D--A gift provided by an external entity (a foundation, a business, or an individual) for a specific purpose and for which:

(A) there is documented evidence that the gift is restricted for research, such as a donor's restriction for research, or

(B) there is separate evidence that the gift is restricted for research through:

(i) documentation by the donor that the gift is restricted (e.g., endowed chair, fellowship), and

(ii) more than half of the earnings are budgeted for research through the institutional accounting process.

(19) [(24)] Restricted Research Expenditure [research expenditures]--an expenditure of funds which an external entity has placed limitations on (Restricted Funds) and for which the use of the funds qualifies as research. [expenditures from restricted funds (restricted awards) used for research and development.]

(20) [(25)] Sponsored Instruction and Training--specific instructional or training activity established by grant, contract, or cooperative agreement with federal, state, or local government agencies; private philanthropic organizations and foundations; for-profit businesses; or individuals. Sponsored Instruction and Training may be R&D for RDF restricted research under certain conditions [includes]:

(A) curriculum development projects if the primary purpose of the project is developing and testing an instructional or educational model through appropriate research methodologies (i.e., data collection, evaluation, dissemination, and publication); or

(B) activities involving the training of individuals in R&D techniques, commonly called R&D training, if such activities utilize the same facilities as other R&D activities and if such activities are not included in the instruction function. Such activities include dissertation work associated with an R&D project.

[(A) any project for which the primary purpose is to instruct any student at any location; recipients of this instruction may be university students or staff, teachers or students in elementary or secondary schools, or the general public, except for those activities defined in paragraph (26) of this section;]

[(B) curriculum development projects at any level either to improve significantly or to add to an institution's general instructional offerings, and do not include R&D;]

[(C) projects that involve university students in community service activities for which they are receiving academic credit;]

[(D) activities funded by awards to departments or schools for the support of students, except for those activities defined in paragraph (26)(E), of this section as Sponsored R&D;]

[(E) dissertation work funded by grants, including grants for travel in relation to a dissertation, unless associated with a R&D activity as defined in paragraph (21) of this section;]

[(F) outreach programs that bring local students on campus for classes; or]

[(G) general support for the writing of textbooks or reference books, video, or software to be used as instructional materials.]

(21) [(26)] Sponsored Research and Development (Sponsored R&D)--activity funded [(sponsored)] by grants, gifts, and/or contracts, including sponsored research contracts, that are externally awarded funds designated by the sponsor as primarily for R&D purposes. The activity must be sponsored by federal, state, or local governmental agencies; private philanthropic organizations and foundations; for-profit businesses; or individuals. Sponsored R&D includes:

(A) awards to university faculty to support R&D activities;

(B) competitively awarded grants and contracts funded by state appropriations specifically identified by the legislature as for research, but not state appropriations made directly to the institution for R&D through formula or special item funding;

(C) [(B)] external faculty "career awards" to support the R&D efforts of the faculty;

(D) [(C)] external funding to maintain facilities or equipment and/or operation of a center [enter] or facility that will be used for R&D;

(E) [(D)] external support for the writing of books[,] when the purpose of the writing is to publish R&D results;

[(E) activities involving the training of individuals in R&D techniques (commonly called R&D training) where such activities utilize the same facilities as other R&D activities and where such activities are not included in the Instruction function;]

(F) the research portion of expenditures in the federal work-study program, in accordance with instructions for preparing the annual financial report that is submitted by an institution to the Comptroller after each fiscal year ends; [or]

(G) industrial collaboration agreements with universities, colleges, centers, or institutes may qualify as R&D if at least half of the funds are explicitly designated as research support;

(H) [(G)] clinical trial agreements in which data collection and analysis are the primary components of the institution's role in the trial, excluding costs of data collection and analysis performed by other institutions under subcontract and excluding costs that are covered by patient charges or similar sources; and[.]

(I) demonstration projects may be R&D only if they include a new R&D component that is at least one-half of the scope of the project.

[(27) University Research and Development (University R&D)--activity that is supported by unrestricted university funds that the university has designated for use in R&D, such as unrestricted gifts, distributions from unrestricted endowments, interest income, technology licensing income, fees received from external entities for non-research services, proceeds from cost recovery enterprises, state appropriations not identified specifically by the legislature for R&D purposes, non-capitalized allocations from the PUF or HEAF for R&D purposes other than construction and remodeling, state appropriations made directly to the university for R&D through formula or special item funding including Norman Hackerman Advanced Research Program, ATP, or cost-sharing expenditures by the university.]

§13.123. Restricted Research Advisory Committee.

The Commissioner shall appoint, on an as needed basis, an advisory committee to review and recommend changes to standards and accounting methods for determining restricted research expenditures.

(1) The advisory committee shall consist of [11 to 15] representatives from eligible higher education institutions.

(2) The Commissioner shall select institutions that represent both system institutions and institutions that are not in systems, including institutions that provide diversity in size, mission, and geographic distribution for membership on the advisory committee.

[(3) At least 30 days prior to meeting, the Commissioner shall inform the presidents of selected institutions that they may recommend an institutional representative to serve on the advisory committee.]

[(4) Advisory committee members shall serve staggered, three-year terms.]

[(5) The advisory committee shall elect a member to serve as its chair.]

[(6) The Commissioner may remove an advisory committee member who is absent for three consecutive meetings of the advisory committee.]

§13.124. Standards and Accounting Methods for Determining Restricted Research Expenditures.

(a) Only expenditures from restricted research awards made from the following types of projects and activities and sponsored by federal, state, or local governmental agencies; private philanthropic organizations and foundations; for-profit businesses; or individuals shall be classified as restricted research expenditures:

(1) Sponsored R&D, as defined in §13.122 of this title (relating to Definitions).

[(2) Industrial Collaboration Agreements for R&D activities, as defined in §13.122 of this title.]

[(3) Demonstration Projects, as defined in §13.122 of this title, which have a significant new R&D component.]

(2) [(4)] Sponsored instruction and training, as defined in §13.122 of this title.[, for curriculum development projects when the primary purpose of the project is developing and testing an instructional or educational model through appropriate research methodologies that include data collection, evaluation, dissemination, and publication.]

(3) Restricted gifts for R&D as defined in §13.122 of this title.

(4) Other sponsored activities as defined in §13.122 of this title.

(5) Pass-through funds as defined in §13.122 of this title, that are to entities other than RDF-eligible institutions.

(6) [(5)] Multiple Function Awards, as defined in §13.122 of this title if the scope or activities of the restricted awards include R&D, these are subject to the following limitation: if the purpose of a restricted award is primarily (more than 50 percent) research, then all expenditures made from that award qualify as restricted research expenditures. If the purpose of the restricted award is not primarily research (less than 50 percent), then none of the expenditures may be counted as restricted research. Primary purpose will normally be demonstrated by more than half of the funds having been budgeted for research, but may be demonstrated by the sponsor's statement of purpose or other documented evidence.

(b) Institutions shall document the process for determining restricted research awards and shall maintain documentation justifying the rationale used to classify the awards as restricted research.

§13.125. Report on Restricted Research Awards.

(a) Not later than June 30, each eligible institution shall provide to the Commissioner a verified report of all restricted research awards for the current state fiscal year. Only those projects or activities described in §13.124 of this title (relating to Standards and Accounting Methods for Determining Restricted Research Expenditures) shall be included in the report.

(1) Classified military projects or any sponsored program deemed confidential or proprietary by funding entities shall not be included in the award lists.

[~~(2) If the project or activity is pursuant to an award from the federal government, it shall be classified by the federal government as R&D.~~]

(2) [~~(3)~~] The report shall be in a format and with the specific content prescribed by the Commissioner.

(3) [~~(4)~~] The report shall indicate the person or persons who determined that the projects or activities were restricted research projects or activities.

(4) [~~(5)~~] The Commissioner shall provide the reports made under this section to each eligible institution.

(b) Not later than July 31 of each year, the Commissioner shall convene a review panel of representatives of all eligible institutions. Each [~~The president of each~~] eligible institution shall recommend a [~~the institution's~~] representative to serve on the review panel.

(1) The Commissioner shall provide each review panel member with a copy of each eligible institution's report on restricted research awards.

(2) The review panel shall examine the institutions' reports on restricted research awards and provide a report to the Commissioner, recommending to the Commissioner those awards from which expenditures may be classified as restricted research expenditures.

(3) The Commissioner shall review the report of the review panel and determine those awards from which expenditures may be classified as restricted research expenditures.

(4) Not later than August 15, the Commissioner shall provide each institution with a copy of the recommendations of the review panel and notify each institution of its awards from which expenditures may be classified as restricted research expenditures.

(5) If an institution wishes to appeal the classification of a restricted research award, the President of the institution shall notify the Commissioner, in writing, not later than September 1. The Commissioner will review the appeal, determine whether to re-classify the expenditure, and notify the institution of the decision.

§13.126. Reporting [~~Reports~~] of Restricted Research Expenditures and Use of Allocated Funds.

(a) Not later than October 15, each eligible institution shall provide a verified, preliminary report of its restricted research expenditures to the Commissioner. [~~The Preliminary Report will include restricted research expenditures from the awards approved by the Commissioner under §13.125 of this title (relating to Report on Restricted Research Awards).~~]

(1) The Preliminary Report will include restricted research expenditures from the awards approved by the Commissioner under §13.125 of this title (relating to Report on Restricted Research Awards).

(2) [~~(1)~~] Expenditures for indirect costs of any restricted research award shall not be included in the Preliminary Report.

[~~(2) Expenditures for pass-throughs to sub-recipients shall not be included in the report.~~]

(b) [~~(3)~~] Not later than November 1 of each fiscal year for which there is an appropriation for [~~the~~] Research Development Fund, the Commissioner shall provide a preliminary restricted research expenditure report to the Comptroller and recommend funding allocations from the Research Development Fund to eligible institutions.

(c) [~~(4)~~] The funds shall be apportioned among the eligible institutions based on the average amount of restricted research expenditures [~~funds~~] by each institution per year for the three preceding state fiscal years.

(d) [~~(5)~~] Not later than December 1, [~~and after completion of the institutions' annual financial reports, and revisions based on corrections from audits,~~] each eligible institution that received an RDF allocation in the preceding fiscal year shall provide the Commissioner and the Legislative Budget Board with a [~~final~~] report that describes how the institution used the allocated funds in the preceding fiscal year [~~of restricted research expenditures~~]. The report shall [~~Final Report will~~] include a description of [~~research expenditures, including~~] expenditures of allocated funds received during prior [~~preceding~~] fiscal years.

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

Filed with the Office of the Secretary of State on July 25, 2011.

TRD-201102795

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Proposed date of adoption: October 27, 2011

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

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TITLE 22. EXAMINING BOARDS

PART 17. TEXAS STATE BOARD OF PLUMBING EXAMINERS

CHAPTER 361. ADMINISTRATION

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §361.6

The Texas State Board of Plumbing Examiners (Board) proposes amendments to §361.6, which specifies certain fees charged by the Board, including fees for initial applications for licenses, endorsements, and registrations, as well as examinations, renewals and late renewal fees.

The proposed amendments to §361.6 are necessary in order for the Board to utilize revenue, as provided in Article VIII and Article IX of the General Appropriations Act (House Bill 1, 82nd Legislature, Regular Session), which is contingent upon the Board assessing fees sufficient to generate $342,948 in additional revenue, during the 2012-2013 biennium. Under the current fee structure, the Board will not generate enough revenue during the 2012-2013 biennium to meet the amount necessary for the Board to access the contingent revenue.

The amendments will create a new category of "Responsible Master Plumber." Under the amendments, the Responsible Master Plumber will pay the same fee as the Master Plumber.

Robert L. Maxwell, Executive Director of the Texas State Board of Plumbing Examiners, has determined that, as a result of the rule amendments, there will be a fiscal impact to individuals who wish to obtain and renew the licenses or registrations. As shown below, each of the following categories of fees will be increased by approximately seven percent:

Figure 1: 22 TAC Chapter 361--Preamble

Mr. Maxwell has also determined that for the first five-year period that the amendments are in effect, persons who annually renew licenses and registrations will be fiscally impacted by pay-

ing increased license renewal fees over a five-year period, in the following amounts:

Figure 2: 22 TAC Chapter 361--Preamble

As required by §1301.403(e) of the Plumbing License Law, individuals who fail to renew any of the above stated licenses or registrations by the annual renewal date of the license or registration must pay an additional late fee in order to renew a license. Individuals who renew an expired license or registration within 90 days after the expiration of the license or registration will pay an additional increased late renewal fee equal to one-half of the renewal fee. Individuals who renew an expired license or registration more than 90 days after the expiration of the license or registration will pay an additional increased late renewal fee equal to the renewal fee. As prohibited by §1301.403(d) of the Plumbing License Law, no individual may renew a license or registration that has been expired for two years or more.

Economic Impact Statement and Regulatory Flexibility Analysis

Texas Government Code §2006.002, as amended by the 80th Legislature, HB 3430, requires an agency to perform an Economic Impact Statement and Regulatory Flexibility Analysis if a proposed rule could have an adverse economic impact on small businesses. The Board licenses individuals and not businesses. Only individuals may hold a plumbing license, endorsement or registration and be required to pay examination, license, endorsement, registration, and renewal fees. Because the Board does not license businesses or require businesses to pay fees, the rule amendments will have no mandated adverse economic impact on small businesses.

Additionally, Mr. Maxwell has determined that each year of the first five years the amendments are in effect there should be no mandated adverse economic impact on local or state government.

The public benefit anticipated as a result of adopting these amendments will be the Board's ability to better protect the heath, safety and welfare of the citizens by utilizing additional funding for administration and enforcement the Plumbing License Law and Board Rules. Administration and enforcement of the Plumbing License Law includes the investigation of consumer complaints, job-site compliance checks and pursuing action against persons who choose to endanger the health, safety and welfare of the citizens by violating the Plumbing License Law and Board Rules.

Comments on the proposed rule amendments may be submitted within 30 days of publication of these proposed rule amendments in the *Texas Register,* to Robert L. Maxwell, Executive Director, Texas State Board of Plumbing Examiners, 929 East 41st Street, P.O. Box 4200, Austin, Texas 78765-4200, or by email to info@tsbpe.state.tx.us.

The amendments to §361.6 are proposed under and affect Title 8, Chapter 1301, Occupations Code ("Plumbing License Law" or "Act"), §§1301.251, 1301.253, and 1301.403, the rule it amends and the General Appropriation Acts, Article VIII, Board of Plumbing Examiners (House Bill 1, 82nd Legislature, Regular Session). Section 1301.251 requires the Board to adopt and enforce rules necessary to administer the Plumbing License Law. Section 1301.253 requires the Board to set fee amounts that are reasonable and necessary to cover the costs of administering the Act. Section 1301.403 sets forth the requirements for renewal of a license. The General Appropriations Act, Article VIII and Article IX (House Bill 1, 82nd Legislature, Regular Session), provides additional funding to the Board contingent upon the Board assessing fees sufficient to generate $342,948 in additional revenue, during the 2012-2013 biennium. The amendments to §361.6 are also proposed under Texas Government Code §2006.002, as amended by the 80th Legislature, HB 3430, which requires an agency to perform an Economic Impact Statement and Regulatory Flexibility Analysis if a proposed rule could have an adverse economic impact on small businesses.

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

§361.6. Fees.

(a) The Board has established the following fees:

(1) Initial Licenses, Endorsements and Registrations

(A) Responsible Master Plumber--$246;

(B) [~~(A)~~] Master Plumber license--$246 [$~~230~~];

(C) [~~(B)~~] Journeyman Plumber license--$43 [$~~40~~];

(D) [~~(C)~~] Medical gas installation endorsement (Master)--$55;

(E) [~~(D)~~] Medical gas installation endorsement (Journeyman)--$14;

(F) [~~(E)~~] Plumbing inspector license--$55;

(G) [~~(F)~~] Water supply protection specialist endorsement (Journeyman)--$14;

(H) [~~(G)~~] Water supply protection specialist endorsement (Master)--$55;

(I) [~~(H)~~] Tradesman Plumber-Limited License--$39 [$~~36~~];

(J) [~~(I)~~] Plumber's Apprentice Registration/Application--$19 [$~~18~~];

(K) [~~(J)~~] Residential Utilities Installer Registration/Application--$18;

(L) [~~(K)~~] Drain Cleaner Registration/Application--$18;

(M) [~~(L)~~] Drain Cleaner-Restricted Registration/Application--$18;

(N) [~~(M)~~] Multipurpose Residential Fire Protection Sprinkler Specialist endorsement (Master)--$55;

(O) [~~(N)~~] Multipurpose Residential Fire Protection Sprinkler Specialist endorsement (Journeyman)--$14.

(2) Examinations

(A) Master Plumber examination--$175;

(B) Journeyman Plumber examination--$40;

(C) Medical gas installation endorsement (Master)--$80;

(D) Medical gas installation endorsement (Journeyman)--$27;

(E) Plumbing inspector examination--$55;

(F) Water supply protection specialist endorsement (Journeyman)--$27;

(G) Water supply protection specialist endorsement (Master)--$80;

(H) Tradesman Plumber-Limited Licensee--$36;

(I) Multipurpose Residential Fire Protection Sprinkler Specialist endorsement (Master)--$80;

(J) Multipurpose Residential Fire Protection Sprinkler Specialist endorsement (Journeyman)--$27.

(3) Renewals

(A) Responsible Master Plumber--$246;

(B) [~~(A)~~] Master Plumber license--$246 [~~$230~~];

(C) [~~(B)~~] Journeyman Plumber license--$43 [~~$40~~];

(D) [~~(C)~~] Medical gas installation endorsement (Master)--$55;

(E) [~~(D)~~] Medical gas installation endorsement (Journeyman)--$14;

(F) [~~(E)~~] Plumbing inspector license--$55;

(G) [~~(F)~~] Water supply protection specialist endorsement (Journeyman)--$14;

(H) [~~(G)~~] Water supply protection specialist endorsement (Master)--$55;

(I) [~~(H)~~] Plumbing Inspector with a Master and/or Journeyman License--$55;

(J) [~~(I)~~] Master Plumber with Journeyman Plumber License--$246 [~~$230~~];

(K) [~~(J)~~] Tradesman Plumber-Limited License--$39 [~~$36~~];

(L) [~~(K)~~] Plumber's Apprentice Registration--$19 [~~$18~~];

(M) [~~(L)~~] Residential Utilities Installer Registration--$18;

(N) [~~(M)~~] Drain Cleaner Registration--$18;

(O) [~~(N)~~] Drain Cleaner-Restricted Registration--$18;

(P) [~~(O)~~] Multipurpose Residential Fire Protection Sprinkler Specialist endorsement (Master)--$55;

(Q) [~~(P)~~] Multipurpose Residential Fire Protection Sprinkler Specialist endorsement (Journeyman)--$14.

(4) Other fees

(A) Late renewal

(i) Responsible Master Plumber--$246;

(I) less than 90 days--one-half renewal fee--$123;

(II) more than 90 days--renewal fee--$246;

(ii) [~~(i)~~] Master Plumber:

(I) less than 90 days--one-half renewal fee--$123 [~~$115~~];

(II) more than 90 days--renewal fee--$246 [~~$230~~];

(iii) [~~(ii)~~] Medical gas installation endorsement (Master):

(I) less than 90 days--one half renewal fee--$27.50;

(II) more than 90 days--renewal fee--$55;

(iv) [~~(iii)~~] Medical gas installation endorsement (Journeyman):

(I) less than 90 days--one half renewal fee--$7;

(II) more than 90 days--renewal fee--$14;

(v) [~~(iv)~~] Journeyman Plumber:

(I) less than 90 days--one-half renewal fee--$21.50 [~~$20~~];

(II) more than 90 days--renewal fee--$43 [~~$40~~];

(vi) [~~(v)~~] Water supply protection specialist (Journeyman):

(I) less than 90 days--one half renewal fee--$7;

(II) more than 90 days--renewal fee--$14;

(vii) [~~(vi)~~] Water supply protection specialist (Master):

(I) less than 90 days--one half renewal fee--$27.50;

(II) more than 90 days--renewal fee--$55;

(viii) [~~(vii)~~] Plumbing Inspector:

(I) less than 90 days--one half renewal fee--$27.50;

(II) more than 90 days--renewal fee--$55;

(ix) [~~(viii)~~] Master Plumber with Journeyman Plumber:

(I) less than 90 days--one half renewal fee--$123 [~~$115~~];

(II) more than 90 days--renewal fee--$246 [~~$230~~];

(x) [~~(ix)~~] Plumbing Inspector with Master and/or Journeyman Plumber:

(I) less than 90 days--one half renewal fee--$27.50;

(II) more than 90 days--renewal fee--$55;

(xi) [~~(x)~~] Tradesman Plumber-Limited License:

(I) less than 90 days--one half renewal fee--$19.50 [~~$18~~];

(II) more than 90 days--renewal fee--$39 [~~$36~~];

(xii) [~~(xi)~~] Plumber's Apprentice Registration:

(I) less than 90 days--one half renewal fee--$9.50 [~~$9~~];

(II) more than 90 days--renewal fee--$19 [~~$18~~];

(xiii) [~~(xii)~~] Residential Utilities Installer Registration:

(I) less than 90 days--one half renewal fee--$9;

(II) more than 90 days--renewal fee--$18;

(xiv) [~~(xiii)~~] Drain Cleaner Registration:

(I) less than 90 days--one half renewal fee--$9;

(II) more than 90 days--renewal fee--$18;

(xv) [~~(xiv)~~] Drain Cleaner-Restricted Registration:

(I) less than 90 days--one half renewal fee--$9;

(II) more than 90 days--renewal fee--$18;

(xvi) [~~(xv)~~] Multipurpose Residential Fire Protection Sprinkler Specialist endorsement (Master):

(I) less than 90 days--one half renewal fee--$27.50;

(II) more than 90 days--renewal fee--$55;

(xvii) [~~(xvi)~~] Multipurpose Residential Fire Protection Sprinkler Specialist endorsement (Journeyman):

(I) less than 90 days--one half renewal fee--$7;

(II) more than 90 days--renewal fee--$14.

(B) Instructor Certification Training (Per Day)--$100.

(C) Duplicate license or registration--$10.

(D) Returned check--$25.

(E) Fees for provisional licenses issued under §1301.358 of the Plumbing License Law are equal to the initial license fees established in paragraph (1) of this subsection.

(b) Methods of payment

(1) Fees paid electronically through the Texas Online website, which may be accessed from the Texas State Board of Plumbing Examiners' website, may be made in the form of credit card or check.

(2) Fees paid by mail or in person may be made in the form of money order, cashier's check, personal check, business check, or the exact amount of cash (cash payments by mail are not recommended).

(3) An individual shall pay the appropriate fee prior to the time of examination. For License, Registration, Endorsement, and renewal, the appropriate fee shall be paid prior to issuance of the License, Registration, Endorsement, or renewal.

(4) The board, under any special circumstances it finds appropriate, may:

(A) waive any requirements concerning the method or timing of payment of any fee;

(B) refund any fee; or

(C) waive payment of any fee not required by statute.

(5) Any fee paid for a license, endorsement or registration which has been denied or revoked due to a criminal conviction under §363.2 of this title (relating to Consequences to the Applicant With Criminal Conviction) or any violation of the Plumbing License Law or Board Rules shall not be refunded.

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 July 20, 2011.

TRD-201102754
Robert L. Maxwell
Executive Director
Texas State Board of Plumbing Examiners
Earliest possible date of adoption: September 4, 2011
For further information, please call: (512) 936-5224

TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 1. MISCELLANEOUS

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes the repeal of §§1.501 - 1.503 and new §§1.501 - 1.504, concerning the privacy of health information. The chapter name will change from "Texas Board of Health" to "Miscellaneous".

BACKGROUND AND PURPOSE

The rules were promulgated to implement the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), which protects the privacy of a client's individually identifiable health information. The rules allow individuals to exercise their rights under the federal Standards for Privacy of Individually Identifiable Health Information, 45 Code of Federal Regulations (C.F.R.) Parts 160 and 164. The repeal of §§1.501 - 1.503 and new §§1.501 - 1.504 will reorganize and explain the rules governing privacy practices of health information and procedures for improved clarity and non-substantive procedural changes. Also, references to legacy agencies within the rules are updated.

Government Code, §2001.039, requires that each state agency review a rule not later than the fourth anniversary of the date on which the rule takes effect and considers for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 1.501 - 1.503 have been reviewed and the department has determined that, except as revised and renumbered under the proposed new rules, as further described in this preamble, the reasons for adopting the sections continue to exist to inform persons of the department's privacy practices and how to exercise their privacy rights with the department.

SECTION-BY-SECTION SUMMARY

The repeal of §§1.501 - 1.503 and new §§1.501 - 1.504 allow for reorganization and clarification of the rules governing the department's privacy practices.

New §1.501 informs individuals of the department's privacy practices and procedures. For clarification purposes, it contains added terms and definitions consistent with 45 C.F.R. §164.103. Various rights of an individual are discussed in this section, including the right to receive notice of privacy practices, the right of access to protected health information, the right to request an amendment to a designated record set, the right to receive an accounting of certain disclosures, the right to request further limits on uses and disclosures of protected health information, the right to request confidential communication, and the right to file a complaint. The section also includes the uses and disclosures of protected health information among Health and Human Services System agencies, and other state agencies.

New §1.502 was added to specify the requirements for designated health care components within the department to comply with all applicable state and federal confidentiality provisions and to collect, use, or disclose protected health information in accordance with applicable state and federal law. This section states the right of an individual to file a complaint with a program or office within the department for an alleged violation of state and/or

federal law as it relates to the confidentiality of protected health information.

New §1.503 informs of an individual's right to correct information collected by and in the possession of the department. It also sets forth the requirements and procedures to request corrections. (This section was previously §1.502 and renumbered as §1.503.)

New §1.504 specifies department procedures in responding to requests to correct information collected by and in the possession of the department. (This section was previously §1.503 and renumbered as §1.504.)

FISCAL NOTE

Olga Rodriguez, Director, Centers for Program Coordination and Health Policy, has determined that for each year of the first five years that the sections will be in effect, there will be no additional fiscal implications to state or local governments as a result of enforcing and administering the sections as proposed. The department and its contractors are already subject to HIPAA regulations and will be subject to any amendments to those requirements.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Olga Rodriguez has also determined that there will be no adverse impact on small businesses or micro-businesses required to comply with the sections as proposed. The proposed rules are applicable to the department and individuals who exercise their privacy rights. Thus, small businesses and micro-businesses will not be required to alter their business practices to comply with the sections.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no new anticipated economic costs to persons who are required to comply with the sections as proposed. Economic costs are limited to charges paid by individuals to access and obtain copies of records in accordance with the Public Information Act and §1.251 of this title relating to Procedures for Handling Requests for Public Information. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Olga Rodriguez has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of administering the sections is to inform the general public about their individual rights and the department's responsibility regarding protected health information.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Comments on the proposal may be submitted to Mirsa Douglass, DSHS Privacy Officer, Department of State Health Services, Mail Code 1915, P.O. Box 149347, Austin, Texas 78714-9347 or hipaa.privacy@dshs.state.tx.us. Comments will be accepted for 30 days following publication of this proposal in the *Texas Register.*

LEGAL CERTIFICATION

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

SUBCHAPTER W. PRIVACY POLICY

25 TAC §§1.501 - 1.503

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

STATUTORY AUTHORITY

The repeals are authorized by Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The repeals affect Government Code, Chapter 531; and Health and Safety Code, Chapter 1001.

§1.501. Privacy of Health Information.

§1.502. Individual's Right to Correction of Incorrect Information.

§1.503. Correction Procedure.

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 July 25, 2011.

TRD-201102799
Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: September 4, 2011
For further information, please call: (512) 776-6972

25 TAC §§1.501 - 1.504

STATUTORY AUTHORITY

The new sections are authorized by Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules necessary for the operation and provision of health and human services by the department

and for the administration of Health and Safety Code, Chapter 1001.

The new sections affect Government Code, Chapter 531; and Health and Safety Code, Chapter 1001.

§1.501. Privacy of Health Information under the Health Insurance Portability and Accountability Act of 1996.

(a) Purpose.

(1) The purpose of this section is to inform individuals of the department's privacy practices and establish department procedures to allow individuals to exercise their rights under the federal Standards for Privacy of Individually Identifiable Health Information, 45 Code of Federal Regulations (C.F.R.) Parts 160 and 164, which were promulgated to implement the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

(2) The department is a hybrid entity as that term is defined in 45 C.F.R. §164.103. The department has designated its health care components in accordance with 45 C.F.R. §164.105(a)(2)(iii)(C). Unless otherwise specified, this section applies only to the designated health care components within the department.

(b) Definitions. Unless otherwise specified, terms have the meaning assigned by 45 C.F.R. §160.103, §164.103, and §164.501, or their common use meaning.

(1) Department--The Department of State Health Services.

(2) Designated health care component--A program or office within the department that performs services or functions as a covered entity.

(3) Designated record set--A group of records maintained by or for a designated health care component of the department that consists of:

(A) the medical records and billing records about individuals maintained by or for the department when the department provides direct health care services;

(B) the enrollment, payment, claims adjudication, and case or medical management records systems maintained by or for health plans within the department; or

(C) records that contain protected health information used, in whole or in part, by or for the department to make decisions about individuals regarding eligibility, prior authorization, treatment, or payment.

(4) Health and Human Services (HHS) System--Interchangeably known as the HHS Enterprise, the coordinating entity providing common direction for the five agencies that comprise it are as follows:

(A) Health and Human Services Commission (HHSC);

(B) Department of Aging and Disability Services (DADS);

(C) Department of Assistive and Rehabilitative Services (DARS);

(D) Department of Family and Protective Services (DFPS); and

(E) Department of State Health Services (DSHS).

(5) Protected health information (PHI)--Individually identifiable health information about an individual, including demographic information, which relates to the individual's past, present, or future physical or mental health condition, provision of health care, or payment for the provision of health care.

(6) Record--Any item, collection, or grouping of information that includes PHI and is created, maintained, collected, used, or disseminated by or for a designated health care component of the department.

(c) Right to notice of privacy practices.

(1) An individual has the right to receive notice of how the department uses and discloses PHI and of the individual's rights and the department's duties with respect to PHI.

(2) A designated health care component of the department where an individual receives services shall post the notice of privacy practices in a prominent location.

(3) An individual may request a copy of the notice from:

(A) the department clinic, hospital, or office where the individual received or receives services;

(B) the department's Internet web site at www.dshs.state.tx.us/hipaa/privacynotices.shtm; or

(C) the department's Privacy Officer by sending a request in writing to the department's Privacy Officer's e-mail address at hipaa.privacy@dshs.state.tx.us or by mail to the DSHS Privacy Officer, Mail Code 1915, P.O. Box 149347, Austin, Texas 78714-9347.

(d) Right of access to protected health information.

(1) An individual has the right to view or obtain a copy of PHI about the individual for as long as the PHI is maintained by the department.

(2) An individual shall follow the Public Information Act, Government Code, Chapter 552, and the department's procedures in §1.251 of this title (relating to Procedures for Handling Requests for Public Information) to access and obtain copies of PHI about the individual held by the department. Requests that are submitted by entities or by persons authorized by state or federal law to obtain an individual's medical or behavioral health records, which were created within department mental health facilities, other state hospitals, clinics, or laboratories are excluded from following the requirements of the Public Information Act.

(3) The department shall follow the time requirements and access procedures in the Public Information Act and in §1.251 of this title to provide access to and copies of records under this section.

(4) The department shall charge the same amount for copies of records under this section as charged for copies under the Public Information Act and §1.251 of this title or as specified by other state or federal law.

(5) The department may deny access to records in a designated record set. The department shall send a denial letter explaining why access has been denied. The individual has a right to request a review of the department's decision if the decision was based on any of the following reasons:

(A) a licensed health care professional decided that giving the individual access to the information would likely put the individual or another person in danger;

(B) the information refers to another person other than a health care provider, and a licensed health care professional decided that giving the individual access to the information would likely cause the other person substantial harm; or

(C) the individual's personal representative asked for the information, and a licensed health care professional decided that giving the personal representative access to the information would likely cause the individual or another person substantial harm.

(6) If the denial is reviewable, the department shall provide the individual with instructions in a denial letter about how to request a review of the decision.

(e) Right to request an amendment to a designated record set.

(1) An individual has the right to request an amendment to PHI about the individual in a designated record set.

(2) An individual shall follow the procedures in §1.503 of this title (relating to an Individual's Right to Correction of Incorrect Information) to request an amendment to PHI in a designated record set.

(3) The department shall follow the procedures in §1.504 of this title (relating to Correction Procedure) for amendments to designated record sets under this section.

(4) The department may deny a request for amendment for any of the following reasons:

(A) the department could deny access to the information under subsection (d) of this section;

(B) the department did not create the information;

(C) the information is not contained in a designated record set; or

(D) the information is correct and complete.

(5) If the request for amendment is denied, the department shall send a letter explaining the decision and include instructions on how the individual can submit a written statement of disagreement with the department's decision. The written statement must contain specific facts that explain the basis for the disagreement.

(f) Right to receive an accounting of certain disclosures made by a designated health care component of the department.

(1) An individual has the right to receive an accounting of certain disclosures of the individual's PHI made by a designated health care component of the department.

(2) The types of disclosures that must be included in the accounting are described in 45 C.F.R. §164.528.

(3) An individual may submit a written request for a list of the designated health care components of the department to the department's Privacy Officer at the Privacy Officer's electronic mail address at hipaa.privacy@dshs.state.tx.us or by mail to the DSHS Privacy Officer, Mail Code 1915, P.O. Box 149347, Austin, Texas 78714-9347.

(4) An individual may submit a written request for an accounting of certain disclosures of the individual's PHI made by a designated health care component of the department to either:

(A) the designated health care component of the department that is in possession of the individual's PHI; or

(B) the department's Privacy Officer at the Privacy Officer's electronic mail address at hipaa.privacy@dshs.state.tx.us or by mail to the DSHS HIPAA Privacy Officer, Mail Code 1915, P.O. Box 149347, Austin, Texas 78714-9347.

(5) A request for a report submitted to the department's Privacy Officer must include the name(s) of the designated health care component of the department from which a report is requested.

(g) Right to request further limits on uses and disclosures of protected health information.

(1) An individual has the right to request that the department restrict its uses and disclosures of PHI about the individual; however, the department is not required to agree to any restrictions that are not required by law, rule, or regulation.

(2) An individual may submit a written request for restrictions of uses and disclosures to the department's Privacy Officer at the Privacy Officer's electronic mail address at hipaa.privacy@dshs.state.tx.us or by mail to the DSHS HIPAA Privacy Officer, Mail Code 1915, P.O. Box 149347, Austin, Texas 78714-9347.

(h) Right to request confidential communication from a designated health care component of the department by different means or at different locations.

(1) An individual has the right to submit a written request that the individual receive communications of PHI from a designated health care component of the department in a way and in a place that is most appropriate for the individual. The written request must specify the reasonable accommodations that are required and the designated health care component of the department to which the request relates.

(2) An individual may submit a written request for accommodation to:

(A) the designated health care component of the department that is in possession of the individual's PHI; or

(B) the department's Privacy Officer at the Privacy Officer's electronic mail address at hipaa.privacy@dshs.state.tx.us or by mail to the DSHS Privacy Officer, Mail Code 1915, P.O. Box 149347, Austin, Texas 78714-9347.

(3) The department shall provide a written approval or denial of the request for accommodation.

(i) Complaints.

(1) An individual has the right to complain about the department's privacy policies or how the department complies with its privacy policies related to PHI.

(2) An individual may file a complaint by telephone to the number printed on the department's HIPAA Privacy Notice, or in writing to:

(A) the department's Privacy Officer at the Privacy Officer's email address at hipaa.privacy@dshs.state.tx.us or by mail to DSHS Privacy Officer, Mail Code 1915, P.O. Box 149347, Austin, Texas 78714-9347; or

(B) Region VI - Dallas Office for Civil Rights (OCR), U.S. Department of Health and Human Services, by mail to 1301 Young Street, Suite 1169, Dallas, Texas 75202, or by email to OCR at OCRcomplaint@hhs.gov, or by phone at: (214) 767-4056, (214) 767-8940 (TDD), or by fax at (214) 767-0432; or

(C) the Texas Attorney General's Office, Consumer Protection Division, by mail at: P.O. Box 12548, Austin, Texas 78711 or at the Attorney General's Internet web site at http://www.oag.state.tx.us/consumer/complain.shtml.

(3) An individual may download a copy of a complaint form and instructions on how to file it at:

(A) the department's HIPAA Internet web site at http://www.dshs.state.tx.us/hipaa/privacycomplaints.shtm; or

(B) the U.S. Department Health and Human Services, OCR's Internet web site at http://www.hhs.gov/ocr/privacy/hipaa/complaints/index.html.

(j) Uses and disclosures of protected health information among HHS System agencies, and other state agencies.

(1) As authorized or required by law, programs or offices among HHS System agencies, and other state agencies may share PHI as necessary to accomplish the public health, health care oversight, business, and other essential functions of the HHS System, and other state agencies.

(2) The department shall use and disclose PHI within the department in accordance with the applicable requirements in 45 C.F.R. §164.504, and federal and state statutes that require the department to protect the confidentiality of PHI.

§1.502. Protecting the Confidentiality of Protected Health Information.

(a) Applicability. This section applies to all programs and offices within the department which have been designated as health care components.

(b) Other laws. The department may be authorized or required by certain state and federal laws to collect, use and disclose PHI. Each statute or rule that authorizes or requires the department to collect, use, and disclose PHI, makes this information confidential under certain circumstances. The department shall comply with all applicable confidentiality provisions and collect, use, and/or disclose PHI in accordance with applicable state and federal law.

(c) Complaints. An individual who believes the department has failed to comply with a state or federal confidentiality law may file a complaint with the program or office within the department that the person alleges has violated the law or with the DSHS Privacy Officer using the contact information contained in §1.501(i)(2)(A) of this title (relating to Privacy of Health Information under the Health Insurance Portability and Accountability Act of 1996).

§1.503. Individual's Right to Correction of Incorrect Information.

(a) Right to correction. An individual who believes that the information collected by and in the possession of the department on a form or through electronic media is incorrect has a right to have the department correct the information. The individual has no right to change information that was correct when submitted, but is no longer correct. An individual cannot request a change on a form that is submitted by another individual, except when he or she has legal authority to act on behalf of the other individual.

(b) Submittal of request. The individual must submit the correction request in writing to the program within the department that is in possession of the information. The program may be identified by correspondence received by the individual from the department, a request for public information from the individual, or the program to whom the form was submitted by the individual.

(c) Requirements for correction requests. The correction request must:

(1) specifically identify the program where the records are located and include the document name, and if known, the page and paragraph;

(2) specifically identify the information which the individual believes is incorrect;

(3) provide the department with sufficient information to establish that the information is incorrect and was incorrect at the time it was submitted by the individual; and

(4) provide the correct information.

§1.504. Correction Procedure.

(a) Acknowledgement. The program within the department shall provide an acknowledgement of receipt of the correction request to the requesting individual within 10 days from the receipt of the request.

(b) Review of request. The program with custody and control of the information shall review the information identified by the individual as incorrect and determine whether the information is in fact incorrect in the department's record.

(1) If the department determines that the information is incorrect in an electronic record or form, an individual with authority to access the information shall enter the correction into the record by electronic media, at or near the place where the incorrect information appears with the date, reason for the correction, by whom the correction was requested, and by whom the correction was made.

(2) If the department determines that the information is incorrect in a paper record or form, an individual with authority to access the information shall insert the information as submitted by the individual requesting the correction, along with an entry of the date, and the name of the individual inserting the correction.

(3) If the department determines that the information is correct, no correction shall be made to the information, and no entry of the request for correction shall be made in the department's record.

(c) Notification. The program or division within the department shall notify the individual that the record is already correct or has been corrected and provide the individual with a copy of the corrected information.

(d) Charges. The department shall not charge or bill a requesting individual for correction of an incorrect record.

(e) Records. The department shall not alter or destroy an original agency record or document in its possession except as required or authorized by law.

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 July 25, 2011.

TRD-201102800
Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: September 4, 2011
For further information, please call: (512) 776-6972

CHAPTER 267. PESTICIDE APPLICATORS

25 TAC §§267.1 - 267.17

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

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes the repeal of §§267.1 - 267.17,

concerning noncommercial pesticide applicators involved in health-related pest control programs.

BACKGROUND AND PURPOSE

The repeal of §§267.1 - 267.17 complies with House Bill (HB) 1530, 81st Legislature, Regular Session, 2009, which amended the Agriculture Code, Chapter 76, and transferred the noncommercial pesticide applicators licensing authority from the department to the Texas Department of Agriculture (TDA), effective September 1, 2009. License renewals were approved up to September 1, 2009, and individuals requesting license renewals after September 1, 2009, were directed to TDA for licensure.

SECTION-BY-SECTION SUMMARY

The repeal of §§267.1 - 267.17 is consistent with the legislation transferring all regulatory authority for noncommercial pest control from the department to the TDA, and will eliminate duplication of licensing rules for noncommercial health-related pesticide applicators.

FISCAL NOTE

Susan E. Tennyson, Section Director, Environmental and Consumer Safety Section, has determined that there will be no fiscal implications to the state or local governments as a result of repealing the sections as proposed, because these rules are no longer necessary with the program transfer from the department to the TDA.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Tennyson has also determined that there will be no effect on small businesses or micro-businesses resulting from the proposed repeal of the sections. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are impacted by the repeal. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Tennyson has also determined that for each year of the first five years the repeals are in effect, the public will benefit by eliminating duplicate rule requirements resulting from amendments incorporated into the Agriculture Code, Title 5, Subtitle E, Chapter 76, Pesticide and Herbicide Regulation, §76.102, referring to agencies responsible for licensing pesticide applicators by HB 1530.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal for repeal will only remove rule duplication; and protection of the environment and/or reduction of risks to human health from environmental exposure will continue to be enforced under the Texas Department of Agriculture.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Comments on the proposal may be submitted to Paula Anderson, Public Health Sanitation and Consumer Product Safety Group, Department of State Health Services, Mail Code 1987, P.O. Box 149347, Austin, Texas 78714-9347, (512) 834-6770, extension 2303, or by email to paula.anderson@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

LEGAL CERTIFICATION

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

STATUTORY AUTHORITY

The repeals are proposed under HB 1530, which authorizes the Texas Department of Agriculture to promulgate rules for the application of pesticides under 4 Texas Administrative Code Chapter 7, Pesticides, Subchapter H, Structural Pest Control Service; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and administration of Health and Safety Code, Chapter 1001.

The repeals affect the Texas Pesticide Control Act, Agriculture Code, Chapter 76; Government Code, Chapter 531; and Health and Safety Code, Chapter 1001.

§267.1. Introduction.

§267.2. Definitions.

§267.3. Fees.

§267.4. Application Procedures.

§267.5. Authorized Pesticide Users.

§267.6. Enforcement.

§267.7. Applicator Certification.

§267.8. Noncommercial Pesticide Applicator Recertification.

§267.9. Expiration and Renewal of Licenses.

§267.10. Operating without a License.

§267.11. Records.

§267.12. Inspection of Equipment.

§267.13. Complaint Investigation.

§267.14. Administrative Penalty.

§267.15. Use Inconsistent with Label Directions.

§267.16. Supervision.

§267.17. Processing Applications.

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 July 22, 2011.

TRD-201102770
Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: September 4, 2011
For further information, please call: (512) 776-6972

CHAPTER 289. RADIATION CONTROL
SUBCHAPTER C. TEXAS REGULATIONS FOR CONTROL OF RADIATION

25 TAC §289.102

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes new §289.102, concerning a memorandum of understanding between the department and the Railroad Commission of Texas (RRC) regarding radiation control functions.

BACKGROUND AND PURPOSE

The purpose of the new rule is to delineate areas of respective jurisdiction and to coordinate the respective responsibilities and duties of the department and the RRC in the regulation of sources of radiation in accordance with Health and Safety Code, §401.414, in order to provide a consistent approach and to avoid duplication of radiation control functions.

SECTION-BY-SECTION SUMMARY

The new rule establishes respective agency responsibilities regarding general agency jurisdiction, jurisdiction over specific activities and wastes, coordination of regulatory activities, coordination of enforcement and incident response activities, mutual assistance, and miscellaneous items.

FISCAL NOTE

Susan E. Tennyson, Section Director, Environmental and Consumer Safety Section, has determined that for each year of the first five years that the new section is in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the section as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Tennyson has also determined that there will be no adverse economic impact on small businesses or micro-businesses required to comply with the new section as proposed. This was determined by interpretation of the rule that small businesses and micro-businesses will not be required to comply with the section.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons because they are not required to comply with the section as proposed. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Tennyson has also determined that for each year of the first five years the section is in effect, the public will benefit from adoption of the section. The public benefit anticipated as the result of enforcing or administering this section is to ensure continued protection of the public, workers, and the environment from unnecessary exposure to radiation by ensuring that the department's and the RRC's jurisdictional responsibilities are clear and specific.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Comments on the proposal may be submitted to Barbara J. Taylor, Radiation Group, Policy/Standards/Quality Assurance Unit, Division of Regulatory Services, Environmental and Consumer Safety Section, Department of State Health Services, Mail Code 1987, P.O. Box 149347, Austin, Texas 78714-9347, (512) 834-6770, extension 2010, or by email to BarbaraJ.Taylor@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

PUBLIC HEARING

A public hearing to receive comments on the proposal will be scheduled after publication in the *Texas Register* and will be held at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas 78754. The meeting date will be posted on the Radiation Control website at www.dshs.state.tx.us/radiation. Please contact Barbara J. Taylor at (512) 834-6770, extension 2010, or BarbaraJ.Taylor@dshs.state.tx.us if you have questions.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rule has been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The new rule is authorized by Health and Safety Code, §401.414, which allows the department and the RRC to adopt a memorandum of understanding defining their respective duties; Health and Safety Code, §401.051, which provides the Executive Commissioner of the Health and Human Services Commission with authority to adopt rules and guidelines relating to the control of radiation; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the

operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The new rule affects Health and Safety Code, Chapters 401 and 1001; and Government Code, Chapter 531.

§289.102. Memorandum of Understanding between the Department of State Health Services and the Railroad Commission of Texas Regarding Radiation Control Functions.

(a) Purpose. The purpose of this Memorandum of Understanding (MOU) is to delineate areas of respective jurisdiction and to coordinate the respective responsibilities and duties of the Department of State Health Services (DSHS) and the Railroad Commission of Texas (RRC) in the regulation of sources of radiation in accordance with Health and Safety Code, §401.414, in order to provide a consistent approach and to avoid duplication. Nothing in this MOU shall be construed to reduce the statutory authority of either agency.

(b) Definitions. The words and terms used in this section shall have the same meaning as defined in the Health and Safety Code, §401.003, unless the context clearly indicates otherwise. Oil and gas naturally occurring radioactive material (NORM) waste is defined in the Health and Safety Code, §401.003(27), as solid, liquid, or gaseous material or combination of materials, excluding source material, special nuclear material, and by-product material, that:

(1) in its natural physical state spontaneously emits radiation;

(2) is discarded or unwanted;

(3) is not exempt by DSHS rule adopted under Health and Safety Code, §401.106; and

(4) constitutes, is contained in, or has contaminated oil and gas waste as that term is defined in the Natural Resources Code, §91.1011.

(c) General agency jurisdiction. The jurisdictional authority for each agency is as follows.

(1) RRC jurisdiction. In accordance with the Health and Safety Code, §401.415 (relating to Oil and Gas NORM Waste), the RRC has sole authority to:

(A) regulate and issue licenses, permits and orders for the disposal of oil and gas NORM waste; and

(B) in order to protect public health and safety and the environment, require the owner or operator of oil and gas equipment used in exploration, production, or disposal to determine whether the equipment contains or is contaminated with oil and gas NORM waste and identify any equipment determined to contain or be contaminated with oil and gas NORM.

(2) DSHS jurisdiction. The DSHS has jurisdiction to regulate and license the possession, receipt, use, handling, transfer, transport, and storage of all radioactive material in accordance with Health and Safety Code, §401.003(3)(A). The DSHS has sole jurisdiction to regulate and register or license the use or service of electronic products as defined in the Health and Safety Code, §401.003(9). The Health and Safety Code, §401.106, gives the DSHS the authority, through rulemaking by the Executive Commissioner of the Texas Health and Human Services Commission, to exempt a source of radiation or a kind of use or user from licensing or registration requirements.

(d) Jurisdiction over specific activities and wastes. Each agency has the following responsibilities.

(1) Disposal activities. The RRC has jurisdiction over the disposal of oil and gas NORM waste. For purposes of this MOU, disposal is defined in 16 TAC §4.603(3) (relating to Definitions) as "engaging in the act of discharging, depositing, injecting, dumping, spilling, leaking, or placing of any oil and gas NORM waste into or on any land or water, or causing or allowing any such act, so that such waste, or any constituent thereof, may enter the environment or be emitted into the air or discharged into any waters, including subsurface waters. For purposes of this subchapter, disposal of oil and gas NORM waste includes its management at the site (e.g., lease, unit, or facility) where disposal will occur when undertaken for the explicit purpose of facilitating disposal at that site. The term does not include decontamination activities, except for in-place mixing of oil and gas NORM waste to remedy historical contamination of the land surface and decontamination of equipment and facilities that become contaminated solely through disposal operations. In addition, the term does not include activities, including processing or treatment, that occurs at a location other than the disposal site."

(2) Decontamination activities. The DSHS has jurisdiction over decontamination activities, except for in-place mixing of oil and gas NORM waste to remedy historical contamination of the land surface and decontamination of equipment and facilities that become contaminated solely through disposal operations.

(3) Transportation activities. The DSHS has jurisdiction over the transportation of oil and gas NORM waste.

(4) Radioactive logging tools. The DSHS has jurisdiction over radioactive logging tools used during normal operations by the licensee. The RRC and the DSHS have jurisdiction over radioactive logging tools that are abandoned down hole.

(5) Radioactive tracers. The DSHS has jurisdiction over radioactive tracers used in normal operations by the licensee. The RRC has jurisdiction over Class II injection wells into which well logging screen out wastes (well returns) may be disposed in accordance with §289.253(u)(3) of this title (relating to Radiation Safety Requirements for Well Logging Service Operations and Tracer Studies).

(6) NORM-contaminated equipment. The DSHS has jurisdiction over NORM-contaminated equipment, except as stated in subsection (c)(1) of this section, and with respect to the RRC requirements for identification of equipment contaminated with oil and gas NORM in 16 TAC §4.605 (relating to Identification of Equipment Contaminated with NORM).

(7) Recycling/Scrap yards. The RRC has jurisdiction over the disposal of NORM-contaminated scale from oil and gas equipment that is managed at a pipe yard, scrap yard, or recycling facility. However, the decontamination of NORM-contaminated pipe and other equipment at any facility is under the jurisdiction of the DSHS. A DSHS-specific licensee would be required to perform the removal of NORM-contaminated scale on the ground at a pipe yard, scrap yard, or recycling facility in accordance with §289.259(i) of this title (relating to Licensing of Naturally Occurring Radioactive Material (NORM)). The removed NORM waste would require disposal in accordance with RRC regulations.

(e) Coordination of regulatory activities. The DSHS and the RRC shall coordinate with each other in the following activities.

(1) The DSHS and the RRC each agree to work together to ensure that complete regulation is maintained for radioactive materials and other sources of radiation associated with oil and gas exploration, development, and production operations. The DSHS and the RRC each agree to coordinate rulemaking activities between the two agencies and the Texas Radiation Advisory Board (TRAB) to ensure consistency of

regulation in accordance with the Health and Safety Code, §401.020. In addition, the RRC agrees to coordinate with the DSHS in the preparation of the annual evaluation and report to the Legislative Budget Board as required under the Government Code, §2110.006 and §2110.007. The DSHS and the RRC each agree to seek, and consider, advice from the TRAB on issues that involve management or disposal of NORM waste generated in connection with oil or gas exploration, development, or production operations.

(2) The DSHS and the RRC each agree to coordinate rulemaking activities that pertain to the requirements of the agreement between the State of Texas and the United States Nuclear Regulatory Commission, as amended, and to ensure that rules and guidelines are compatible with federal regulatory programs. Each agency agrees to coordinate with the other by providing information on any proposed legislation relating to the regulation of radioactive substances.

(3) The DSHS and the RRC each agree to meet as needed to discuss possible changes in this MOU and to encourage increased communication between the agencies.

(4) The DSHS and the RRC each agree to coordinate with the other agency with respect to activities involving radioactive sources that are lodged, abandoned, or lost down hole. Prior to approving abandonment procedures, tool recovery, well re-entry, and corrective action when a radioactive source has been breached or radiation otherwise escapes the source, RRC will assure coordination with DSHS to obtain concurrence.

(f) Coordination of enforcement and incident response activities. The DSHS has responsibility for enforcement of the conditions of its licenses and rules. The RRC has jurisdiction for enforcement of the conditions of its permits and rules. Each agency will refer to the other agency any complaints received that are the responsibility of the other agency. When deemed appropriate by both agencies, the RRC and the DSHS may jointly enforce permit and license terms and conditions, make joint inspections and incident investigations, and cooperate on enforcement actions. Each agency shall retain the authority to undertake separate enforcement or legal actions.

(g) Mutual assistance. The DSHS and the RRC may each request from the other agency short-term assistance of personnel or resources when there is need for such assistance, such as for performing training, environmental or public health or safety monitoring, or technical reviews. Each agency will provide the requested assistance to the extent possible without disrupting its own required activities.

(h) Miscellaneous.

(1) The RRC and the DSHS agree to revise their respective rules and procedures as needed to implement this MOU.

(2) If any provision of this MOU is held to be invalid, the remaining provisions shall not be affected thereby.

(i) Effective date. This MOU will take effect after approval by both agencies and 20 days after the date on which it is filed in the office of the secretary of state in accordance with the provisions of Government Code, §2001.036. This MOU will remain in effect until rescinded by either 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.

Filed with the Office of the Secretary of State on July 22, 2011.

TRD-201102763

Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: September 4, 2011
For further information, please call: (512) 776-6972

SUBCHAPTER E. REGISTRATION REGULATIONS

25 TAC §289.229, §289.231

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes amendments to §289.229, concerning radiation safety requirements for accelerators, therapeutic radiation machines, simulators, and electronic brachytherapy devices, and §289.231, concerning general provisions and standards for protection against machine-produced radiation.

BACKGROUND AND PURPOSE

Section 289.229 is being amended to correct rule citation references and update terminology to be consistent with current technology. New definitions and requirements for the use of electronic brachytherapy devices are added to include training requirements for physicians and operators; add operating and safety procedures; revisions to medical event notifications; and requirements for surveys, calibrations, and spot checks. The requirements for calibration of dosimetry systems for therapeutic radiation machines are revised.

Section 289.231 is being amended to correct rule citation references; update technical terminology; update department name, address and related form names; update licensing board names; revise the requirements for remote inspection procedures; and update record retention requirements.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Section 289.229 and §289.231 have been reviewed and the department has determined that the reasons for adopting these sections continue to exist because rules on these subjects are needed.

SECTION-BY-SECTION SUMMARY

Throughout §289.229, electronic brachytherapy device requirements are added to incorporate a new radiation therapy technology that is now regulated.

Throughout §289.229 and §289.231, minor grammatical and typographical corrections are made and rule reference citations are corrected and/or updated.

Concerning §289.229(b)(1), (c)(2) and (3), (d)(2), (e)(58), (70), and (84), the term "practitioner" is deleted and replaced with "physician" to clarify that therapeutic radiation machines shall be used by or under the direction of a physician.

New §289.229(b)(4) is added to clarify that a "covered entity" as defined in the Health Insurance Portability and Accountability Act (HIPAA) and its rules at 45 Code of Federal Regulations (CFR) §160.103, may be subject to privacy standards governing how information that identifies a patient can be used and disclosed and that failure to follow HIPAA requirements may result in the

department making a referral of a potential violation to the United States Department of Health and Human Services.

Concerning §289.229(e), electronic brachytherapy device definitions are added to incorporate terminology related to this new modality. Changes are reflected in §289.229(e)(24), (25), (26), and (60).

Concerning §289.229(e), definitions are revised and/or added to update technical terminology applicable to this section.

The new definition of "certified physician" in §289.229(e)(13) is added to specify the specialty of physicians practicing in radiation oncology or therapeutic radiology.

Concerning §289.229(e)(18), the phrase "For purposes of this section console is an equivalent term" is added to update the term "control panel" to clarify that either term is applicable.

New §289.229(e)(61) adds the definition of "prescribed dose" to ensure that the dose to the patient is administered as described in the "written directive."

New §289.229(e)(92) adds the definition of "virtual source" to specify where the electron and x-ray beam originates.

New §289.229(e)(94) adds the definition of "written directive" to specify written instructions for patient treatment.

Concerning §289.229(f)(1), new language is added to require a person having an accelerator for non-human use to receive a certificate of registration prior to energizing the radiation machine, with the exception of installation and acceptance testing.

In §289.229(f)(2)(C)(iii), (h)(2)(D)(i)(I) and (3)(C)(i), the word "initial" is added before "survey" to clarify that the documentation from the first radiation survey must be maintained.

In reference to §289.229(f)(3)(A)(ix), (h)(2)(A)(viii) and (xi), (h)(2)(D)(ii), (h)(3)(A)(iv), (h)(3)(C)(iii), (h)(4)(A)(v) and (viii), (h)(4)(C)(iv), (i)(1)(B), §289.231(c)(55) and (77), (m)(1)(D)(i), (m)(3)(A), (n)(1)(A), (u)(1), (dd)(2), (ll)(5), and the Figure in (ll)(2), the numbers written as a word are revised to a numerical digit.

Section 289.229(f)(3)(B), (h)(2)(D)(iii)(I), (3)(C)(ii)(I) and (iii)(I) is revised to clarify that written procedures may be documented in an electronic reporting system.

Amendments to §289.229(f)(3)(C), (h)(2)(D)(ii)(IV), (3)(C)(ii)(III)(-b-), and (4)(D)(iii)(II) revise the interval in which radiation measurements shall be performed to be consistent with other sections of this chapter.

New §289.229(f)(3)(G) and (h)(1)(I) add requirements for radiation surveys and contamination smears to incorporate program policy into rule.

Section 289.229(f)(3)(H) adds retention records for receipt, transfer and disposal of radiation machines to be consistent with equivalent requirements throughout the chapter.

Section 289.229(f)(5) and (h)(5) are deleted because record and document requirements are incorporated in other sections of this chapter.

Concerning §289.229(h)(1)(A), language is added to require each person possessing a therapeutic radiation machine capable of operating at or above 1 million electron volts to receive a certificate of registration prior to using the accelerator for human use, with the exception of installation and acceptance testing.

Section 289.229(h)(1) adds qualifications and device-specific training requirements for certified physicians and operators of electronic brachytherapy devices to ensure proper use of the radiation machine.

New §289.229(h)(1)(F) is added to require facilities using therapeutic radiation machines for human use to develop a quality assurance program as a method of minimizing deviations from facility procedures and to document preventative measures.

Concerning §289.229(h)(1)(G) and (2)(D)(iii)(II), the words "with a specialty in therapeutic radiological physics" are added to designate the required specialty necessary for physicists to practice in radiation therapy.

Concerning §289.229(h)(1)(G), the operating and safety procedure requirements are revised to specify applicability to all radiation therapy modalities. Additionally, new operating and safety procedures are added to update current safety practices and to be consistent with requirements specified throughout the chapter.

New §289.229(h)(1)(J) is added to establish criteria to perform acceptance testing on the treatment planning system of therapy-related computer systems in accordance with published protocols.

In Table I of Figure §229(h)(2)(A)(i), the system category for "contact therapy" is deleted because new radiation therapy technology makes this obsolete.

Regarding §289.229(h)(2)(D)(i)(I) and (3)(C)(i)(I), the specialty of "medical health physics" is deleted because it is not applicable for physicists to practice in radiation therapy.

Concerning §289.229(h)(2)(D)(ii)(III)(-c-), §289.231(c)(22) and (m)(1)(D)(i), the term "air kerma rates" is added to update technical terminology and is an equivalent term to exposure rates.

Concerning §289.229(h)(2)(D)(iii)(VII) and (3)(C)(iii)(VIII), the requirement that an intercomparison be conducted is deleted because the practice is unreliable.

In §289.229(h)(3)(A)(i), "mGy" is added as an equivalent unit of measure to "rad" to be consistent with International Systems of Units.

Concerning §289.229(h)(3)(A)(ii), (iv) - (vii), (xi), (xiv), and (xv), the term "new equipment" has been changed to "equipment manufactured after March 1, 1989" to clarify date specific manufacture of equipment.

Section 289.229(h)(3)(A)(iv)(II) deletes "existing equipment" and replaces it with "equipment manufactured on or before March 1, 1989" to clarify date specific manufacture of equipment.

In §289.229(h)(3)(A)(ii), (iv) - (vii) and (ix) - (xv), (3)(B)(iii) - (v) and (vii), (3)(C)(i), (4)(A)(i), and (4)(D)(ii)(II), the term "control panel" is changed to "console" to be consistent with technical language for radiation machines operating at 1 MeV or above.

Section 289.229(h)(3)(A)(iv)(III)(-e-)(-4-) changes the retention time period for the dose monitoring information from 20 minutes to 15 minutes to accommodate systems with a shorter retention time.

Concerning §289.229(h)(2)(D) and (3)(C), the heading is revised to delete "additional operating and safety procedures" because operating and safety procedure requirements have been moved to another subsection.

Concerning §289.229(h)(3)(C)(v), this clause is deleted to avoid the duplication of information since the requirements for operating and safety procedures applicable to all therapeutic radiation machines for human use are located in §289.229(h)(1)(G).

Concerning §289.229(h)(2)(D)(ii)(III)(-a-) and (3)(C)(ii)(VIII), the word "radiation" is added to "therapy system" to be consistent with language used throughout the section.

New §289.229(h)(3)(C)(ii)(VI) is added to require that therapeutic systems with new components installed be calibrated with an established protocol. In addition, language is added for consistency throughout the section.

Section 289.229(h)(4)(A)(x) adds quality assurance protocols for digital imaging acquisition systems to incorporate the new technology.

Concerning the Figure §289.229(h)(4)(B)(i), the current half value layer (HVL) table for simulators used in radiation therapy treatment planning is deleted and replaced with a new table to include updated HVL values to maintain compatibility with the United States Food and Drug Administration regulation.

New §289.229(h)(4)(C)(vii) adds language to ensure that the planned treatment is properly delivered to the patient.

Section 289.229(h)(4)(D)(iii)(I) adds language to clarify that this section does not apply to a CT system used for simulation purposes only however, if the CT system is also used for diagnostic procedures this section applies.

Section 289.229(h)(4)(D)(iii)(I)(-a-) adds provisions to require dose measurements of the CT unit to be performed within 30 days after installation rather than 12 months to ensure dose measurements are accurate at the time of installation. In addition, for compatibility with rules of this chapter and to be more time and cost effective, the interval for radiation output dose measurements by the physicist is extended from 12 months to 14 months.

In §289.229(h)(4)(D)(iii)(I)(-b-), as a result of deleting the words "except x-ray tube replacement," the rule specifies that a dose measurement be performed when the x-ray tube is replaced to ensure that dose to the patient is accurate.

Regarding §289.229(h)(4)(D)(iii)(III), language is added to specify the clause relating to CT dose measurements be consistent with requirements throughout the chapter.

In §289.229(i), (1), and (2), (j), and (1), the words "therapy event" are deleted and replaced with "medical events" to be consistent with language used throughout the chapter.

New §289.229(i)(2)(D) is added to provide provisions for accountability of cumulative radiation doses received through a combination of external beam radiation therapy and radioactive material therapy.

In reference to Figure §289.229(l), retention intervals are extended for: tests and repairs; calibration surveys; training for operators; credentials of operators; calibration of therapy devices at energies below and above 1 MeV; spot checks and corrective actions of therapy devices at energies below and above 1 MeV; and CT dose measurements so applicable records will be retained until the next inspection interval.

Section 289.231(c)(10), (49), and (50) is revised to reflect licensing board name changes.

Section 289.231(c)(4), (i)(1), (r)(2)(A) and (3), (aa)(2)(A)(ii), and (dd)(3) and (5), and the Figures in §289.231(aa)(2)(A)(ii) and (ll)(2), (6) and (7) are revised to reflect changes in the department name, address, and form name changes.

Relating to §289.231(c)(42)(C), language is added to ensure that a radiation machine categorized as minimal threat has not been known to cause an injury.

Concerning §289.231(c)(66), the verbiage "shallow dose equivalent applies to the external exposure of the skin of the whole body or the skin of an extremity" is added to be consistent with terminology defined throughout the chapter.

New §289.231(m)(4) is added to clarify how to calculate the effective dose equivalent as a part of the individual's annual radiation dose record.

New §289.231(o)(4) is added to provide provisions for accountability of cumulative radiation doses received through a combination of radiation producing machines and radioactive materials.

Concerning §289.231(t)(5), the title of §289.229 is updated to be consistent with the revised rule title.

Concerning §289.231(gg)(2)(C), the subparagraph is deleted because the disposition would be unknown if the radiation machine was reported stolen, lost, or missing.

In reference to §289.231(hh)(1), the language regarding notification of incidents is added to be consistent with requirements specified throughout this chapter.

Section 289.231(kk)(4)(C) adds the words "as determined by the agency" to permit the agency to change the types of radiation machines that are inspected remotely.

Concerning §289.231(kk)(4)(D), the subparagraph is deleted to allow the department to determine which modalities will have remote inspections performed.

FISCAL NOTE

Susan E. Tennyson, Section Director, Environmental and Consumer Safety Section, has determined that for each year of the first five years that §289.229 and §289.231 are in effect, there will be no fiscal implications to the state or local governments as a result of enforcing and administering the sections as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Tennyson has also determined that there will be no adverse economic impact on small businesses or micro-businesses required to comply with §289.229 and §289.231 as proposed. This is determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections. The facilities using therapeutic radiation machine are already required to have a licensed/certified physician and a licensed medical physicist with a specialty in therapeutic radiation on staff. Additional staff should not be necessary.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Tennyson has also determined that for each year of the first five years the sections are in effect, the public will ben-

efit from adoption of the sections. The public benefit anticipated as the result of enforcing or administering these sections is to ensure continued protection of the public, patients, workers, and the environment from unnecessary exposure to radiation by ensuring that rules are clear and specific.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Comments on the proposal may be submitted to Barbara J. Taylor, Radiation Group, Policy, Standards and Quality Assurance Unit, Division of Regulatory Services, Environmental and Consumer Safety Section, Department of State Health Services, Mail Code 1987, P.O. Box 149347, Austin, Texas 78714-9347, (512) 834-6770, extension 2010, or by email to BarbaraJ.Taylor@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

PUBLIC HEARING

A public hearing to receive comments on the proposal will be scheduled after publication in the *Texas Register* and will be held at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas 78754. The meeting date will be posted on the Radiation Control website (www.dshs.state.tx.us/radiation). Please contact Barbara J. Taylor at (512) 834-6770, extension 2010, or BarbaraJ.Taylor@dshs.state.tx.us if you have questions.

LEGAL CERTIFICATION

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

STATUTORY AUTHORITY

The amendments are authorized by Health and Safety Code, §401.051, which provides the Executive Commissioner of the Health and Human Services Commission with authority to adopt rules and guidelines relating to the control of radiation; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. The review of the rules implements Government Code, §2001.039.

The amendments affect the Health and Safety Code, Chapters 401 and 1001; and Government Code, Chapter 531.

§289.229. Radiation Safety Requirements for Accelerators, Therapeutic Radiation Machines, [~~and~~] Simulators, and Electronic Brachytherapy Devices.

(a) Purpose. This section establishes radiation safety requirements for the use of accelerators, therapeutic radiation machines, [~~and~~] radiation therapy simulation systems (simulators), and electronic brachytherapy devices. No person shall possess, use, transfer, or acquire an accelerator, a therapeutic radiation machine, [~~or~~] a radiation therapy simulation system (simulator), or electronic brachytherapy device, except as authorized in a certificate of registration issued in accordance with §289.226 of this title (relating to Registration of Radiation Machine Use and Services) or as otherwise provided for in this chapter.

(b) Scope.

(1) This section applies to persons who receive, possess, use or transfer accelerators used in industrial operations and research and development, and therapeutic radiation machines, [~~and~~] radiation therapy simulation systems (simulators), and electronic brachytherapy devices used in the healing arts and veterinary medicine. Use of therapeutic radiation machines in the healing arts or veterinary medicine under this section shall be by or under the supervision of a physician [~~practitioner~~] of the healing arts or a veterinarian. Use of electronic brachytherapy devices under this section shall be by or under the supervision of a certified physician. The registrant shall be responsible for the administrative control and for directing the use of the accelerators, other therapeutic radiation machines, [~~or~~] simulators, or electronic brachytherapy devices.

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

(4) The Health Insurance Portability and Accountability Act (HIPAA) of 1996, 45 Code of Federal Regulations (CFR), Parts 160 and 164, establishes privacy standards governing how information that identifies a patient can be used and disclosed. This applies to covered entities defined under HIPAA. Failure to follow HIPAA requirements may result in the agency making a referral of a potential violation to the United States Department of Health and Human Services.

(c) Prohibitions.

(1) The agency may prohibit use of accelerators, therapeutic radiation machines, [~~and~~] simulators, or electronic brachytherapy devices that pose significant threat or endanger occupational and public health and safety, in accordance with §289.205 of this title and §289.231 of this title.

(2) Individuals shall not be exposed to the useful beam except for healing arts purposes and unless such exposure has been authorized by a physician [~~licensed practitioner~~] of the healing arts. For electronic brachytherapy devices, individuals shall not be exposed to the useful beam except for healing arts purposes and unless such exposure has been authorized by a certified physician. This provision specifically prohibits deliberate exposure of an individual for training, demonstration, or other non-healing arts purposes.

(3) No research and/or development using radiation machines on humans shall be conducted unless approved by an Institutional Review Board (IRB) as required by Title 45, CFR [~~Code of Federal Regulations (CFR)~~] Part 46 and Title 21, CFR Part 56. The IRB shall include at least one physician [~~practitioner~~] of the healing arts to direct any use of radiation in accordance with §289.231(b) of this title.

(d) Exemptions.

(1) (No change.)

(2) Individuals who are sole physicians, [~~practitioners and~~] sole operators and the only occupationally exposed individual are exempt from the following requirements:

(A) (No change.)

(B) subsection (h)(1)(G) [~~(h)(1)(D)~~] of this section.

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

(1) Absorbed dose (D)--The mean energy imparted by ionizing radiation to matter. Absorbed dose is determined as the quotient of dE by dM, where dE is the mean energy imparted by ionizing radiation to matter of mass dM. The SI unit of absorbed dose is joule per kilogram and the special name of the unit of absorbed dose is the gray (Gy). The previously used special unit of absorbed dose (rad) is being replaced by the gray.

(2) Absorbed dose rate--Absorbed dose per unit time, for machines with timers, or dose monitor unit per unit time for linear accelerators.

(3) Air kerma--The kinetic energy released in air by ionizing radiation. Kerma is the quotient of dE by dM, where dE is the sum of the initial kinetic energies of all the charged ionizing particles liberated by uncharged ionizing particles in air of mass dM. The SI unit of air kerma is joule per kilogram and the special name for the unit of kerma is the gray (Gy).

[~~(1) Aluminum equivalent - The thickness of type 1100 aluminum alloy affording the same attenuation, under specified conditions as the material in question. The nominal chemical composition of type 1100 aluminum alloy is 99% minimum aluminum, 0.12% copper.~~]

[~~(2) Attenuate - To reduce the exposure rate upon passage of radiation through matter.~~]

[~~(3) Automatic exposure control (AEC) - A device that automatically controls one or more technique factors in order to obtain a required quantity of radiation at preselected locations (See definition for phototimer).~~]

[~~(4) Automatic exposure rate control (AERC) - A device that automatically controls one or more technique factors in order to obtain a required quantity of radiation per unit time at preselected locations.~~]

(4) [~~(5)~~] Barrier--(See definition for protective barrier).

(5) [~~(6)~~] Beam axis--The axis of rotation of the beam limiting device. [~~A line from the source through the centers of the x-ray field.~~]

(6) [~~(7)~~] Beam-flattening filter--(See field-flattening filter). [~~A filter used to provide dose uniformity over the area of a useful x-ray beam at a specified depth.~~]

(7) [~~(8)~~] Beam-limiting device--A field defining collimator, integral to the therapeutic radiation machine, which provides a means to restrict the dimensions of the useful beam. [~~A device that provides a means to restrict the dimensions of the x-ray field.~~]

(8) Beam monitoring system--A system designed and installed in the radiation head to detect and measure the radiation present in the useful beam.

(9) - (10) (No change.)

[~~(11) Beam monitoring system--A dosimetry system designed to detect and measure the radiation present in the useful beam.~~]

(11) [~~(12)~~] Beam scattering foil--A thin piece of material (usually metallic) placed in the beam to scatter a beam of electrons in order to provide a more uniform electron distribution in the useful beam. [~~A foil used to scatter a beam of electrons.~~]

[~~(13) Calibration of machine - The measurement and specification of absorbed dose to a medium, or exposure in air, at a defined point in a radiation beam.~~]

(12) [~~(14)~~] Central axis of the beam--An imaginary line passing through the center of the useful beam and the center of the plane figure formed by the edge of the first beam-limiting device.

(13) Certified physician--A physician licensed by the Texas Medical Board and certified in radiation oncology or therapeutic radiology.

(14) [~~(15)~~] Coefficient of variation or C--The ratio of the standard deviation to the mean value of a population of observations. It is estimated using the following equation:
Figure: 25 TAC §289.229(e)(14)
[~~Figure: 25 TAC §289.229(e)(15)~~]

(15) [~~(16)~~] Collimator--A device or mechanism by which the x-ray beam is restricted in size.

(16) [~~(17)~~] Computed tomography (CT)--The production of a tomogram by the acquisition and computer processing of x-ray transmission data.

(17) [~~(18)~~] Continuous pressure type switch--A switch so constructed that a circuit closing contact can be maintained only by continuous pressure on the switch by the operator.

(18) [~~(19)~~] Control panel--The part of the radiation machine where the switches, knobs, push buttons, and other hardware necessary for manually setting the technique factors are located. For purposes of this section console is an equivalent term.

(19) [~~(20)~~] CT conditions of operation--All selectable parameters governing the operation of a CT x-ray system including, but not limited to, nominal tomographic section thickness, filtration, and the technique factors as defined in this subsection.

(20) Detector--(See definition for radiation detector).

[~~(21) CT gantry - The tube housing assemblies, beam-limiting devices, detectors, and the supporting structures and frames that hold these components.~~]

[~~(22) Diagnostic x-ray system - An x-ray system designed for irradiation of any part of the human body or any animal for the purpose of diagnosis or visualization.~~]

(21) [~~(23)~~] Diaphragm--A device or mechanism by which the x-ray beam is restricted in size.

[~~(24) Dose monitoring system - A system of devices for the detection, measurement, and display of quantities of radiation.~~]

(22) [~~(25)~~] Dose monitor unit (DMU)--A unit response from the beam [~~dose~~] monitoring system from which the absorbed dose can be calculated.

(23) Dosimetry system--A system of devices used for the detection, measurement, and display of qualitative and quantitative radiation exposures.

(24) Electronic brachytherapy--A method of radiation therapy using electrically generated x-rays to deliver a radiation dose at a

distance of up to a few centimeters by intracavitary, intraluminal or interstitial application, or by applications with the source in contact with the body surface or very close to the body surface.

(25) Electronic brachytherapy device--The system used to produce and deliver therapeutic radiation including the x-ray tube, the control mechanism, the cooling system, and the power source.

(26) Electronic brachytherapy source--The x-ray tube component used in an electronic brachytherapy device.

(27) External beam radiation therapy--Therapeutic irradiation in which the source of radiation is at a distance from the body.

(28) Field-flattening filter--A filter used to homogenize the absorbed dose rate over the radiation field.

[(26) Existing equipment - Therapy systems subject to subsection (h)(2) and (h)(3) of this section that were manufactured on or before March 1, 1989.]

(29) [(27)] Field size--The dimensions along the major axes of an area in a plane perpendicular to the central axis of the beam at the normal treatment or examination source to image distance and defined by the intersection of the major axes and the 50% isodose line.

(30) [(28)] Filter--Material placed in the useful beam to change beam quality in therapeutic radiation machines subject to subsection (h) of this section [preferentially absorb selected radiations].

(31) [(29)] Focal spot--The area projected on the anode of the x-ray tube that is bombarded by the electrons accelerated from the cathode and from which the useful beam originates.

(32) [(30)] Gantry--That part of the radiation therapy system supporting and allowing possible movements [movement] of the radiation head about the center of rotation [source].

(33) Gray (Gy)--For purposes of this section, the SI unit of absorbed dose, kerma, and specific energy imparted equal to 1 joule per kilogram. For purposes of this section the previous unit of absorbed dose (rad) is being replaced by the gray (1 Gy = 100 rad).

(34) [(31)] Half-value layer (HVL)--The thickness of a specified material which attenuates x-radiation or gamma radiation to an extent such that the exposure rate (air kerma rate), or absorbed dose rate is reduced to one-half of the value measured without the material at the same point [The thickness of a specified material that attenuates the beam of radiation to an extent such that the exposure rate is reduced to one-half of its original value].

(35) [(32)] Healing arts--Any treatment, operation, diagnosis, prescription, or practice for the ascertainment, cure, relief, palliation, adjustment, or correction of any human disease, ailment, deformity, injury, or unhealthy or abnormal physical or mental condition.

[(33) Image intensifier - A device, installed in its housing, that instantaneously converts an x-ray pattern into a corresponding light image of higher energy density.]

(36) [(34)] Image receptor--Any device, such as a fluorescent screen or radiographic film, that transforms incident x-ray photons either into a visible image or into another form that can be made into a visible image by further transformations.

[(35) Inherent filtration - The filtration of the useful beam provided by the permanently installed components of the x-ray tube housing assembly.]

(37) [(36)] Institutional Review Board (IRB)--Any board, committee, or other group formally designated by an institution to review, approve the initiation of, and conduct periodic review of biomedical research involving human subjects.

(38) [(37)] Interlock--A device preventing the start or continued operation of equipment unless certain predetermined conditions prevail.

(39) [(38)] Interruption of irradiation--The stopping of irradiation with the possibility of continuing irradiation without resetting of operating conditions at the control panel.

(40) Irradiation--The exposure of a living being or matter to ionizing radiation.

(41) Isocenter--The center of the sphere through which the useful beam axis passes while the gantry moves through its full range of motions.

(42) Kilovolt (kV) (kilo electron volt (keV))--The energy equal to that acquired by a particle with one electron charge in passing through a potential difference of one thousand volts in a vacuum. (Note: current convention is to use kV for photons and keV for electrons.)

[(39) Isocenter - A fixed point in space located at the center of the smallest sphere through which the central axis of the beam passes in all conditions.]

[(40) Kilovolt - kV (See definition for peak tube potential).]

(43) [(41)] Kilovolt peak--kVp (See definition for peak tube potential).

(44) [(42)] Lead equivalent--The thickness of lead affording the same attenuation, under specified conditions, as the material in question.

(45) [(43)] Leakage radiation--Radiation emanating from the source(s) assembly except for the useful beam and radiation produced when the exposure switch or timer is not activated.

(46) [(44)] Leakage technique factors--The technique factors associated with the source assembly that is used in measuring leakage radiation.

(47) [(45)] Licensed medical physicist--An individual holding a current Texas license under the Medical Physics Practice Act, Texas Occupations Code, Chapter 602, with a specialty in therapeutic radiological physics.

(48) Light field--The area illuminated by light, simulating the radiation field.

(49) mA--Milliampere.

(50) Medical event--An event that meets the criteria specified in subsection (i) of this section.

(51) Megavolt (MV) (megaelectron volt (MeV))--The energy equal to that acquired by a particle with one electron charge in passing through a potential difference of one million volts in a vacuum.

(52) Mobile electronic brachytherapy device--An electronic brachytherapy device that is transported from one address to be used at another address.

(53) Moving beam radiation therapy--Radiation therapy with any planned displacement of radiation field or patient relative to each other, or with any planned change of absorbed dose distribution. It includes arc, skip, conformal, intensity modulation and rotational therapy.

[~~(46) Medical research - The investigation of various health risks and diseases using radiation machines as part of the evaluation process.~~]

[~~(47) Moving beam radiation therapy - Radiation therapy with any planned displacement of radiation field or with any planned change of absorbed dose distribution.~~]

[~~(48) New equipment - Systems subject to subsections (h)(2) and (h)(3) of this section that were manufactured after March 1, 1989.~~]

(54) [~~(49)~~] Nominal treatment distance--The following nominal treatment distances shall apply.

(A) For electron irradiation, the distance from the scattering foil, virtual source, or exit window of the electron beam to the entrance surface of the irradiated object along the central axis of the useful beam, as specified by the manufacturer.

(B) For x-ray irradiation, the virtual source or target to isocenter distance [~~from the target~~] along the central axis of the useful beam to the isocenter. For non-isocentric equipment, this distance shall be that specified by the manufacturer.

(55) [~~(50)~~] Output--The exposure rate (air kerma rate), dose rate, or a quantity related to these rates from a therapeutic radiation machine.

(56) [~~(51)~~] Peak tube potential--The maximum value of the potential difference in kilovolts across the x-ray tube during an exposure.

(57) Phantom--An object behaving in essentially the same manner as tissue, with respect to absorption or scattering of the ionizing radiation in question.

(58) Physician--An individual licensed by the Texas Medical Board.

[~~(52) Phototimer - A method for controlling radiation exposures to image receptors by the amount of radiation that reaches a radiation monitoring device. The radiation monitoring device is part of an electronic circuit that controls the duration of time the tube is activated (See definition for automatic exposure control).~~]

(59) [~~(53)~~] Port film--An x-ray exposure made with a radiation therapy system to visualize a patient's treatment area using radiographic film.

(60) Portable shielding--Moveable shielding that can be placed in the primary or secondary beam to reduce the radiation exposure to the patient, occupational worker or a member of the public. The shielding can be easily moved to position with use of mobility devices or by hand.

(61) Prescribed dose--The total dose and dose per fraction as documented in the written directive. The prescribed dose is an estimation from measured data from a specified therapeutic machine using assumptions that are clinically acceptable for the treatment technique and historically consistent with the clinical calculations previously used for patients treated with the same clinical technique.

[~~(54) Practitioner of the healing arts (practitioner) - For purposes of this section, a person licensed to practice healing arts by either the Texas State Board of Medical Examiners as a physician, the Texas Board of Chiropractic Examiners, or the Texas State Board of Podiatry Examiners.~~]

(62) [~~(55)~~] Primary dose monitoring system--A system that will monitor the useful beam during irradiation and that will terminate irradiation when a preselected number of dose monitor units have been delivered [~~acquired~~].

(63) [~~(56)~~] Primary protective barrier--(See definition for protective barrier).

(64) [~~(57)~~] Protective apron--An apron made of radiation absorbing materials used to reduce radiation exposure.

(65) [~~(58)~~] Protective barrier--A barrier of radiation absorbing materials used to reduce radiation exposure. The types of protective barriers are as follows:

(A) primary protective barrier--A barrier sufficient to attenuate the useful beam to the required degree.

(B) secondary protective barrier--A barrier sufficient to attenuate the stray radiation to the required degree.

(66) [~~(59)~~] Protective glove--A glove made of radiation absorbing materials used to reduce radiation exposure.

(67) Radiation detector--A device which, in the presence of radiation provides, by either direct or indirect means, a signal or other indication suitable for use in measuring 1 or more quantities of incident radiation.

(68) Radiation field--(See definition for useful beam).

(69) Radiation head--The structure from which the useful beam emerges.

(70) [~~(60)~~] Radiation oncologist--A physician [~~practitioner~~] with a specialty in radiation therapy.

(71) [~~(61)~~] Radiation therapy simulation system (simulator)--An x-ray system intended for localizing and confirming the volume to be irradiated during radiation treatment and confirming the position and size of the therapeutic irradiation field.

(72) Radiation therapy system--An x-ray system that utilizes prescribed doses of ionizing radiation for treatment.

(73) [~~(62)~~] Scan--The complete process of collecting x-ray transmission data for the production of a tomogram. Data can be collected simultaneously during a single scan for the production of one or more tomograms.

(74) [~~(63)~~] Scan increment--The amount of relative displacement of the patient with respect to the CT x-ray system between successive scans measured along the direction of such displacement.

(75) [~~(64)~~] Scan sequence--A preselected set of 2 [~~two~~] or more scans performed consecutively under preselected CT conditions of operation.

(76) [~~(65)~~] Scan time--The period of time between the beginning and end of x-ray transmission data accumulation for a single scan.

(77) [~~(66)~~] Scattered radiation--Radiation that has been deviated in direction during passage through matter.

(78) [~~(67)~~] Secondary dose monitoring system--A system which [~~that~~] will terminate irradiation in the event of failure of the primary dose monitoring system.

(79) [~~(68)~~] Secondary protective barrier (See definition for protective barrier).

(80) [~~(69)~~] Shutter--A device attached to the tube housing assembly which [~~that~~] can totally intercept the useful beam and which [~~that~~] has a lead equivalency not less than that of the tube housing assembly.

[(70) Source-to-image receptor distance (SID) - The distance from the source to the center of the input surface of the image receptor.]

(81) [(71)] Source-to-skin distance (SSD)--The distance from the source to the skin of the patient.

(82) [(72)] Spot check--Those tests and analyses performed at specified intervals for the purpose of verifying the consistent output of radiation equipment.

(83) [(73)] Stationary beam therapy--Radiation therapy without [relative] displacement of one or more mechanical axes relative to the patient during irradiation [the useful beam].

(84) [(74)] Supervision--The delegating of the task of applying radiation in accordance with this section to persons not licensed in the healing arts or veterinary medicine, who provide services under the physician's [practitioner's] control. The physician [licensed practitioner] or veterinarian assumes full responsibility for these tasks and shall assure that the tasks will be administered correctly.

(85) Target--That part of an x-ray tube or accelerator onto which a beam of accelerated particles is directed to produce ionizing radiation or other particles.

(86) [(75)] Termination of irradiation--The stopping of irradiation in a fashion which [that] will not permit continuance of irradiation without the resetting of operating conditions at the control panel.

(87) Therapeutic radiation machine--X ray or electron producing equipment designed and used for external beam radiation therapy.

[(76) Therapy system - An x-ray system that utilizes prescribed doses of ionizing radiation for treatment.]

(88) [(77)] Traceable to a national standard--This indicates that a quantity or a measurement has been compared to a national standard, for example, National Institute of Standards and Technology, directly or indirectly through one or more intermediate steps and that all comparisons have been documented.

(89) Tube housing assembly--The tube housing with tube installed. It includes high-voltage and/or filament transformers and other appropriate elements when such are contained within the tube housing.

(90) [(78)] Useful beam--Radiation that passes through the window, aperture, cone, or other collimating device of the source housing. Also referred to as the primary beam.

(91) [(79)] Veterinarian--An individual licensed by the Texas Board of Veterinary Medical Examiners.

(92) Virtual source--A point from which radiation appears to originate.

(93) [(80)] Wedge filter--An added filter effecting continuous progressive attenuation on all or part of the useful beam.

(94) Written directive--An order in writing for the administration of radiation to a specific patient as specified in subsection (h)(1)(F)(ii) of this section.

(f) Accelerators used for research and development and industrial operations.

(1) Registration. Each person possessing an accelerator for non-human use, shall apply for and receive a certificate of registration from the agency before beginning use of the accelerator. A person may energize the accelerator for purposes of installation and acceptance testing before receiving a certificate of registration from the agency in accordance with §289.226(i)(1) [§289.226(k)] of this title [before activation of the accelerator, including acceptance testing].

(2) Facility requirements.

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

(C) Initial surveys shall be performed as follows.

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

(iii) The registrant shall maintain a copy of the initial survey report for inspection by the agency in accordance with subsection (l) [(k)] of this section.

(iv) (No change.)

(3) Safety requirements.

(A) Interlock systems shall comply with the following requirements.

(i) - (viii) (No change.)

(ix) If an interlock or alarm is operating improperly, it shall be immediately labeled as defective and repaired within 7 [seven] calendar days.

(x) Records of tests and repairs required by this paragraph shall be made and maintained in accordance with subsection (l) [(k)] of this section for inspection by the agency.

(B) Each registrant shall develop and implement written operating and safety procedures. The procedures may be documented in an electronic reporting system and shall include, but [may] not be limited to, the following:

(i) - (viii) (No change.)

(C) The registrant shall ensure that radiation measurements are performed with a calibrated dosimetry system. The dosimetry system calibration shall be traceable to a national standard. The calibration interval shall not exceed 24 months. There shall be available at each accelerator facility, appropriate portable monitoring equipment that is operable and has been calibrated for the appropriate radiations being produced at the facility. [The equipment shall be calibrated in accordance with §289.231(s)(2) of this title.]

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

(F) Records of calibration and survey results made in accordance with subparagraphs (C) and (D) of this paragraph shall be maintained in accordance with subsection (l) [(k)] of this section.

(G) The registrant shall perform radiation surveys and contamination smears prior to the transfer or disposal of an accelerator operating at or above 10 MeV. Such survey(s) shall be documented and maintained by the registrant for inspection by the agency in accordance with subsection (l) of this section.

(H) The registrant shall retain records of receipt, transfer, and disposal of all radiation machines specific to each authorized use location. The records shall include the date, manufacturer name, model and serial number from the control panel or console of the radiation machine and identification of the person making the record.

(4) Training requirements for operators.

(A) (No change.)

(B) Records of the training specified in subparagraph (A) of this paragraph shall be made and maintained for agency inspection in accordance with subsection (l) [(k)] of this section.

[(5) Records/documents.]

[(A) The registrant shall maintain copies of the following records/documents at authorized use locations in accordance with subsection (k) of this section:]

[*(i)* current applicable sections of this chapter as listed on the certificate of registration;]

[*(ii)* current certificate of registration;]

[*(iii)* surveys of radiation levels in unrestricted areas in accordance with paragraph (2)(B) of this subsection;]

[*(iv)* personnel monitoring records of occupationally exposed individuals in accordance with §289.231(r) of this title, as applicable;]

[*(v)* current operating and safety procedures in accordance with paragraph (3)(B) of this subsection or §289.255 of this title, as applicable;]

[*(vi)* operator training in accordance with paragraph (4)(B) of this subsection;]

[*(vii)* notice of violation from last inspection, if applicable, and documentation of corrections of violations;]

[*(viii)* receipt, transfer, and disposal of accelerators including the date, manufacturer name, model and serial number from the control panel or console of the radiation machine, and identification of the person making the record;]

[*(ix)* latest calibrations for each survey instrument in use at the authorized use location in accordance with paragraph (3)(F) of this subsection;]

[*(x)* interlock and alarm tests in accordance with paragraph (3)(A)(x) of this subsection; and]

[*(xi)* latest radiation survey records in accordance with paragraphs (2)(C)(iii) or (3)(F) of this subsection.]

[(B) Records specified in subparagraph (A) of this paragraph may be maintained in electronic format.]

(g) Requirements for accelerator(s) used in industrial radiography. In addition to the requirements in subsections (f)(1), (2), and (3)(C) - (H) [(f)(1), (2), (3)(C)-(F), and (5)] of this section, accelerators used for industrial radiography shall meet the applicable requirements of §289.255 of this title.

(h) Therapeutic radiation machines, [and] simulators used in the healing arts, [and] veterinary medicine, and electronic brachytherapy devices.

(1) General requirements.

(A) Each person possessing a therapeutic radiation machine capable of operating at or above 1 million electron volts (MeV) shall apply for and receive a certificate of registration from the agency before using the accelerator for human use. A person may energize the accelerator for purposes of installation and acceptance testing before receiving a certificate of registration from the agency [activation of the radiation machine, including acceptance testing].

(B) Each person possessing a simulator, [and/or] a therapeutic radiation machine capable of operating below 1 MeV, and/or an electronic brachytherapy device, shall apply for a certificate of registration within 30 days after energizing the equipment.

(C) (No change.)

(D) The electronic brachytherapy registrant shall require the physician to be:

(i) licensed by the Texas Medical Board; and

(ii) certified in:

(I) radiation oncology or therapeutic radiology by the American Board of Radiology; or

(II) radiation oncology by the American Osteopathic Board of Radiology;

(E) Operators of the electronic brachytherapy device shall complete device-specific training as follows:

(i) completion of a training program provided by the manufacturer; or

(ii) training received that is substantially equivalent to the manufacturer's training program from a certified physician or a licensed medical physicist who is trained to use the device.

(iii) The registrant shall retain a record of each individual's device-specific training in accordance with subsection (l) of this section for inspection by the agency.

(F) Each facility, including facilities using electronic brachytherapy devices, shall develop a quality assurance program in writing or in an electronic reporting system. The quality assurance program shall be implemented as a method of minimizing deviations from facility procedures and to document preventative measures taken prior to serious patient injury or therapeutic misadministration.

(i) The quality assurance program shall include but not be limited to the following topics:

(I) treatment planning and patient simulation;

(II) charting and documenting treatment field parameters;

(III) dose calculation and review procedures;

(IV) review of daily treatment records; and

(V) for electronic brachytherapy, verification of catheter placement and device exchange procedures;

(ii) A written directive shall be prepared prior to administration of a therapeutic radiation dose except where a delay to provide a written directive would jeopardize the patient's health. The information contained in the oral directive shall be documented immediately in the patient's record and a written directive prepared within 24 hours of the oral directive.

(iii) A written directive that changes an existing written directive for any therapeutic radiation procedure is only acceptable if the revision is dated and signed by a certified physician prior to the administration of the therapeutic dose, or the next fractional dose.

(iv) Deviations from the prescribed treatment, from the facilities quality assurance program, and from the operating and safety procedures shall be investigated and brought to the attention of the certified physician or licensed medical physicist, and the radiation safety officer (RSO).

(v) The patient's identity shall be verified by more than one method as the individual named in the written directive prior to administration.

(vi) The discovery of each medical event or misadministration shall be reported in accordance with subsection (i) or (j) of this section.

(vii) The review of the quality assurance program shall include all the deviations from the prescribed treatment and shall

be conducted at intervals not to exceed 14 months. A signed record of each dated review shall be maintained for inspection by the agency in accordance with subsection (l) of this section and shall include evaluations and findings of the review.

(G) [(D)] Written [Each registrant shall develop and implement written] operating and safety procedures shall be developed by a licensed medical physicist with a specialty in therapeutic radiological physics and shall include any restrictions required for the safe operation of the particular therapeutic radiation machine. These procedures shall be available in the control area of the therapeutic radiation machine and an electronic brachytherapy device. The operator(s) shall be able to demonstrate familiarity with these procedures. [These procedures shall be made available to each individual operating radiation machines and simulators, including any restrictions of the operating technique required for the safe operation of the particular therapeutic radiation system.] These procedures shall include, but are not limited to the following:

(i) therapeutic radiation machines shall not be used for irradiation of patients unless full calibration measurements and quality assurance checks have been completed;

(ii) therapeutic radiation machines shall not be used in the administration of radiation therapy if a spot check indicates a significant change in the operating characteristics of a system as specified in the written procedures;

(iii) therapeutic radiation machines shall not be left unattended unless secured by a locking device which will prevent unauthorized use (A computerized pass-word system would also constitute a locking device);

(iv) when there is a need to immobilize a patient or port film for radiation therapy, mechanical supporting or restraining devices shall be used;

(v) no individual, other than the patient, shall be in the treatment room during exposures from therapeutic radiation machines operating above 150 kV;

(vi) at energies less than or equal to 150 kV, any individual, other than the patient, in the treatment room shall be protected by a barrier sufficient to meet the requirements of §289.231(m) and (o) of this title;

(vii) [(i)] use of a technique chart for simulators in accordance with paragraph (4)(A)(i) of this subsection [for simulators];

(viii) [(ii)] radiation dose requirements in accordance with §289.231(m) and (o) of this title;

(ix) [(iii)] personnel monitoring requirements in accordance with §289.231(n) of this title;

(x) [(iv)] use of protective devices for simulators in accordance with paragraph (4)(A)(iii) of this subsection [for simulators];

(xi) [(v)] credentialing requirements for individuals operating radiation machines in accordance with subparagraph (C) of this paragraph;

[(vi) exposure of individuals other than the patient in accordance with paragraphs (2)(D)(iv)(IV), and (3)(C)(v)(I) of this subsection;]

(xii) [(vii)] film processing program for simulators in accordance with paragraph (4)(A)(viii) [(4)(A) (vii) and (viii)] of this subsection [for simulators]; and

(xiii) [(viii)] procedures for restriction and alignment of beam for simulators in accordance with paragraph (4)(B)(iii) of this subsection. [;]

[(ix) posting notices to workers in accordance with §289.203(b) of this title;]

[(x) instructions to workers in accordance with §289.203(c) of this title;]

[(xi) notifications and reports to individuals in accordance with §289.203(d) of this title; and]

[(xii) posting of a radiation area in accordance with §289.231(x) and (y) of this title.]

(H) [(E)] Registrants with equipment that has been issued variances by the United States Food and Drug Administration (FDA) to Title 21, CFR Part 1020 shall maintain copies of those variances at authorized use locations in accordance with subsection (l) [(k)] of this section.

(I) The registrant shall perform radiation surveys and contamination smears prior to the transfer or disposal of an accelerator operating at or above 10 MeV. Such survey(s) shall be documented and maintained by the registrant for inspection by the agency in accordance with subsection (l) of this section.

(J) Where applicable, the licensed medical physicist shall perform acceptance testing on the treatment planning system of therapy-related computer systems in accordance with published protocols accepted by nationally recognized bodies. In the absence of such a published protocol, the manufacturer's current protocol shall be followed.

(2) Therapeutic radiation machines capable of operating at energies below 1 MeV.

(A) Equipment requirements.

(i) When the tube is operated at its leakage technique factors, the leakage radiation shall not exceed the values specified at the distance stated for the classification of that radiation machine system shown in the following Table I. The leakage technique factors are the maximum-rated peak tube potential and the maximum-rated continuous tube current for the maximum-rated peak tube potential.
Figure: 25 TAC §289.229(h)(2)(A)(i)
[Figure: 25 TAC §289.229(h)(2)(A)(i)]

(ii) - (iii) (No change.)

(iv) The filter system shall be so designed that:

(I) - (II) (No change.)

(III) the radiation at 5 centimeters (cm) from the filter insertion slot opening does not exceed 30 roentgens per hour (R/hr) (300 mGy/hr) under any operating conditions; and

(IV) (No change.)

(v) - (vii) (No change.)

(viii) The timer shall:

(I) - (VI) (No change.)

(VII) be accurate to within 1.0% of the selected value or 1 [one] second, whichever is greater.

(ix) - (x) (No change.)

(xi) Unless it is possible to bring the radiation output to the prescribed exposure parameters within 5 [five] seconds, the beam shall be attenuated by a shutter having a lead equivalency not less

than that of the tube housing assembly. After the unit is at operating parameters, the shutter shall be controlled electrically by the operator from the control panel. An indication of shutter position shall appear at the control panel.

(xii) (No change.)

(B) (No change.)

(C) Additional facility requirements for therapeutic radiation systems capable of operation above 150 kVp.

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

(iii) Interlocks shall be provided such that all entrance doors shall be closed, including doors to any interior booths, before treatment can be initiated or continued. If the radiation beam is interrupted by any door opening, it shall not be possible to restore the machine to operation without closing the door and reinitiating irradiation by manual action at the control panel. When any door is opened while the x-ray tube is activated, the exposure at a distance of 1 m [~~1 meter (m)~~] from the source shall be reduced to less than 100 mR/hr (1mGy/hr).

(D) Surveys, calibrations, and spot checks[~~, and additional operating procedures~~].

(i) Surveys shall be performed as follows.

(I) All new and existing facilities not previously surveyed shall have an initial [~~a~~] survey made by a licensed medical physicist with a specialty in therapeutic radiological physics [~~or medical health physics~~], who shall provide a written report of the survey to the registrant. Additional surveys shall be done after any change in the facility, facility design, or equipment that might cause a significant increase in radiation hazard.

(II) The registrant shall maintain a copy of the initial survey report and all subsequent survey reports required by subclause (I) of this clause in accordance with subsection (l) [~~(k)~~] of this section for inspection by the agency.

(III) (No change.)

(ii) Calibrations shall be performed as follows.

(I) The calibration of a therapeutic radiation system shall be performed at intervals not to exceed 1 [~~one~~] year and after any change or replacement of components that could cause a change in the radiation output. The calibrations shall be such that the dose at a reference point in a water or plastic phantom can be calculated to within an uncertainty of 5.0%.

(II) (No change.)

(III) The calibration of the therapeutic radiation system shall include, but not be limited to, the following determinations:

(-a-) verification that the radiation therapy system is operating in compliance with the design specifications;

(-b-) (No change.)

(-c-) the exposure rates (air kerma rates) as a function of field size, technique factors, filter, and treatment distance used; and

(-d-) (No change.)

(IV) Calibration of the radiation output of a therapeutic radiation system shall be performed with a calibrated dosimetry system. The dosimetry system calibration [~~shall be calibrated within the previous 24 months and~~] shall be traceable to a national standard. The calibration interval shall not exceed 24 months. [~~During the calendar year in which the dosimetry system is not calibrated, an intercomparison to a system calibrated within the previous 12 months shall be performed.~~]

(V) Records of calibration measurements specified in clause (ii) of this subparagraph shall be maintained by the registrant in accordance with subsection (l) [~~(k)~~] of this section for inspection by the agency.

(VI) (No change.)

(iii) Spot checks shall be performed on therapeutic radiation systems capable of operation at greater than 150 kVp. Such measurements shall meet the following requirements.

(I) The spot check procedures shall be in writing, or documented in an electronic reporting system, and shall have been developed by a licensed medical physicist with a specialty in therapeutic radiological physics.

(II) If a licensed medical physicist does not perform the spot check measurements, the results of the spot check measurements shall be reviewed by a licensed medical physicist with a specialty in therapeutic radiological physics within 5 [~~five~~] treatment days and a record made of the review. If the output varies by more than 5.0% from the expected value, a licensed medical physicist with a specialty in therapeutic radiological physics shall be notified immediately.

(III) - (V) (No change.)

(VI) Records of written spot checks and any necessary corrective actions shall be maintained by the registrant in accordance with subsection (l) [~~(k)~~] of this section for inspection by the agency. A copy of the most recent spot check shall be available at a designated area within the therapy facility housing that therapeutic radiation system.

(VII) Spot checks shall be obtained using a system satisfying the requirements of clause (ii)(IV) of this subparagraph [~~or that has been intercompared with a system meeting those requirements within the previous year~~].

[~~*(iv)* In addition to the items listed in paragraph (1)(D) of this subsection, operating and safety procedures shall also include procedures to ensure the following requirements are met.~~]

[~~*(I)* Therapeutic radiation systems shall not be left unattended unless the system is secured against unauthorized use.~~]

[~~*(II)* Restraining or mechanical supporting devices shall be used when a patient or port film must be immobilized in position for radiation therapy.~~]

[~~*(III)* The tube housing assembly shall not be held by hand during operation unless the system is designed to require such holding and the peak tube potential of the system does not exceed 50 kVp. In such cases, the holder shall wear protective gloves and apron of not less than 0.5 mm lead equivalency at 100 kVp.~~]

[~~*(IV)* For therapeutic radiation systems operating at or below 150 kVp, no individual other than the patient shall be in the treatment room unless such individual is protected by a barrier sufficient to meet the requirements of §289.231(o) of this title. No individual other than the patient shall be in the treatment room during exposures from therapeutic radiation systems operating above 150 kVp.~~]

[~~*(V)* The therapeutic radiation system shall not be used in the administration of radiation therapy unless the requirements of clauses (ii) and (iii)(V) of this subparagraph have been met.~~]

(3) Therapeutic radiation machines capable of operating at energies of 1 MeV and above.

(A) Equipment requirements.

(i) For operating conditions producing maximum leakage radiation, the absorbed dose in rads (mGy) due to leakage radiation, including x rays, electrons, and neutrons, at any point in a circular plane of 2 m radius centered on and perpendicular to the central axis of the beam at the isocenter or normal treatment distance and outside the maximum useful beam size shall not exceed 0.1% of the maximum absorbed dose in rads (mGy) of the unattenuated useful beam measured at the point of intersection of the central axis of the beam and the plane surface. Measurements excluding those for neutrons shall be averaged over an area up to, but not exceeding, 100 square centimeters (cm^2) at the positions specified. Measurements of the portion of the leakage radiation dose contributed by neutrons shall be averaged over an area up to, but not exceeding, 200 cm^2. For each system, the registrant shall determine or obtain from the manufacturer the leakage radiation existing at the positions specified for the specified operating conditions. Records on leakage radiation measurements shall be maintained in accordance with subsection (l) [~~(k)~~] of this section for inspection by the agency.

(ii) Each wedge filter that is removable from the system shall be clearly marked with an identification number. Documentation available at the control panel shall contain a description of the filter. The wedge angle shall appear on the wedge or wedge tray (if permanently mounted to the tray). If the wedge tray is damaged, the wedge transmission factor shall be redetermined. Equipment manufactured after March 1, 1989, [~~New equipment~~] shall meet the following requirements.

(I) Irradiation shall not be possible until a selection of a filter or a positive selection to use "no filter" has been made at the treatment console [~~control panel~~], either manually or automatically.

(II) (No change.)

(III) A display shall be provided at the treatment console [~~control panel~~] showing the beam quality in use.

(IV) An interlock shall be provided to prevent irradiation if any filter selection operation carried out in the treatment room does not agree with the filter selection operation carried out at the treatment console [~~control panel~~].

(iii) (No change.)

(iv) All therapeutic radiation systems shall be provided with radiation detectors in the radiation head. These shall include the following, as appropriate.

(I) Equipment manufactured after March 1, 1989, [~~New equipment~~] shall be provided with at least 2 [~~two~~] independent radiation detectors. The detectors shall be incorporated into 2 [~~two~~] independent dose monitoring systems.

(II) Equipment manufactured on or before March 1, 1989, [~~Existing equipment~~] shall be provided with at least 1 [~~one~~] radiation detector. This detector shall be incorporated into a primary dose monitoring system.

(III) The detector and the system into which that detector is incorporated shall meet the following requirements.

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

(-d-) For equipment manufactured after March 1, 1989 [~~new equipment~~], the design of the dose monitoring systems shall assure that the malfunctioning of 1 [~~one~~] system shall not affect the correct functioning of the secondary system; and failure of any element common to both systems that could affect the correct function of both systems shall terminate irradiation.

(-e-) Each dose monitoring system shall have a legible display at the treatment console [~~control panel~~]. For equipment manufactured after March 1, 1989 [~~new equipment~~], each display shall:

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

(-4-) retain the dose monitoring information in at least one system for a 15-minute [~~20-minute~~] period of time in the event of a power failure.

(v) In equipment manufactured after March 1, 1989, [~~new equipment~~] inherently capable of producing useful beams with unintentional asymmetry exceeding 5.0%, the asymmetry of the radiation beam in two orthogonal directions shall be monitored before the beam passes through the beam-limiting device. If the difference in dose rate between one region and another region symmetrically displaced from the central axis of the beam exceeds 5.0% of the central axis dose rate, indication of this condition shall be at the console [~~control panel~~]; and if this difference exceeds 10% of the central axis dose rate, the irradiation shall be terminated.

(vi) Selection and display of dose monitor units shall meet the following requirements.

(I) Irradiation shall not be possible until a selection of a number of dose monitor units has been made at the treatment console [~~control panel~~].

(II) The preselected number of dose monitor units shall be displayed at the treatment console [~~control panel~~] until reset manually for the next irradiation.

(III) (No change.)

(IV) For equipment manufactured after March 1, 1989 [~~new equipment~~], after termination of irradiation, it shall be necessary to manually reset the preselected dose monitor units before irradiation can be initiated.

(vii) Termination of irradiation by the dose monitoring system or systems during stationary beam therapy shall meet the following requirements.

(I) (No change.)

(II) If original design of the equipment includes a secondary dose monitoring system, that system shall be capable of terminating irradiation when not more than 15% or 40 dose monitor units, whichever is smaller, above the preselected number of dose monitor units set at the console [~~control panel~~] has been detected by the secondary dose monitoring system.

(III) For equipment manufactured after March 1, 1989 [~~new equipment~~], a secondary dose monitoring system shall be present. That system shall be capable of terminating irradiation when not more than 10% or 25 dose monitoring units, whichever is smaller, above the preselected number of dose monitor units set at the console [~~control panel~~] has been detected by the secondary dose monitoring system.

(IV) For equipment manufactured after March 1, 1989 [~~new equipment~~], an indicator on the console [~~control panel~~] shall show which dose monitoring system has terminated irradiation.

(viii) (No change.)

(ix) It shall be possible to interrupt irradiation and equipment movements at any time from the operator's position at the treatment console [~~control panel~~]. Following an interruption, it shall be possible to restart irradiation by operator action without any reselection of operating conditions. If any change is made of a preselected value

during an interruption, irradiation and equipment movements shall be automatically terminated.

(x) It shall be possible to terminate irradiation and equipment movements or go from an interruption condition to termination conditions at any time from the operator's position at the treatment console [~~control panel~~].

(xi) Timers shall meet the following requirements.

(I) A timer that has a display shall be provided at the treatment console [~~control panel~~]. The timer shall have a preset time selector and an elapsed time indicator.

(II) (No change.)

(III) For equipment manufactured after March 1, 1989 [~~new equipment~~], after termination of irradiation and before irradiation can be reinitiated, it shall be necessary to manually reset the preset time selector.

(IV) (No change.)

(xii) Equipment capable of producing more than 1 [~~one~~] radiation type shall meet the following additional requirements.

(I) Irradiation shall not be possible until a selection of radiation type has been made at the treatment console [~~control panel~~].

(II) An interlock system shall be provided to:

(-a-) (No change.)

(-b-) prevent irradiation if any selected operations carried out in the treatment room do not agree with the selected operations carried out at the treatment console [~~control panel~~];

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

(III) The radiation type selected shall be displayed at the treatment console [~~control panel~~] before and during irradiation.

(xiii) Equipment capable of generating radiation beams of different energies shall meet the following requirements.

(I) Irradiation shall not be possible until a selection of energy has been made at the treatment console [~~control panel~~].

(II) An interlock system shall be provided to prevent irradiation if any selected operations carried out in the treatment room do not agree with the selected operations carried out at the treatment console [~~control panel~~].

(III) The nominal energy value selected shall be displayed at the treatment console [~~control panel~~] before and during irradiation.

(xiv) Equipment capable of both stationary beam therapy and moving beam therapy shall meet the following requirements.

(I) Irradiation shall not be possible until a selection of stationary beam therapy or moving beam therapy has been made at the treatment console [~~control panel~~].

(II) An interlock system shall be provided to prevent irradiation if any selected operations carried out in the treatment room do not agree with the selected operations carried out at the treatment console [~~control panel~~].

(III) The selection of stationary or moving beam shall be displayed at the treatment console [~~control panel~~]. An interlock system shall be provided to ensure that the equipment can only operate in the mode that has been selected.

(IV) For equipment manufactured after March 1, 1989 [~~new equipment~~], an interlock system shall be provided to terminate irradiation if movement of the gantry occurs during stationary beam therapy or stops during moving beam therapy unless such stoppage is a preplanned function.

(V) Moving beam therapy shall be controlled to obtain the selected relationships between incremental dose monitor units and incremental angle of movement.

(-a-) For equipment manufactured after March 1, 1989 [~~new equipment~~], an interlock system shall be provided to terminate irradiation if the number of dose monitor units delivered in any 10 degrees of arc differs by more than 20% from the selected value.

(-b-) For equipment manufactured after March 1, 1989 [~~new equipment~~], where gantry angle terminates the irradiation in arc therapy, the dose monitor units shall differ by less than 5.0% from the value calculated from the absorbed dose per unit angle relationship.

(VI) (No change.)

(xv) For equipment manufactured after March 1, 1989 [~~new equipment~~], a system shall be provided from whose readings the absorbed dose rate at a reference point in the treatment volume can be calculated. The radiation detectors specified in subparagraph (iv) of this paragraph may form part of this system. In addition, the dose monitor unit rate shall be displayed at the treatment console [~~control panel~~]. If the equipment can deliver under any conditions an absorbed dose rate at the normal treatment distance more than twice the maximum value specified by the manufacturer for any machine parameters utilized, a device shall be provided that terminates irradiation when the absorbed dose rate exceeds a value twice the specified maximum. The dose rate at which the irradiation will be terminated shall be in a record maintained by the registrant in accordance with subsection (l) [~~(k)~~] of this section for agency inspection.

(xvi) - (xvii) (No change.)

(B) Facility and shielding requirements.

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

(iii) The console [~~control panel~~] shall be located outside the treatment room and all emergency buttons/switches shall be clearly labeled as to their functions.

(iv) Windows, mirrors, closed-circuit television, or an equivalent system shall be provided to permit continuous observation of the patient following positioning and during irradiation and shall be so located that the operator may observe the patient from the console [~~control panel~~].

(I) - (II) (No change.)

(v) Provision shall be made for continuous two-way aural communication between the patient and the operator at the console [~~control panel~~] independent of the accelerator. However, where excessive noise levels or treatment requirements make aural communication impractical, other methods of communication shall be used. When this is the case, a description of the alternate method shall be submitted to and approved by the agency.

(vi) (No change.)

(vii) Interlocks shall be provided such that all entrance doors shall be closed before treatment can be initiated or continued. If the radiation beam is interrupted by any door opening, it shall not be possible to restore the machine to operation without closing the

door and reinitiating irradiation by manual action at the console [control panel].

(C) Surveys, calibrations, spot checks, and operational requirements[, and additional operating procedures].

(i) Surveys shall be performed as follows.

(I) All new and existing facilities not previously surveyed shall have an initial [a] survey made by a licensed medical physicist with a specialty in therapeutic radiological physics [or medical health physics], who shall provide a written report of the survey to the registrant. The physicist who performs the survey shall be a person who did not consult in the design of the therapeutic radiation machine installation and is not employed by or within any corporation or partnership with the person who consulted in the design of the installation. In addition, such surveys shall be done after any change in the facility or equipment that might cause a significant increase in radiation hazard.

(II) The survey report shall include, but not be limited to the following:

(-a-) a diagram of the facility that details building structures and the position of the console [control panel], therapeutic radiation machine, and associated equipment;

(-b-) - (-e-) (No change.)

(III) The registrant shall maintain a copy of the survey report and a copy of the survey report shall be provided to the agency within 30 days of completion of the survey. Records of the survey report shall be maintained in accordance with subsection (l) [(k)] of this section for inspection by the agency.

(IV) (No change.)

(ii) Calibrations of therapeutic systems shall be performed as follows.

(I) The calibration of systems subject to this subsection shall be performed in accordance with an established calibration protocol before the system is first used for irradiation of a patient and thereafter at time intervals that do not exceed 12 months and after any change that might significantly alter the calibration, spatial distribution, or other characteristics of the therapy beam. The calibration procedures shall be in writing, or documented in an electronic reporting system, and shall have been developed by a licensed medical physicist with a specialty in therapeutic radiological physics. The calibration protocol entitled, "Protocol for Clinical Reference Dosimetry of High-Energy Photon and Electron Beams," Task Group 51, Radiation Therapy Committee, American Association of Physicists in Medicine, Medical Physics 26(9): 1847-1870, September 1999, would be [is] accepted as an established protocol. At [If Task Group 51 protocol for calibration is not used, at] a minimum, the calibration protocol shall include items in subclauses (III) - (V) of this clause below.

(II) (No change.)

(III) Calibration radiation measurements required by subclause (I) of this clause shall be performed using a dosimetry system:

(-a-) (No change.)

(-b-) that is traceable to a national standard and at an interval not to exceed 24 months [has been calibrated within the previous 24 months and after any servicing that may have affected its calibration. During the calendar years in which the dosimetry system is not calibrated, an intercomparison to a system calibrated within the previous 12 months shall be performed];

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

(IV) - (V) (No change.)

(VI) Calibration of therapeutic systems containing asymmetric jaws, multileaf collimation, or dynamic/virtual wedges shall be performed with an established protocol. The procedures shall be developed by a licensed medical physicist with a specialty in therapeutic radiological physics and shall be in writing or documented in an electronic reporting system. Current recommendations by a national professional association as the American Association of Physicists in Medicine, Task Group 142 report: "Quality Assurance of Medical Accelerators" published August 17, 2009, would be considered an established protocol.

(VII) [*(VI)*] Records of calibration measurements specified in subclause (I) of this clause and dosimetry system calibrations specified in subclause (III) of this clause shall be maintained by the registrant in accordance with subsection (l) [(k)] of this section for inspection by the agency.

(VIII) [*(VII)*] A copy of the latest calibrated absorbed dose rate measured in accordance with subclause (I) of this clause shall be available at a designated area within the facility housing that radiation therapy system.

(iii) Spot checks shall be performed on systems subject to this paragraph during calibrations and thereafter at weekly intervals with the period between spot checks not to exceed 5 [five] treatment days. Such radiation output measurements shall meet the following requirements.

(I) The spot check procedures shall be performed in accordance with established protocol, shall be in writing, or documented in an electronic reporting system, and shall have been developed by a licensed medical physicist with a specialty in therapeutic radiological physics. Either the [The] spot check protocol entitled, "Comprehensive QA for Radiation Oncology," Task Group 40, Radiation Therapy Committee, American Association of Physicists in Medicine, Medical Physics 21(4): 581-618, April, 1994, or Task Group 142 report: Quality Assurance of Medical Accelerators, published by American Association of Physicists in Medicine on August 17, 2009, are accepted as an established protocol [is accepted as established protocol]. At [If Task Group 40 protocol for spot checks is not used, at] a minimum, the spot check protocol shall include items in subclauses (III) - (VI) of this clause [below].

(II) If a licensed medical physicist does not perform the spot check measurements, the results of the spot check measurements shall be reviewed by a licensed medical physicist at a frequency not to exceed 5 [five] treatment days and a record kept of the review. If the output varies by more than 3.0% from the expected value, a licensed medical physicist shall be notified immediately.

(III) - (VI) (No change.)

(VII) Records of spot check measurements and any necessary corrective actions shall be maintained by the registrant in accordance with subsection (l) [(k)] of this section for inspection by the agency.

(VIII) Spot checks shall be obtained using a system satisfying the requirements of clause (ii)(III) of this subparagraph [subclause III of this clause or that has been intercompared with a system meeting those requirements within the previous year].

(iv) (No change.)

[*(v)* In addition to the items listed in paragraph (1)(D) of this subsection, operating and safety procedures shall also include procedures to ensure the following requirements are met.]

[*(I)* No individual other than the patient shall be in the treatment room during treatment of a patient.]

[~~(II)~~] ~~Restraining or mechanical supporting devices shall be used if a patient or port film must be immobilized in position during treatment.~~]

[~~(III)~~] ~~The therapeutic system shall not be used in the administration of radiation therapy unless the requirements of clauses (i)-(iv) of this subparagraph have been met.~~]

(4) Radiation therapy simulators.

(A) General requirements. In addition to the general requirements in paragraph (1)(B), (C), (F), and (H) of this subsection [~~subsections (h)(1)(B)-(E) of this section~~], radiation therapy simulators shall comply with the following:

(i) Technique chart. A technique chart relevant to the particular radiation machine shall be provided or electronically displayed in the vicinity of the console [~~control panel~~] and used by all operators.

(ii) Operating and safety procedures. Each registrant shall have and implement written operating and safety procedures in accordance with paragraph (1)(G) of this subsection [~~subsection (h)(1)(D) of this section~~].

(iii) Protective devices. When utilized, protective devices shall meet the following requirements.

(I) Protective devices shall be made of no less than 0.25 mm [~~0.25 millimeter (mm)~~] lead equivalent material.

(II) Protective devices, including aprons, gloves, and shields shall be checked annually for defects, such as holes, cracks, and tears. These checks may be performed by the registrant by visual, tactile, or x-ray imaging. If a defect is found, equipment shall be replaced or removed from service until repaired. A record of this test shall be made and maintained by the registrant in accordance with subsection (l) [~~(k)~~] of this section for inspection by the agency.

(iv) (No change.)

(v) Operator position. The operator's position during the exposure shall be such that the operator's exposure is as low as reasonably achievable (ALARA) and the operator is a minimum of 6 [~~six~~] feet from the source of radiation or protected by an apron, gloves, or other shielding having a minimum of 0.25 mm lead equivalent material.

(vi) - (vii) (No change.)

(viii) Film processing.

(I) (No change.)

(II) Chemicals shall be replaced according to the chemical manufacturer's or supplier's recommendations or at an interval not to exceed 3 [~~three~~] months.

(III) Darkroom light leak tests shall be performed and any light leaks corrected at intervals not to exceed 6 [~~six~~] months.

(IV) (No change.)

(V) Corrections or repairs of the light leaks or other deficiencies in subclauses (II), (III), and (IV) of this clause shall be initiated within 72 hours of discovery and completed no longer than 15 days from detection of the deficiency unless a longer time is authorized by the agency. Records of the correction or repairs shall include the date and initials of the individual performing these functions and shall be maintained in accordance with subsection (l) [~~(k)~~] of this section for inspection by the agency.

(VI) Documentation of the items in subclauses (II), (III), and (V) of this clause shall be maintained at the site where performed and shall include the date and initials of the individual completing these items. These records shall be kept in accordance with subsection (l) [~~(k)~~] of this section for inspection by the agency.

(ix) Alternative processing systems. Users of daylight processing systems, laser processors, self-processing film units, or other alternative processing systems shall follow manufacturer's recommendations for image processing. Documentation that the registrant is following manufacturer's recommendations shall include the date and initials of the individual completing the document and shall be maintained at the site where performed in accordance with subsection (l) [~~(k)~~] of this section for inspection by the agency.

(x) Digital imaging acquisition systems. Users of digital imaging acquisition systems shall follow quality assurance/quality control protocol for image processing established by the manufacturer or, if no manufacturer's protocol is available, by the registrant. The registrant shall include the protocol, whether established by the registrant or the manufacturer in its operating and safety procedures. The registrant shall document the frequency at which the quality assurance/quality control protocol is performed. Documentation shall include the date and initials of the individual completing the document and shall be maintained at the site where performed in accordance with subsection (l) of this section for inspection by the agency.

(B) Additional requirements for radiation therapy simulators used in the general radiographic mode of operation.

(i) Beam quality (HVL). The half-value layer of the useful beam for a given x-ray tube potential shall not be less than the values shown in the following Table IV. If it is necessary to determine such half-value layer at an x-ray tube potential that is not listed in Table IV, linear interpolation may be made.
Figure: 25 TAC §289.229(h)(4)(B)(i)
[~~Figure: 25 TAC §289.229(h)(4)(B)(i)~~]

(ii) - (viii) (No change.)

(C) Additional requirements for radiation therapy simulators utilizing fluoroscopic capabilities.

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

(iv) Fluoroscopic timers shall meet the following requirements.

(I) Means shall be provided to preset the cumulative on-time of the fluoroscopic x-ray tube. The maximum cumulative time of the timing device shall not exceed 5 [~~five~~] minutes without resetting.

(II) (No change.)

(v) - (vi) (No change.)

(vii) If the treatment-planning system is different from the treatment-delivery system, the accuracy of electronic transfer of the treatment-delivery parameters to the treatment-delivery unit shall be verified at the treatment location.

(D) Additional requirements for radiation therapy simulators utilizing CT capabilities. CT simulators producing digital images only are exempt from the requirements of this subparagraph and paragraph (h)(4)(A)(i), (viii), and (ix) of this subsection.

(i) (No change.)

(ii) Facility design requirements.

(I) (No change.)

(II) Windows, mirrors, closed-circuit television, or an equivalent shall be provided to permit continuous observation of the patient during irradiation and shall be so located that the operator can observe the patient from the console [control panel].

(-a-) (No change.)

(-b-) In a facility that has a primary viewing system by electronic means and an alternate viewing system, should both viewing systems described in subclause (II) of this clause fail or be inoperative, treatment shall not be performed with the unit until 1 [one] of the systems is restored.

(iii) Dose measurements of the radiation output of the CT x-ray system.

(I) Dose measurements of the radiation output of the CT x-ray system shall be performed by a licensed medical physicist with a specialty in diagnostic radiological physics. If the CT system is used for simulation purposes only, the following requirements do not apply. If the unit is also used for diagnostic procedures, the [The] measurements shall be performed as follows:

(-a-) within 30 days after installation and thereafter, at intervals not to exceed 14 [12] months;

(-b-) when major maintenance[, except x-ray tube replacement,] that could affect radiation output is performed; or

(-c-) (No change.)

(II) Measurements of the radiation output of a CT x-ray system shall be performed with a calibrated dosimetry system. The dosimetry system calibration [shall have been calibrated within the preceding 24 months and] shall be traceable to a national standard. The calibration interval shall not exceed 24 months. [During the calendar year in which the dosimetry system is not calibrated, an intercomparison to a system calibrated within the previous 12 months shall be performed.]

(III) Records of dose measurements specified in clause (iii) of this subparagraph shall be maintained by the registrant in accordance with subsection (l) [(k)] of this section for inspection by the agency.

(iv) A maintenance schedule shall be developed in accordance with the manufacturer's United States Department of Health and Human Services maintenance schedule. The schedule shall include, but need not be limited to the following:

(I) (No change.)

(II) acquisition of images obtained with phantoms using the same processing mode and CT conditions of operation as are used to perform dose measurements required by clause (iii)(I) of this subparagraph. The registrant shall retain either of the following in accordance with subsection (l) [(k)] of this section for inspection by the agency:

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

[(5) Records/documents.]

[(A) The registrant shall maintain copies of the following records/documents at each authorized use location in accordance with subsection (k) of this section for inspection by the agency:]

[(i) current applicable sections of this chapter as listed on the certificate of registration;]

[(ii) current certificate of registration;]

[(iii) current operating and safety procedures in accordance with subsection (h)(1)(D) of this section;]

[(iv) receipt, transfer, and disposal of radiation machines specific to that location including the date, manufacturer name, model and serial number from the control panel or console of the radiation machine and identification of the person making the record;]

[(v) credentials of operators of radiation machines operating at that location in accordance with subsection (h)(1)(C) of this section;]

[(vi) film processing records for that location in accordance with subsection (h)(4)(A)(viii) and (ix) of this section, as applicable;]

[(vii) FDA variances of machines at that location in accordance with subsection (h)(1)(E) of this section;]

[(viii) CT dose measurements and CT quality control films or images at that location in accordance with subsection (h)(4)(D)(iii)(III) and (iv)(II) of this section;]

[(ix) therapy (below 1 MeV) surveys, calibrations of equipment, and spot checks at that location in accordance with subsection (h)(2)(D)(i)(II) and (ii)(IV) of this section;]

[(x) therapy (1 MeV and above) surveys, calibrations of equipment, and spot checks at that location in accordance with subsection (h)(3)(C)(i)(III), (ii)(IV), and (iii)(VII) of this section;]

[(xi) records, notices, and reports of therapy events in accordance with subsection (j) of this section; and]

[(xii) notice of violations from last inspection, if applicable, and documentation of corrections of any violations.]

[(B) Records specified in subparagraph (A) may be maintained in electronic format.]

(i) Medical events [Therapy events] (misadministrations).

(1) Medical events [Therapy events] involving equipment operating at energies below 1 MeV and electronic brachytherapy devices, shall be reported when:

(A) (No change.)

(B) the treatment consists of 3 [three] or fewer fractions and the calculated total administered dose differs from the total prescribed dose by more than 10% of the total prescribed dose; or

(C) (No change.)

(2) Medical events [Therapy events] involving equipment operating with energies of 1 MeV and above shall be reported when:

(A) (No change.)

(B) the treatment consists of 3 [three] or fewer fractions and the calculated total administered dose differs from the total prescribed dose by more than 10% of the total prescribed dose; [or]

(C) the calculated total administered dose differs from the total prescribed dose by more than 20% of the total prescribed dose; or [.]

(D) the combination of external beam radiation therapy and radioactive material therapy causes over-radiation of a patient resulting in physical injury or death.

(j) Reports of medical events [therapy events] (misadministrations).

(1) For a medical event [therapy event], a registrant shall do the following:

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

(2) Each registrant shall retain a record of each event in accordance with subsection (l) [(k)] of this section for inspection by the agency. The record shall contain the following:

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

(3) (No change.)

(k) Additional requirements for electronic brachytherapy devices.

(1) Technical requirements for electronic brachytherapy devices.

(A) The timer shall:

(i) have a display provided at the treatment control panel and a pre-set time selector;

(ii) activate with the production of radiation and retain its reading after irradiation is interrupted. After irradiation is terminated and before irradiation can be reinitiated, it shall be necessary to reset the elapsed time indicator to zero;

(iii) terminate irradiation when a pre-selected time has elapsed, if any dose monitoring system present has not previously terminated irradiation;

(iv) permit selection of exposure times as short as 1 second;

(v) not permit an exposure if set at zero; and

(vi) be accurate to within 1.0% of the selected value or 1 second, whichever is greater.

(B) The control panel, in addition to the displays required in subparagraph (A) of this paragraph, shall have the following:

(i) an indication of whether electrical power is available at the control panel and if activation of the x-ray tube is possible;

(ii) means for indicating x-rays are being produced;

(iii) means for indicating x-ray tube potential and current; and

(iv) means for terminating an exposure at any time.

(C) All emergency buttons/switches shall be clearly labeled as to their functions.

(2) Surveys, calibrations, and spot checks.

(A) Surveys shall be performed as follows.

(i) All facilities having electronic brachytherapy device(s) shall have an initial survey made by a licensed medical physicist, with a specialty in therapeutic radiological physics, who shall provide a written report of the survey to the registrant. Additional surveys shall be done as follows:

(I) when making any change in the portable shielding;

(II) when making any change in the location where the electronic brachytherapy device is used within the treatment room; and

(III) when relocating the electronic therapy device.

(ii) The registrant shall maintain a copy of the initial survey report and all subsequent survey reports in accordance with subsection (l) of this section for inspection by the agency.

(iii) The survey report shall indicate all instances where the installation is in violation of applicable requirements of this chapter.

(B) Calibrations shall be performed as follows.

(i) Calibration procedures shall be in writing, or documented in an electronic reporting system, and shall have been developed by a licensed medical physicist with a specialty in therapeutic radiological physics.

(ii) The registrant shall make calibration measurements required by this section in accordance with any current recommendations from a recognized, national professional association (such as the American Association of Physicists in Medicine Report Number 152) for electronic brachytherapy, when available. Equivalent alternative methods are acceptable. In the absence of a protocol by a national professional association, published protocol included in the device manufacturer operator's manual should be followed.

(iii) The calibration of the electronic brachytherapy device shall be performed after change of the x-ray tube or replacement of components that could cause a change in the radiation output. The calibrations shall be such that the dose at a reference point in water or plastic phantom can be calculated to within an uncertainty of 5.0%.

(iv) The calibration of the radiation output of the electronic brachytherapy device shall be performed by a licensed medical physicist with a specialty in therapeutic radiological physics who is physically present at the facility during such calibration.

(v) The calibration of the therapeutic electronic brachytherapy device shall include verification that the electronic brachytherapy device is operating in compliance with the design specifications.

(vi) Calibration of the radiation output of the electronic brachytherapy device shall be performed with a calibrated dosimetry system. The dosimetry calibration shall be traceable to a national standard. The calibration interval shall not exceed 24 months.

(vii) Records of calibration measurements shall be maintained by the registrant in accordance with subsection (l) of this section for inspection by the agency.

(viii) A copy of the latest calibrated absorbed dose rate measured on the electronic brachytherapy device shall be available at a designated area within the therapy facility housing the electronic brachytherapy device.

(C) Spot check procedures.

(i) Spot check procedures shall be in writing, or documented in an electronic reporting system, and shall have been developed by a licensed medical physicist with a specialty in therapeutic radiological physics.

(ii) If a licensed medical physicist does not perform the spot check measurements, the results of the spot check measurements shall be reviewed by a licensed medical physicist with a specialty in therapeutic radiological physics within 2 treatment days and a record made of the review.

(iii) The written spot check procedures shall specify the operating instructions that shall be carried out whenever a parameter exceeds an acceptable tolerance as established by the licensed medical physicist.

(iv) The certified physician or licensed medical physicist shall prevent the clinical use of a malfunctioning device until

the malfunction identified in the spot check has been evaluated and corrected or, if necessary, the equipment repaired.

(v) Records of the written spot checks and any necessary corrective actions shall be maintained by the registrant in accordance with subsection (l) of this section for inspection by the agency. A copy of the most recent spot check shall be available at a designated area within the therapy facility housing that therapeutic radiation system.

(vi) Spot checks shall be obtained using a dosimetry system satisfying the requirements of subparagraph (B)(vi) of this paragraph.

(l) [(k)] Records [Records/documents] for agency inspection. The registrant shall maintain the following records at the time intervals specified, for inspection by the agency. The records may be maintained in electronic format. [Each registrant shall make the following records/documents available to the agency for inspection, upon reasonable notice.]

Figure: 25 TAC §289.229(l)

[Figure: 25 TAC §289.229(k)]

§289.231. General Provisions and Standards for Protection Against Machine-Produced Radiation.

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

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

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

(4) Agency--The Department of State Health Services [The Texas Department of Health or its successor].

(5) - (9) (No change.)

(10) Chiropractor--An individual licensed by the Texas Board of Chiropractic Examiners [Texas State Board of Chiropractic Examiners].

(11) - (21) (No change.)

(22) Exposure rate (air kerma rate)--The exposure per unit of time.

(23) - (31) (No change.)

(32) Ionizing radiation--Any electromagnetic or particulate radiation capable of producing ions, directly or indirectly, in its passage through matter. Ionizing radiation includes gamma rays and x-rays [x rays], alpha and beta particles, high speed electrons, neutrons, and other nuclear particles.

(33) - (41) (No change.)

(42) Minimal threat radiation machines--Those radiation machines capable of generating or emitting fields of radiation that, during the operation of which:

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

(C) no [known] physical injury to an individual has occurred and is known by the agency.

(43) - (48) (No change.)

(49) Physician--An individual licensed by the Texas Medical Board [Texas State Board of Medical Examiners].

(50) Podiatrist--An individual licensed by the Texas State Board of Podiatric Medical Examiners [Texas State Board of Podiatric Examiners].

(51) - (53) (No change.)

(54) Radiation--One or more of the following:

(A) gamma and x-rays [x rays]; alpha and beta particles and other atomic or nuclear particles or rays;

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

(55) Radiation area--Any area, accessible to individuals, in which radiation levels could result in an individual receiving a DE in excess of 0.005 rem (0.05 mSv) in 1 [one] hour at 30 cm from the radiation machine or from any surface that the radiation penetrates.

(56) - (65) (No change.)

(66) Shallow dose equivalent (H_s) (that applies to the external exposure of the skin of the whole body or the skin of an extremity) [(SDE)]--The dose equivalent [DE] at a tissue depth of 0.007 cm (7 mg/cm^2) [that applies to the external exposure of the skin of the whole body or the skin of an extremity]. For purposes of this chapter, the acronym SDE has the same meaning as the term shallow dose equivalent.

(67) - (76) (No change.)

(77) Very high radiation area--An area, accessible to individuals, in which radiation levels from sources of radiation external to the body could result in an individual receiving an absorbed dose in excess of 500 rads (5 grays) in 1 [one] hour at 1 meter (m) from a radiation machine or from any surface that the radiation penetrates. At very high doses received at high dose rates, units of absorbed dose, gray and rad, are appropriate, rather than units of DE, Sv and rem.

(78) - (82) (No change.)

(d) - (h) (No change.)

(i) Communications.

(1) Except where otherwise specified, all communications and reports concerning this chapter and applications filed under them should be addressed to the Radiation Control Program, Department of State Health Services, P.O. Box 149347, Mail Code 1987, Austin, Texas, 78714-9347 [Bureau of Radiation Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas, 78756-3189]. Communications, reports, and applications may be delivered in person to the agency's office located at 8407 Wall Street, Austin, Texas.

(2) (No change.)

(j) - (l) (No change.)

(m) Occupational dose limits.

(1) The registrant shall control the occupational dose to individuals to the following dose limits.

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

(D) If a woman declares her pregnancy, the registrant shall ensure that the DE to an embryo/fetus during the entire pregnancy, due to occupational exposure of a declared pregnant woman, does not exceed 0.5 rem (5 mSv). If a woman chooses not to declare pregnancy, the occupational dose limits specified in paragraph (1)(A) and (B) of this subsection are applicable to the woman.

(i) The registrant shall make efforts to avoid substantial variation above a uniform monthly exposure rate (air kerma rate) to a declared pregnant woman so as to satisfy the limit in paragraph (1) of this subsection. The National Council on Radiation Protection and Measurements recommended in NCRP Report No. 91 "Recommendations on Limits for Exposure to Ionizing Radiation" (June 1,

1987) that no more than 0.05 rem (0.5 mSv) to the embryo/fetus be received in any 1 [one] month.

(ii) - (v) (No change.)

(2) (No change.)

(3) When a protective apron is worn while working with fluoroscopic equipment used for clinical diagnostic or research purposes, the effective dose equivalent (EDE) for external radiation shall be determined as follows.

(A) When only 1 [one] individual monitoring device is used and it is located at the neck (collar) outside the protective apron, the reported DDE shall be the EDE for external radiation; or

(B) When only 1 [one] individual monitoring device is used and it is located at the neck (collar) outside the protective apron, and the reported dose exceeds 25% of the limit specified in paragraph (1) of this subsection, the reported DDE value multiplied by 0.3 shall be the EDE for external radiation; or

(C) (No change.)

(4) The EDE determined by paragraph (3) of this subsection shall be recorded as part of an individual's dose record and will contribute to that individual's annual TEDE.

(5) [(4)] The DDE, LDE, and SDE may be assessed from surveys or radiation measurements for the purpose of demonstrating compliance with the occupational dose limits, if the individual monitoring device was not in the region of highest potential exposure, or the results of individual monitoring are unavailable.

(6) [(5)] The registrant shall reduce the dose that an individual may be allowed to receive in the current year by the amount of occupational dose received from radiation machines or radioactive materials while employed by any other person. See subsection (r)(4) of this section.

(n) Conditions requiring individual monitoring of occupational dose.

(1) Each registrant shall monitor exposures from radiation machines at levels sufficient to demonstrate compliance with the occupational dose limits of this section. As a minimum, each registrant shall monitor occupational exposure to radiation from radiation machines and shall supply and require the use of individual monitoring devices by:

(A) adults likely to receive, in 1 [one] year from sources external to the body, a dose in excess of 10% of the limits in subsection (m)(1) of this section;

(B) minors likely to receive, in 1 [one] year from sources of radiation external to the body, a DDE in excess of 0.1 rem (1 mSv), an LDE in excess of 0.15 rem (1.5 mSv), or an SDE to the skin or to the extremities in excess of 0.5 rem (5 mSv);

(C) - (D) (No change.)

(2) (No change.)

(o) Dose limits for individual members of the public.

(1) Each registrant shall conduct operations so that:

(A) (No change.)

(B) the dose in any unrestricted area from registered external sources does not exceed 0.002 rem (0.02 mSv) in any 1 [one] hour.

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

(4) The registrant shall ensure that in facilities utilizing both radiation producing machines and radioactive materials, the TEDE to an individual member of the public shall not exceed 0.1 rem (1 mSv) in 1 year.

(p) - (q) (No change.)

(r) Determination of occupational dose for the current year.

(1) (No change.)

(2) In complying with the requirements of paragraph (1) of this subsection, a registrant may:

(A) accept, as a record of the occupational dose that the individual received during the current year, RC Form 231-3 [BRC Form 231-3] from prior or other current employers, or other clear and legible record, of all information required on that form and indicating any periods of time for which data are not available; or

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

(3) The registrant shall record the exposure data for the current year, as required by paragraph (1) of this subsection, on RC Form 231-3, [BRC Form 231-3] or other clear and legible record, of all the information required on RC Form 231-3 [BRC Form 231-3].

(4) If the registrant is unable to obtain a complete record of an individual's current occupational dose while employed by any other registrant or licensee, the registrant shall assume in establishing administrative controls in accordance with subsection (m)(6) [(m)(5)] of this section for the current year, that the allowable dose limit for the individual is reduced by 1.25 rems (12.5 millisieverts (mSv)) for each quarter; or 416 millirems (mrem) (4.16 mSv) for each month for which records were unavailable and the individual was engaged in activities that could have resulted in occupational radiation exposure.

(5) - (6) (No change.)

(s) (No change.)

(t) Control of access to high radiation areas.

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

(5) The registrant is not required to control entrance or access to rooms or other areas containing radiation machines capable of producing a high radiation area as described in this subsection if the registrant has met all the specific requirements for access and control specified in other applicable sections of this chapter, such as §289.227 of this title (relating to Use of Radiation Machines in the Healing Arts), §289.229 of this title (relating to Radiation Safety for Accelerators, Therapeutic Radiation Machines, [and] Simulators, and Electronic Brachytherapy Devices), and §289.255 of this title (relating to Radiation Safety Requirements and Licensing and Registration Procedures for Industrial Radiography).

(u) Control of access to very high radiation areas.

(1) In addition to the requirements in subsection (t) of this section, the registrant shall institute measures to ensure that an individual is not able to gain unauthorized or inadvertent access to areas in which radiation levels could be encountered at 500 rads (5 grays) or more in 1 [one] hour at 1 m from a radiation machine or any surface through which the radiation penetrates at this level.

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

(v) - (z) (No change.)

(aa) Open records.

(1) (No change.)

(2) Any person who submits written information or data to the agency and requests that the information be considered confidential, privileged, or otherwise not available to the public under the Texas Public Information Act, shall justify such request in writing, including statutes and cases where applicable, addressed to the agency.

(A) Documents containing information that is claimed to fall within an exception to the Texas Public Information Act shall be marked to indicate that fact. Markings shall be placed on the document on origination or submission.

(i) (No change.)

(ii) The following wording shall be placed at the bottom of the front cover and title page, or first page of text if there is no front cover or title page:
Figure: 25 TAC §289.231(aa)(2)(A)(ii)
[~~Figure: 25 TAC §289.231(aa)(2)(A)(ii)~~]

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

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

(bb) - (cc) (No change.)

(dd) Records of individual monitoring results.

(1) (No change.)

(2) The registrant shall make entries of the records specified in paragraph (1) of this subsection at intervals not to exceed 1 [~~one~~] year and within 90 days of the end of the year.

(3) The registrant shall maintain the records specified in paragraph (1) of this subsection on RC Form 231-3, [~~BRC Form 231-3,~~] in accordance with the instructions for RC Form 231-3, [~~BRC Form 231-3~~] or in clear and legible records containing all the information required by RC Form 231-3 [~~BRC Form 231-3~~].

(4) (No change.)

(5) The registrant shall retain each required form or record required by this subsection and records used in preparing RC Form 231-3 [~~BRC Form 231-3~~] or equivalent in accordance with subsection (ll)(6) of this section.

(ee) - (ff) (No change.)

(gg) Reports of stolen, lost, or missing radiation machines.

(1) (No change.)

(2) Each registrant required to make a report in accordance with paragraph (1) of this subsection shall, within 30 days after making the telephone report, make a written report to the agency that includes the following information:

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

[~~(C) a statement of disposition, or probable disposition, of the radiation machine involved;~~]

(C) [~~(D)~~] exposures of individuals to radiation, circumstances under which the exposures occurred, and the possible TEDE to persons in unrestricted areas;

(D) [~~(E)~~] actions that have been taken, or will be taken, to recover the radiation machine; and

(E) [~~(F)~~] procedures or measures that have been, or will be, adopted to ensure against a recurrence of the loss or theft of radiation machines.

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

(hh) Notification of incidents.

(1) Notwithstanding other requirements for notification, each registrant shall immediately report each event involving a radiation machine possessed by the registrant that may have caused or threatens to cause an individual, except a patient administered radiation for the purpose of medical diagnosis or therapy, to receive:

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

(2) - (4) (No change.)

(ii) Reports of exposures and radiation levels exceeding the limits.

(1) In addition to the notification required by subsection (hh) of this section, each registrant shall submit a written report within 30 days after learning of any of the following occurrences:

(A) (No change.)

(B) doses in excess of any of the following:

(i) the occupational dose limits for adults in subsection (m)(1)(A) and (B) [~~subsection (m)(1)(A)~~] of this section;

(ii) - (v) (No change.)

(C) (No change.)

(2) - (4) (No change.)

(jj) (No change.)

(kk) Inspections.

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

(4) Inspection of radiation machines and services.

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

(C) On-site routine inspections and remote inspections may be alternated as determined by the agency.

[~~(D) On-site routine inspections and remote inspections will be alternated for the following:~~]

[~~*(i)* facilities possessing and using only radiation machines defined as minimal threat machines in accordance with subsection (ll)(3) of this section; and~~]

[~~*(ii)* facilities possessing and using only radiographic machines for podiatry.~~]

(D) [~~(E)~~] For remote inspection of radiation machines, each registrant shall respond to a request from the agency for a remote inspection by performing the following:

(i) completing the remote inspection forms in accordance with the instructions included with the forms; and

(ii) returning to the agency the completed remote inspection forms with documentation of the most recent equipment performance evaluation performed in accordance with §289.227(o) [~~§289.227(q)~~] of this title and an inventory in accordance with §289.226(m)(1)(B) of this title, by the deadline indicated on the form.

(E) [~~(F)~~] The agency will conduct inspections of radiation machines or lasers in a manner designed to cause as little disruption of a healing arts practice as is practicable.

(5) - (6) (No change.)

(ll) Appendices.

(1) Definitions of machine types and types of use [~~Machine Types and Types of Use~~]. For the purposes of this section, the listed machine types and types of use have the following meanings:

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

(C) accelerators, simulators [~~and~~] other therapeutic machines, and electronic brachytherapy devices, used for medical purposes;

(D) - (K) (No change.)

(2) Inspection intervals for registrants.
Figure: 25 TAC §289.231(ll)(2)
[~~Figure: 25 TAC §289.231(ll)(2)~~]

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

(5) Training for agency inspectors of lasers. Initial training will include an introduction to the requirements in this chapter and inspection forms. Inspections of 2 [~~two~~] medical and 2 [~~two~~] entertainment lasers, conducted by an inspector having completed the requirements of this paragraph, shall be observed before unsupervised inspection of lasers is permitted.

(6) Time requirements for record keeping. The following are time requirements for record keeping.
Figure: 25 TAC §289.231(ll)(6)
[~~Figure: 25 TAC §289.231(ll)(6)~~]

(7) Occupational exposure form. The following, RC Form 231-3 [~~BRC Form 231-3~~], is to be used to document occupational exposure record for a monitoring period.
Figure: 25 TAC §289.231(ll)(7)
[~~Figure: 25 TAC §289.231(ll)(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.

Filed with the Office of the Secretary of State on July 25, 2011.

TRD-201102798
Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: September 4, 2011
For further information, please call: (512) 776-6972

PART 4. ANATOMICAL BOARD OF THE STATE OF TEXAS

CHAPTER 477. DISTRIBUTION OF BODIES

25 TAC §§477.1, 477.2, 477.4, 477.7, 477.8

The Anatomical Board of the State of Texas (Board) proposes amendments to §§477.1, 477.2, 477.4, 477.7, and 477.8, concerning the rules and procedures for the distribution of whole body donations for education and research.

The Board's proposed amendments are to implement Health and Safety Code §692A.011(a)(4) as amended by House Bill 2027 in the 81st Legislative Session. Section 692A.011(a)(4) provides that the use of a gift of a whole body to an eye or tissue bank must be coordinated through the Anatomical Board of the State of Texas. One proposed amendment is to implement a requirement of Senate Bill 187 in the 82nd Legislative session.

Amendments to §477.1 are proposed to improve the definitions of the Act and rule, to expand the scope of the definition of "bodies" or "parts of human bodies," as well as more clearly define the scope of the Board's jurisdiction.

An amendment to §477.2 is proposed to expand the requirement of accreditation to tissue banks that receive whole body donations under the Health and Safety Code, Chapter 692A.

Amendments to §477.4 are proposed to require labeling of transported specimens, and to expand the requirement that no whole body be shipped out of the State of Texas by a tissue bank unless written permission for such shipment has been granted by the Board acting through its secretary-treasurer.

An amendment to §477.7 is proposed to expand to tissue banks the requirement of filing a cadaver procurement and transfer form.

An amendment to §477.8 expands the requirement for filing forms for recording of willed and donated bodies to those institutions that receive donations as authorized by Health and Safety Code, Chapter 692A.

Dr. Vaughan Lee, Chairman, has determined that for each fiscal year of the first five years the sections are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the sections as proposed.

Dr. Lee has also determined that there are no anticipated economic costs to individuals, small businesses or micro-businesses required to comply with the sections as proposed, with one exception. Dr. Lee has determined there may be minimal costs to tissue banks seeking accreditation, but there are no alternative methods other than accreditation to protect and promote public health, safety, and welfare consistent with statutory requirements.

Dr. Lee has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit as a result of the enforcing or administering the sections is to effectively regulate the disposition/dispersion of whole bodies in Texas, all of which will protect and promote public health, safety and welfare.

Comments on the proposal may be submitted in writing either in person or by courier to Len Cleary, Ph.D., Secretary/Treasurer, Anatomical Board of the State of Texas, P.O. Box 20745, Houston, Texas 77225-0745. Comments will be accepted for 30 days following publication of the proposed amendments in the *Texas Register.*

The proposed amendments are authorized by the Texas Health and Safety Code §692A.011(a)(4) and §692A.001(35) that provides that the use of a gift of a whole body to an eye or tissue bank must be coordinated through the Anatomical Board of the State of Texas and that tissue banks may be accredited under state law.

The proposed amendments affect the Texas Administrative Code, Title 25, Chapter 477.

§477.1. Definition and Jurisdiction of the Board.

(a) Definition. Whenever the terms human "body" or "bodies" or "parts of human body" or "parts of human bodies" are used in Chapters 477 - 485 [~~483~~], the terms include anatomical specimens, defined as parts of a human corpse in §691.001 of the Health and Safety Code.

(b) Jurisdiction:

(1) Anatomical Donations. The board exercises jurisdiction over bodies willed or donated to the board, medical, dental or chiropractic schools, or other donees authorized by the board under

Health and Safety Code, Chapters 691 and 692A [~~692~~]. The board also exercises jurisdiction over individuals, corporations, associations, institutions, research organizations, or other legal entities authorized to receive whole bodies under Chapters 691 and 692A [~~or 692~~].

(2) The board lacks jurisdiction over:

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

(C) individuals in possession of parts or skeletal material or specimens described in subparagraphs (A) and (B) of this paragraph.

§477.2. Institutional Requirements.

(a) Institution accreditation. Institutions applying to be authorized to receive and hold bodies, or parts thereof, must show evidence of accreditation by the accrediting board for that profession. This applies to tissue banks authorized to receive donations under the Health and Safety Code Chapter 692A.

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

§477.4. Transport, Importation and Exportation of Bodies.

(a) Transport of Bodies. The transfer and transport of bodies from one institution to another, or for export from the state, shall be done in an appropriate, secured vehicle operated by a licensed funeral establishment, ambulance service, member institution, or public carrier. A label with the statement "CONTENTS DERIVED FROM DONATED HUMAN TISSUE" shall be affixed to the container in which the body or anatomical specimen is transported. Violations may result in revocation of authorization to receive and hold bodies.

(b) (No change.)

(c) Exportation. No body under the jurisdiction of the board including donations to tissue banks authorized by Health and Safety Code, Chapter 692A, shall be shipped out of the State of Texas, unless permission in writing for such shipment has been granted by the board acting through its secretary-treasurer. If the secretary-treasurer is an employee of the institution that is to make the shipment, secondary approval must be given by the chair.

(1) The board may grant approval of exportation of a body if it or its secretary-treasurer or chair determines that:

(A) a written request has been received from an institution that is in the approved categories described in §479.1(a) of this title (relating [~~subsection (a) of Section 479.1 relating~~] to [~~"~~]Institutions Authorized to Receive and Hold Bodies)[~~"~~] that describes the need for the body and the facilities available for holding the body.

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

(2) (No change.)

(d) - (e) (No change.)

§477.7. Board Forms.

(a) (No change.)

(b) Yearly cadaver procurement and use report. Each institution which has received, directly or by transfer, and/or used a body during the prior year shall complete, sign and file with the secretary-treasurer the yearly cadaver procurement and use report prescribed by the board. This report shall be filed not later than August 31 of each year for the prior annual period August 1 through July 31.Tissue banks receiving donations as authorized by Health and Safety Code Chapter 692A will file a cadaver procurement and transfer form as prescribed by the board.

(c) (No change.)

§477.8. Forms for Recording of Willed and Donated Bodies.

(a) Member institutions operating a willed body program, and institutions or individuals receiving donated bodies, including those authorized under Health and Safety Code, Chapter 692A, shall prepare separate forms for pre-death wills under Health and Safety Code, Chapter 691 and post-death donations under the Anatomical Gift Act, Health and Safety Code, Chapter 692A [~~692~~]. A copy of such forms shall be deposited, as a sample, with the secretary-treasurer.

(b) All Chapter 691 will forms and Chapter 692A [~~692~~] donation forms shall incorporate the following: "Complaints or inquiries regarding a willed or donated body should be directed to the secretary-treasurer of the Anatomical Board of the State of Texas. The name and address of this individual may be obtained from the institution to which the body was delivered."

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 July 18, 2011.

TRD-201102716
Len Cleary, Ph.D.
Secretary-Treasurer
Anatomical Board of the State of Texas
Earliest possible date of adoption: September 4, 2011
For further information, please call: (713) 500-5631

TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 336. RADIOACTIVE SUBSTANCE RULES

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §§336.1, 336.2, 336.103, 336.105, 336.210, 336.305, 336.309, 336.331, 336.359, and 336.405. The commission also proposes new §336.351 and §336.357.

Background and Summary of the Factual Basis for the Proposed Rules

The changes proposed to this chapter will revise the commission's radiation control rules to ensure compatibility with regulations promulgated by the United States Nuclear Regulatory Commission (NRC). Compatibility of the commission's rules with the federal program is necessary to preserve the status of Texas as an Agreement State under Title 10 Code of Federal Regulations (CFR) Part 150 and under the "Articles of Agreement between the United States Atomic Energy Commission and the State of Texas for Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended." Rules which are designated by NRC as compatibility items must be adopted by an Agreement State within three years of the effective date of the NRC rules, in most cases. Specific changes to the rules that involve incorporation of NRC rules are explained in the Section by Section Discussion of this preamble. These rules along with their *Federal Register* publication dates and effective dates are listed as follows:

Requirements for Expanded Definition of Byproduct Material (72 FR 55864, effective November 30, 2007).

The federal Energy Policy Act of 2005 expanded the Atomic Energy Act of 1954 definition of "byproduct material" to include any discrete source of radium-226, any material made radioactive by use of a particle accelerator, and discrete source material that the NRC determines would pose a similar threat to public health, safety or the common defense and security as radium-226, that are extracted or converted after extraction for use for a commercial, medical or research activity. The expansion of this definition placed the added materials under the NRC's regulatory authority. The federal Energy Policy Act of 2005 directed the NRC to issue regulations to implement the new definition of byproduct material. The NRC published its adopted regulations in the *Federal Register* on October 1, 2007 (72 FR 55864). The NRC explained that the new categories of byproduct material are not considered to be low-level radioactive waste. The first category of new material that is now classified as byproduct material is any discrete source of radium-226 that is produced, extracted, or converted after extraction before, on or after August 8, 2005 for use for a commercial, medical, or research activity. Radium is a chemically reactive, silvery white radioactive metallic element with an atomic number of 88 and symbol of Ra. Radium-226, the most abundant and most stable isotope of radium, emits alpha particles and gamma radiation and decays into radon gas. Because of radium's properties, especially its ability to stimulate luminescence, industries used radium in the early twentieth century in various consumer products, such as glow-in-the-dark watch and clock faces and other instruments that were made to be visible at night. Most of these uses were discontinued for health and safety reasons. In more recent times, radium sources were used in industrial radiography, industrial smoke detectors, or industrial gauges that measure properties such as moisture and density. In the NRC's rules, only "discrete" sources of radium-226 are covered under the new definition. The NRC explains that discrete sources are radionuclides that have been processed so that the concentration within the material has been purposely increased for use for commercial, medical, or research activities. The NRC determined that Energy Policy Act of 2005 gave the NRC authority over discrete sources of radium-226 but not over diffuse sources of radium-226, such as radium-226 as it occurs in nature or over other processes where radium-226 may be unintentionally concentrated. Scale from pipes, fly ash from coal power plants, phosphate fertilizers, or residuals from the treatment of water to meet drinking water standards are not considered to be discrete sources of radium-226 and therefore are not covered under the NRC's new definition of byproduct material. Although certain byproduct materials were added to the NRC's regulatory authority, the materials were already subject to state licensing requirements. The State of Texas and the commission already regulated discrete and diffuse sources of radium-226 as naturally-occurring radioactive material waste prior to the Energy Policy Act of 2005 definitional changes. Consequently, the commission's implementation of the NRC's rules does not change the state requirements for how discrete sources of radium-226 may be disposed. The second category of new byproduct material under the NRC regulation is any material that has been made radioactive by use of a particle accelerator and is produced, extracted, or converted after extraction before, on, or after August 8, 2005 for use for a commercial, medical, or research activity. A particle accelerator is a device that imparts kinetic energy to subatomic particles by increasing their speed through electromagnetic interactions. Particle accelerators are used to produce radioactive material by directing a beam of high-speed particles at a target composed of a specifically selected element, which is usually not radioactive. Usually the nuclide produced is radioactive and is created for the use of its radiological properties. The NRC explains that the majority of accelerator-produced radioactive material is created for use in medicine. Prior to the NRC's regulations, the commission rule in §336.1(g) included accelerator-produced radioactive material within the term "low-level radioactive waste." Because the Energy Policy Act and the NRC regulations now define materials that are made radioactive by use of a particle accelerator as byproduct material and that the newly added material is not considered to be low-level radioactive waste, the commission must revise current §336.1(g) and regulate accelerator produced radioactive material as byproduct and not as low-level radioactive waste to maintain compatibility with the NRC requirements. The third category of new byproduct material is any discrete source of naturally occurring radioactive material, other than source material, that the NRC determines would pose a threat similar to the threat posed by a discrete source of radium-226 to the public health and safety or the common defense and security and before, on, or after August 8, 2005, is extracted or converted after extraction for use in a commercial, medical, or research activity. In its October 1, 2007 publication of adopted rules, the NRC announced that it was not adding any new discrete sources of naturally occurring radioactive material under this classification. To date, the NRC has not added a new category of radioactive material to be classified as byproduct under this provision. The commission proposes to add this category of byproduct material to maintain compatibility with NRC requirements but there are no types of radioactive material that will be classified as byproduct material under this provision at this time.

National Source Tracking System (71 FR 65685, effective February 6, 2007).

After the terrorist attacks in the United States on September 11, 2001, the NRC conducted a comprehensive review of nuclear material security requirements with particular focus of radioactive material of concern, including cobalt-60, cesium-137, iridium-192, and americium-241, as well as other radionuclides with the potential to be used in a radiological dispersal device or a radiological exposure device in the absence of proper security and control measures. The NRC's adopted rules create a national tracking system of sealed sources to provide greater source accountability and increased controls by licensees. The NRC rules require licensees to report information on the manufacture, transfer, receipt, disassembly, and disposal of nationally tracked sealed sources. A sealed source consists of radioactive material that is sealed in a capsule or is closely bonded to a non-radioactive substrate to prevent leakage or escape of the radioactive material. A nationally tracked sealed source is a sealed source containing a quantity of radioactive material equal to or greater than the Category 2 levels listed in the new Appendix E to 10 CFR Part 20. The commission proposes requirements of the National Source Tracking System in NRC regulations to maintain compatibility as an Agreement State program.

Occupational Dose Records, Labeling Containers, and the Total Effective Dose Equivalent (72 FR 68043 effective February 15, 2008).

The NRC implemented a regulatory review to reduce unnecessary regulatory burden on NRC and Agreement State licensees without affecting the level of protection for either the health and safety of workers and the public or for the environment. The NRC revised the requirements regarding the information that a

licensee must make available to workers. A licensee must provide an annual report to each individual monitored of the dose received in that monitoring year if the individual's occupational dose report exceeds 1 millisievert (100 millirem) or to any individual that requests the report. A licensee is not required to provide unsolicited annual dose reports to those individuals whose annual dose does not exceed these limits. Also, the NRC's final rules revise the definition of "total effective dose equivalent" to mean the sum of the effective dose equivalent (for external exposures) and the committed effective dose equivalent (for internal exposures). The revised definition will allow licensees to substitute effective dose equivalent for deep-dose equivalent for external exposures. Another aspect of the NRC rulemaking is to remove provisions in 10 CFR §20.2104(a)(2) that requires licensees to attempt to obtain the records of cumulative occupational radiation dose for each worker requiring monitoring because previous NRC rule changes removed requirements using cumulative lifetime dose under 10 CFR Part 20 except for cases involving planned special exposures. The previous NRC revisions make it unnecessary for licensees to attempt to obtain lifetime exposures for workers who are not participating in a planned special exposure. The NRC explains that the rule does not affect the level of protection for either the health and safety of workers and the public or for the environment because the requirements to determine an individual's occupational radiation dose received during the current year or cumulative radiation dose prior to permitting a planned special exposure are not changed. The commission proposes changes in the rules to maintain compatibility with the NRC regulations.

NRC Order Imposing Increased Controls, EA-05-090 (71 FR 72128, published December 1, 2005).

In response to efforts to assess security risks posed by uncontrolled sources, the NRC issued an order on November 14, 2005 to impose requirements for the control of high-risk radioactive materials to prevent inadvertent and intentional unauthorized access, primarily due to the potential health and safety hazards posed by the uncontrolled material. The order identifies certain radionuclides of concern and establishes control measures for licensees to secure those materials. As part of the order, each Agreement State is required to issue legally binding requirements to put essentially identical measures in place for licensees under state regulatory jurisdiction. Because the NRC order was effective immediately for security concerns, the commission has already imposed the requirements of the NRC order on licensees and now proposes rules to implement the controls required by the NRC order.

The rulemaking will also amend the fees charged for facilities regulated under Chapter 336, Subchapter L. The proposed fees shall recover for the state the actual expenses arising from the regulatory activities associated with licenses for commercial disposal of by-product material. This is consistent with other cost recovery rules already adopted by the commission. The rulemaking will also amend the annual license fees to fund the Radiation and Perpetual Care Account.

Section by Section Discussion

Subchapter A, General Provisions

The commission proposes to amend §336.1 by removing §336.1(g). Accelerator-produced radioactive material is now regulated as byproduct material and not included as low-level radioactive waste in accordance with the NRC rulemaking *Requirements for Expanded Definition of Byproduct Material (72 FR 55864, effective November 30, 2007).*

The commission proposes to amend §336.2 to make it compatible with 10 CFR Part 20. The definitions of "Accelerator-produced radioactive material" and "Byproduct material" are proposed to be amended for consistency with 10 CFR §20.1003. A new definition of "Discrete source" is proposed for consistency with 10 CFR §20.1003. These definitions are proposed to implement the NRC rulemaking *Requirements for Expanded Definition of Byproduct Material* (72 FR 55864, effective November 30, 2007). The definition of "Low-level radioactive waste" is proposed to be revised to update the agency name of the "Texas Department of Health" to the "Texas Department of State Health Services." The definition of "Low-level radioactive waste" is also proposed to be amended to exclude the new classes of byproduct material in proposed §336.2(16)(C) - (E) and to implement the NRC rulemaking *Requirements for Expanded Definition of Byproduct Material* (72 FR 55864, effective November 30, 2007). A new definition of "Nationally tracked source" is proposed to implement the NRC rulemaking *National Source Tracking System* (71 FR 65685, effective February 6, 2007). The definition of "Naturally occurring radioactive material (NORM) waste" is proposed to be revised to update the agency name of the "Texas Department of Health" to the "Texas Department of State Health Services." A new definition of "Particle accelerator" is proposed for consistency with 10 CFR §20.1003. This definition is proposed to implement the NRC rulemaking *Requirements for Expanded Definition of Byproduct Material* (72 FR 55864, effective November 30, 2007). The definition of "Total effective dose equivalent (TEDE)" is proposed to be amended for consistency with 10 CFR §20.1003. This definition is proposed to implement the NRC rulemaking *Occupational Dose Records, Labeling Containers, and the Total Effective Dose Equivalent* (72 FR 68043, effective February 15, 2008). A new definition of "Waste" is proposed for consistency with 10 CFR §20.1003 and §61.2. This definition is proposed to implement the NRC rulemaking *Requirements for Expanded Definition of Byproduct Material* (72 FR 55864, effective November 30, 2007).

Congress enacted the Energy Policy Act of 2005 which expanded the definition of "byproduct material" under Section 11(e) of the Atomic Energy Act. The NRC adopted rules in 2007 to implement the new definition. Consistent with the expanded federal definition, "byproduct material" is proposed to be defined to include: any discrete source of radium-226 that is produced, extracted, or converted after extraction, for use for a commercial, medical, or research activity; any material that has been made radioactive by use of a particle accelerator and is produced, extracted, or converted for use for a commercial, medical, or research activity; and any discrete source of naturally occurring radioactive material, other than source material, that is extracted or converted after extraction for use in a commercial, medical, or research activity and that the NRC, in consultation with the Administrator of the United States Environmental Protection Agency (EPA), the United States Secretary of Energy, the United States Secretary of Homeland Security, and the head of any other appropriate Federal agency, determines would pose a threat similar to the threat posed by a discrete source of radium-226 to the public health and safety or the common defense and security. The commission notes that the expanded definition of byproduct material in Subchapter A does not expand or change the types of material licensed for disposal under Chapter 336, Subchapter L. Chapter 336, Subchapter L, relating to the licensing of source material and

by-product material disposal facilities, addresses the requirements for the disposal of by-product material as defined in that subchapter and is limited to byproduct material as defined in the Atomic Energy Act, Section 11(e)(2) and §336.2(16)(B) as the tailings and waste produced by or resulting from the extraction or concentration of uranium or thorium from ore primarily for its source material content. Except for the reclassification of accelerator produced radioactive materials as byproduct material discussed in the proposed amendment to §336.1, the definitions in §336.2 are proposed to maintain compatibility with federal regulations and do not change existing requirements for disposal of radioactive material under Chapter 336. A licensee that was authorized to store and process NORM materials under Chapter 336, Subchapter M would be authorized to accept the same material now classified as byproduct material under the revised definitions.

Subchapter B, Radioactive Substance Fees

The commission proposes to amend §336.103 to reflect current procedures and provide clarification for invoicing and payment of annual fees for commercial facilities regulated under Chapter 336, Subchapter H. The proposed amendment to §336.103(c) clarifies that the commission will invoice quarterly for reimbursement of actual costs incurred from regulatory activities associated with the license. The current practice of quarterly invoicing for actual expenses allows the commission's staff to plan and budget regulatory activities efficiently and avoids problems that a single yearly invoice would create across fiscal years and biennial appropriations cycles. Cost recovery for expenses related to radioactive material licensing activities is authorized in state statute. Texas Health and Safety Code (THSC), §401.412(d) provides the commission may assess and collect an annual fee for each license and registration and for each application in an amount sufficient to recover its reasonable costs to administer its authority.

The commission proposes to amend §336.105 to revise application fees charged for commercial facilities regulated under Chapter 336, Subchapter L. The proposed fees shall recover for the state the actual expenses arising from the regulatory activities associated with licenses for commercial disposal of by-product material. Cost recovery for expenses related to radioactive material licenses are authorized in state statute. THSC, §401.301(g) provides the commission may assess and collect additional fees from the applicant to recover the costs the commission incurs for administrative review, technical review, and hearings on the application. THSC, §401.412(d) provides the commission may assess and collect an annual fee for each license and registration and for each application in an amount sufficient to recover its reasonable costs to administer its authority.

The commission proposes to amend §336.105(a)(4) for applications for new, amended, or renewal commercial by-product material disposal licenses issued under Chapter 336, Subchapter L. The proposed amendment adds §336.105(a)(4)(A) to require a supplemental fee to recover the actual costs incurred by the commission for review of the application and any hearings associated with an application for commercial by-product material disposal. The proposed amendment also adds §336.105(a)(4)(B) to provide that the executive director invoice for reimbursement of the amount of the costs incurred quarterly. Agency practice of quarterly invoicing for actual expenses allows the commission's staff to plan and budget regulatory activities efficiently and avoids problems that a single yearly invoice would create across fiscal years and biennial appropriations cycles. Payment shall be made within 30 days following the date of the invoice. The proposed amendment implements THSC, §401.301(g) to provide for cost recovery for commercial by-product material disposal license applications.

The commission proposes to amend §336.105(b)(4) for annual fees for commercial by-product material disposal licenses issued under Chapter 336, Subchapter L. Currently the $60,929.50 annual fee specified in §336.105(b)(4) is not sufficient to cover the costs incurred by the commission for expenses arising from the regulatory activities associated with commercial by-product material disposal licensing. The proposed amendment adds §336.105(b)(4)(A) to require a supplemental license fee sufficient to recover the actual costs incurred by the commission. This fee shall recover for the state the actual expenses arising from the regulatory activities associated with the license in accordance with THSC, §401.412(d). The proposed amendment also adds §336.105(b)(4)(B) to provide that the executive director shall invoice for the amount of the costs incurred quarterly. Agency practice of quarterly invoicing for actual expenses allows the commission's staff to plan and budget regulatory activities efficiently and avoids problems that a single yearly invoice would create across fiscal years and biennial appropriations cycles. Payment shall be made within 30 days following the date of the invoice. The proposed amendment implements THSC, §401.412(d) to provide for cost recovery for annual fees associated with commercial by-product material disposal licenses.

The commission proposes to amend §336.105(h) to add a citation to §336.103 and to clarify the requirements for payment of fees. The proposed amendment implements THSC, §401.301 to fund the perpetual care account. Licenses issued under Subchapter H will be required to pay the annual fee when necessary. Currently, no licensees will be assessed with this fee since the perpetual care account is sufficiently funded under the limitations imposed in THSC, §401.301(e).

Subchapter C, General Licensing Requirements

The commission proposes to amend §336.210 to add radium-226 in alphabetical order to the Release Fractions Table in §336.210(e). This amendment is proposed for consistency with 10 CFR §30.72 and to implement the NRC rulemaking *Requirements for Expanded Definition of Byproduct Material* (72 FR 55864, effective November 30, 2007). This proposed amendment adds radium-226 to the list of radioactive material that must be considered in the emergency planning provided in radioactive materials license applications.

Subchapter D, Standards for Protection Against Radiation

The commission proposes to amend §336.305(c) to revise the method used to demonstrate compliance with the occupational dose limits. This amendment is proposed for consistency with 10 CFR §20.2008 and to implement the NRC rulemaking *Occupational Dose Records, Labeling Containers, and the Total Effective Dose Equivalent* (72 FR 68043 and 72233, effective February 15, 2008). The proposed amendment provides that when external exposure is determined by measurement with an external personal monitoring device, the deep-dose equivalent must be used in place of the effective dose equivalent, unless the effective dose equivalent is determined by a dosimetry method approved by the executive director.

The commission proposes to amend §336.309(a) to revise the requirements for determining prior occupational dose. The

proposed rule removes the requirement to attempt to obtain records of lifetime cumulative occupational radiation dose. Section 336.309(f) is proposed to require the licensee to retain dose records until the executive director terminates each pertinent license requiring this record. This amendment is proposed for consistency with 10 CFR §20.2104 and to implement the NRC rulemaking *Occupational Dose Records, Labeling Containers, and the Total Effective Dose Equivalent* (72 FR 68043 and 72233, effective February 15, 2008).

The commission proposes to amend §336.331 to update the agency name of the "Texas Department of Health" to the "Texas Department of State Health Services." The commission proposes §336.331(i) to require shipping manifests for disposal of byproduct material as defined in proposed §336.2(16)(C) - (E). This amendment is proposed for consistency with 10 CFR §20.2006 and to implement the NRC rulemaking *Requirements for Expanded Definition of Byproduct Material* (72 FR 55864, effective November 30, 2007).

The commission proposes new §336.351 to implement the requirements of the National Source Tracking System. The National Source Tracking System is the NRC's program for accounting for certain sealed sources by requiring licensees to report information on the manufacture, transfer, receipt, disassembly, and disposal of nationally tracked sealed sources. New §336.351 is proposed for consistency with 10 CFR §20.2207 and to implement the NRC rulemaking *National Source Tracking System* (71 FR 65685, effective February 6, 2007).

The commission proposes new §336.357 to implement the requirements in NRC's Order Imposing Increased Controls, EA-05-090. New §336.357 is proposed for consistency with 10 CFR §20.1801, and to implement the NRC's Order Imposing Increased Controls, EA-05-090 (71 FR 65685, published December 1, 2005). The proposed rule adds requirements for the control and access of certain radioactive materials possessed by a licensee to implement the security measures required by the NRC's order and are consistent with the Texas Department of State Health Services requirements in 25 TAC §289.252(ii).

The commission proposes to amend §336.359. Figure 2 in §336.359(d) is revised to include the elements "Nitrogen" and "Oxygen." This amendment is proposed for consistency with 10 CFR Part 20, Appendix B and to implement the NRC rulemaking *Requirements for Expanded Definition of Byproduct Material (72 FR 55864, effective November 30, 2007).*

Subchapter E, Notices, Instructions, and Reports to Workers and Inspections

The commission proposes to amend §336.405 to update requirements for notifications to workers. Section 336.405(b) is proposed to be amended to require a licensee to provide an annual report to an individual if their occupational dose exceeds 1 millisieverts (100 millirem) or the individual requests his or her annual dose report. This amendment is proposed for consistency with 10 CFR §19.13 and to implement the NRC rulemaking *Occupational Dose Records, Labeling Containers, and the Total Effective Dose Equivalent* (72 FR 68043 and 72233, effective February 15, 2008).

Fiscal Note: Costs to State and Local Government

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that, for the first five-year period the proposed rules are in effect, fiscal implications are anticipated for the agency but not for other units of state or local government as a result of administration or enforcement of the proposed rules.

The proposed rules will amend Chapter 336 to ensure that the agency's radiation control rules are compatible with regulations promulgated by the NRC. The proposed rules are necessary to maintain the status of the state as an Agreement State authorized to administer a portion of the radiation control program under the Atomic Energy Act. The proposed adoption of federal rule language is not expected to significantly impact the current practices and procedures used by licensees to comply with state and federal regulations.

The proposed rules allow the agency to recover the actual costs incurred by the commission for the review of an application and any hearings associated with an application for commercial by-product material disposal facilities regulated under Chapter 336, Subchapter L. The proposed rules will also allow the agency to recover the actual costs associated with regulatory activities for commercial radioactive by-product disposal licensees (an annual license fee). The application fee is currently $374,729. Annual license fees are currently $60,929 per year. Agency use of any revenue collected above these amounts would be subject to the legislature increasing the agency's appropriation authority.

For both of the proposed fee changes, the executive director would be required to send an invoice for the amount of the costs incurred during the period of September 1 through August 31 of each year. Payment would have to be made within 30 days following the date of the invoice.

The proposed rules also provide for the funding of the Radiation and Perpetual Care Account (Account 5096). The revenue in Account 5096 is funded by non-refundable fees equal to 5% of the total fee for each specific license under the jurisdiction of the agency. The maximum balance of fees collected in the Radiation and Perpetual Care Account is $500,000. If the balance in the account is reduced to $350,000 or less due to decommissioning or remediation activities, the agency is to reinstitute the assessment of the non-refundable fee until the balance of fees collected totals $500,000.

The proposed rules are not expected to have a significant impact on local government or other state agencies since these types of governmental entities do not typically engage in the commercial disposal of radioactive by-product material.

Public Benefits And Costs

Nina Chamness also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be consistency with federal regulations and the ability of the agency to recover actual costs arising from regulatory activities associated with the regulation of the commercial disposal of radioactive by-product material.

The proposed rules are not expected to have an impact on individuals. Fiscal implications may be anticipated for those commercial by-product material disposal businesses regulated under Chapter 336, Subchapter L. At this time, no new license applications are anticipated for these types of facilities. However, for future license applicants, any additional costs above the current application fee of $374,729 will depend upon the actual costs incurred by the commission for the review of an application and any hearings associated with the application.

The proposed rules also provide for the funding of the Radiation and Perpetual Care Account (Account 5096). If the balance of

fees collected in Account 5096 is $350,000 or less, a business would be required to pay a non-refundable fee equal to 5% of the total fee for each specific license under the jurisdiction of the agency until the balance of fees collected in the account totals $500,000. A business applying for a new license would not be required to pay a non-refundable fee to Account 5096 if the balance is over $350,000 at the time of application. At this time the balance in Account 5096 is at the maximum allowed balance.

At this time, there is one large business in the state that has a license for the commercial disposal of radioactive by-product material. There may be costs for this license holder resulting from the proposed requirement to submit an annual license fee sufficient to recover the actual costs incurred by the commission for the actual expenses arising from the regulatory activities associated with the license. Those costs will depend upon the agency's cost to regulate these activities. If these regulatory activities cost more than $60,929 per year, the Radioactive Materials Division would send an invoice for the amount of the additional costs incurred during the period of September 1 through August 31 of each year. Payment would have to be made within 30 days following the date of the invoice. At this time the Radioactive Materials Division is not able to project whether those regulatory costs would exceed $60,929 each year.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses under the proposed rules. Small businesses do not typically engage in the commercial disposal of radioactive by-product material.

Small Business Regulatory Flexibility Analysis

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules are required to protect the environment and comply with federal regulations. In addition, the proposed rules are not expected to affect a small or micro-business in a material way for the first five years that the proposed rules are in effect.

Local Employment Impact Statement

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

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the act. "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 rules are not anticipated to 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 there are no significant requirements imposed on radioactive material licensees. The commission proposes these rules for purpose of maintaining consistency with NRC regulations by providing new and revised definitions; revising occupational dose, exposure, and reporting requirements; and providing reporting requirements for national tracked sources. The proposed rules also revise fee requirements to implement THSC, §401.301(g) to authorize the assessment of additional application fees to recover the commission's cost for administrative and technical review and hearings for a license application.

Furthermore, the proposed rulemaking does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The proposed rulemaking does not exceed a standard set by federal law, an express requirement of state law, a requirement of a delegation agreement, nor adopt a rule solely under the general powers of the agency.

The Texas Radiation Control Act, THSC, Chapter 401, authorizes the commission to regulate commercial radioactive waste processing and the disposal of most radioactive material in Texas. THSC, §§401.051, 401.103, and 401.104 authorize the commission to adopt rules for the control of sources or radiation and the licensing of the disposal of radioactive materials. In addition, the State of Texas is an Agreement State, authorized by the NRC to administer a radiation control program under the Atomic Energy Act. NRC requirements must be implemented by the commission to preserve the status as an Agreement State. The proposed rules do not exceed the standards set by federal law. The proposed rulemaking implements changes in NRC definitions, NRC occupational dose requirements, NRC security requirements, and NRC requirements for reporting of national tracked sources.

The proposed rules do not exceed an express requirement of state law. The Texas Radiation Control Act, THSC, Chapter 401 establishes general requirements for the licensing and disposal of radioactive materials. The Texas Radiation Control Act in THSC, §401.001 specifically establishes the policy to maintain compatibility with federal standards and regulatory programs.

The commission has also determined that the proposed rules do not exceed a requirement of a delegation agreement or contract between the state and an agency of the federal government. The State of Texas has been designated as an Agreement State by the NRC under the authority of the Atomic Energy Act. The Atomic Energy Act requires that the NRC find that the state radiation control program is compatible with the NRC's requirements for the regulation of radioactive materials and is adequate to protect health and safety. The commission determined that the proposed rules do not exceed the NRC's requirements nor exceed the requirements for retaining status as an Agreement State.

The commission also determined that these rules are proposed under specific authority of the Texas Radiation Control Act, THSC, Chapter 401. THSC, §§401.051, 401.103, and 401.104 authorize the commission to adopt rules for the control of sources or radiation and the licensing of the disposal of radioactive materials.

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

Takings Impact Assessment

The commission evaluated these proposed rules and performed a preliminary assessment of whether Texas Government Code, Chapter 2007 is applicable. The commission's preliminary assessment indicates that Texas Government Code, Chapter 2007 does not apply to these proposed rules because this is an action that is reasonably taken to fulfill an obligation mandated by federal law, which is exempt under Texas Government Code, §2007.003(b)(4). The State of Texas has received authorization as an Agreement State from the NRC to administer a radiation control program under the Atomic Energy Act. The Atomic Energy Act requires the NRC to find that the state's program is compatible with NRC requirements for the regulation of radioactive materials and is protective of health and safety. The proposed rulemaking will provide consistency with federal regulations.

Nevertheless, the commission further evaluated these proposed rules and performed a preliminary assessment of whether these proposed rules constitute a taking under Texas Government Code, Chapter 2007. The following is a summary of that evaluation and preliminary assessment. The primary purpose of these proposed rules is to implement changes to federal requirements for the regulation and licensing of radioactive material. The proposed rules would substantially advance this purpose by implementing new federal definitions of by-product material; revising occupational dose, exposure, and reporting requirements; providing security controls, and providing reporting requirements for national tracked sources.

Promulgation and enforcement of these proposed rules would be neither a statutory nor a constitutional taking of private real property. The proposed rules do not affect a landowner's rights in private real property because this rulemaking does not burden (constitutionally), nor restrict or limit, the owner's right to property and reduce its value by 25% or more beyond which would otherwise exist in the absence of the rules. The proposed rules primarily implement requirements in federal law relating to revised definitions; revise occupational dose, exposure, and reporting requirements; provide security requirements; and provide reporting requirements for national tracked sources. The proposed rules do not affect private real property.

Consistency with the Coastal Management Program

The commission reviewed this proposed rulemaking action and determined that the proposed rules are neither identified in, nor will they affect, any action/authorization identified in Coastal Coordination Act Implementation Rules in 31 TAC §505.11, relating to Actions and Rules Subject to the Texas Coastal Management Program (CMP). Therefore, the proposed rulemaking action is not subject to the CMP.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on August 30, 2011 at 10:00 in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802. Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Michael Parrish, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www5.tceq.texas.gov/rules/ecomments/.* File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2011-011-336-PR. The comment period closes September 6, 2011. Copies of the proposed rulemaking can be obtained from the commission's Web site at *http://www.tceq.texas.gov/nav/rules/propose_adopt.html.* For further information, please contact Devane Clarke, Radioactive Materials Division, (512) 239-5604.

SUBCHAPTER A. GENERAL PROVISIONS

30 TAC §336.1, §336.2

Statutory Authority

The amendments are proposed under the Texas Radiation Control Act, Texas Health and Safety Code (THSC), Chapter 401; THSC, §401.011, which provides the commission authority to regulate and license the disposal of radioactive substances, the commercial processing and storage of radioactive substances, and the recovery and processing of source material; §401.051, which authorizes the commission to adopt rules and guidelines relating to control of sources of radiation; §401.103, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; §401.104, which requires the commission to provide rules for licensing for the disposal of radioactive substances; §401.201, which provides authority to the commission to regulate the disposal of low-level radioactive waste; §401.301, which authorizes the commission to set fees by rule; and §401.412, which provides authority to the commission to regulate licenses for the disposal of radioactive substances. The proposed amendments are also authorized by Texas Water Code, §5.103, which provides the commission with the authority to adopt rules necessary to carry out its powers and duties under the water code and other laws of the state.

The proposed amendments implement THSC, Chapter 401, including §§401.011, 401.051, 401.057, 401.059, 401.103, 401.104, 401.151, 401.201, 401.301, and 401.412.

§336.1. Scope and General Provisions.

(a) Except as otherwise specifically provided, the rules in this chapter apply to all persons who dispose of radioactive substances; all persons who recover or process source material; and all persons who receive radioactive substances from other persons for storage or processing.

(1) However, nothing in these rules shall apply to any person to the extent that person is subject to regulation by the United States Nuclear Regulatory Commission (NRC) or to radioactive material in the possession of federal agencies.

(2) Any United States Department of Energy contractor or subcontractor or any NRC contractor or subcontractor of the following

categories operating within the state, is exempt from the rules in this chapter, with the exception of any applicable fee set forth in Subchapter B of this chapter (relating to Radioactive Substance Fees), to the extent that such contractor or subcontractor under his contract receives, possesses, uses, transfers, or acquires sources of radiation:

(A) prime contractors performing work for the United States Department of Energy at a United States government-owned or controlled site, including the transportation of radioactive material to or from the site and the performance of contract services during temporary interruptions of transportation;

(B) prime contractors of the United States Department of Energy performing research in or development, manufacture, storage, testing, or transportation of atomic weapons or components thereof;

(C) prime contractors of the United States Department of Energy using or operating nuclear reactors or other nuclear devices in a United States government-owned vehicle or vessel; and

(D) any other prime contractor or subcontractor of the United States Department of Energy or the NRC when the state and the NRC jointly determine that:

(i) the exemption of the prime contractor or subcontractor is authorized by law; and

(ii) under the terms of the contract or subcontract, there is adequate assurance that the work thereunder can be accomplished without undue risk to the public health and safety or the environment.

(3) Radioactive material that is physically received from the federal government by a non-federal facility is subject to state jurisdiction except as provided in paragraph (2) of this subsection.

(4) The rules of this chapter do not apply to transportation of radioactive materials. This provision does not exempt a transporter from other applicable requirements.

(5) The rules in this chapter do not apply to the disposal of radiation machines as defined in this subchapter or electronic devices that produce non-ionizing radiation.

(b) Regulation by the State of Texas of source material, by-product material, and special nuclear material in quantities not sufficient to form a critical mass is subject to the provisions of the agreement between the State of Texas and the NRC and to 10 Code of Federal Regulations Part 150 (10 CFR Part 150) (Exemptions and Continued Regulatory Authority in Agreement States and in Offshore Waters Under Section 274). (A copy of the Texas agreement, "Articles of Agreement between the United States Nuclear Regulatory Commission and the State of Texas for Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended" (Agreement), may be obtained from this commission.) Under the Agreement and 10 CFR Part 150, the NRC retains certain regulatory authorities over source material, by-product material, and special nuclear material in the State of Texas. Persons in the State of Texas are not exempt from the regulatory requirements of the NRC with respect to these retained authorities.

(c) No person may receive, possess, use, transfer, or dispose of radioactive material, which is subject to the rules in this chapter, in such a manner that the standards for protection against radiation prescribed in these rules are exceeded.

(d) Each person licensed by the commission under this chapter shall confine possession, use, and disposal of licensed radioactive material to the locations and purposes authorized in the license.

(e) No person may cause or allow the release of radioactive material, which is subject to the rules in this chapter, to the environment in violation of this chapter or of any rule, license, or order of the Texas Commission on Environmental Quality (commission).

(f) No person shall:

(1) dispose of low-level radioactive waste on site, except as authorized under §336.501(b) of this title (relating to Scope and General Provisions);

(2) receive low-level radioactive waste from other persons for the purpose of disposal, except for a person specifically licensed for the disposal of low-level radioactive waste;

(3) dispose of radioactive materials other than low-level radioactive waste, except for diffuse naturally occurring radioactive material waste having concentrations of less than 2,000 picocuries per gram (pCi/g) radium-226 or radium-228;

(4) dispose of radioactive materials from other persons other than low-level radioactive waste, except for naturally occurring radioactive material waste in accordance with Subchapter K of this chapter (relating to Commercial Disposal of Naturally Occurring Radioactive Material Waste from Public Water Systems);

(5) recover or process source material, except in accordance with Subchapter L of this chapter (relating to Licensing of Source Material Recovery and By-Product Material Disposal Facilities);

(6) store, process, or dispose of by-product material, except in accordance with Subchapter L of this chapter; or

(7) receive radioactive substances from other persons for storage or processing, except in accordance with Subchapter M of this chapter (relating to Licensing of Radioactive Substances Processing and Storage Facilities).

[~~(g) For the purpose of this chapter, any time the term "low-level radioactive waste" is used, the provision also applies to accelerator-produced radioactive material.~~]

§336.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, or as described in Chapter 3 of this title (relating to Definitions), unless the context clearly indicates otherwise. Additional definitions used only in a certain subchapter will be found in that subchapter.

(1) Absorbed dose--The energy imparted by ionizing radiation per unit mass of irradiated material. The units of absorbed dose are the rad and the gray (Gy).

(2) Accelerator-produced radioactive material--Any material made radioactive by [~~exposing it to the radiation from~~] a particle accelerator.

(3) Activity--The rate of disintegration (transformation) or decay of radioactive material. The units of activity are the curie (Ci) and the becquerel (Bq).

(4) Adult--An individual 18 or more years of age.

(5) Agreement state--Any state with which the United States Nuclear Regulatory Commission (NRC) or the Atomic Energy Commission has entered into an effective agreement under the Atomic

Energy Act of 1954, §274b, as amended through October 24, 1992 (Public Law 102-486).

(6) Airborne radioactive material--Any radioactive material dispersed in the air in the form of dusts, fumes, particulates, mists, vapors, or gases.

(7) Airborne radioactivity area--A room, enclosure, or area in which airborne radioactive materials, composed wholly or partly of licensed material, exist in concentrations:

(A) in excess of the derived air concentrations (DACs) specified in §336.359, Appendix B, Table I, Column 1, of this title (relating to Appendix B. Annual Limits on Intake (ALI) and Derived Air Concentrations (DAC) of Radionuclides for Occupational Exposure; Effluent Concentrations; Concentrations for Release to Sanitary Sewerage); or

(B) to a degree that an individual present in the area without respiratory protective equipment could exceed, during the hours an individual is present in a week, an intake of 0.6% of the ALI or 12 DAC-hours.

(8) Air-purifying respirator--A respirator with an air-purifying filter, cartridge, or canister that removes specific air contaminants by passing ambient air through the air-purifying element.

(9) Annual limit on intake (ALI)--The derived limit for the amount of radioactive material taken into the body of an adult worker by inhalation or ingestion in a year. ALI is the smaller value of intake of a given radionuclide in a year by the "reference man" that would result in a committed effective dose equivalent of 5 rems (0.05 sievert) or a committed dose equivalent of 50 rems (0.5 sievert) to any individual organ or tissue. ALI values for intake by ingestion and by inhalation of selected radionuclides are given in Table I, Columns 1 and 2, of §336.359, Appendix B, of this title.

(10) As low as is reasonably achievable (ALARA)--Making every reasonable effort to maintain exposures to radiation as far below the dose limits in this chapter as is practical, consistent with the purpose for which the licensed activity is undertaken, taking into account the state of technology, the economics of improvements in relation to the state of technology, the economics of improvements in relation to benefits to the public health and safety, and other societal and socioeconomic considerations, and in relation to utilization of ionizing radiation and licensed radioactive materials in the public interest.

(11) Assigned protection factor (APF)--The expected workplace level of respiratory protection that would be provided by a properly functioning respirator or a class of respirators to properly fitted and trained users. Operationally, the inhaled concentration can be estimated by dividing the ambient airborne concentration by the APF.

(12) Atmosphere-supplying respirator--A respirator that supplies the respirator user with breathing air from a source independent of the ambient atmosphere, and includes supplied-air respirators (SARs) and self-contained breathing apparatus (SCBA) units.

(13) Background radiation--Radiation from cosmic sources; non-technologically enhanced naturally-occurring radioactive material, including radon (except as a decay product of source or special nuclear material) and global fallout as it exists in the environment from the testing of nuclear explosive devices or from past nuclear accidents such as Chernobyl that contribute to background radiation and are not under the control of the licensee. "Background radiation" does not include radiation from radioactive materials regulated by the commission, Texas Department of State Health Services, NRC, or an Agreement State.

(14) Becquerel (Bq)--See §336.4 of this title (relating to Units of Radioactivity).

(15) Bioassay--The determination of kinds, quantities, or concentrations, and, in some cases, the locations of radioactive material in the human body, whether by direct measurement (in vivo counting) or by analysis and evaluation of materials excreted or removed from the human body. For purposes of the rules in this chapter, "radiobioassay" is an equivalent term.

(16) Byproduct material--

(A) A radioactive material, other than special nuclear material, that is produced in or made radioactive by exposure to radiation incident to the process of producing or using special nuclear material; [~~or~~]

(B) The tailings or wastes produced by or resulting from the extraction or concentration of uranium or thorium from ore processed primarily for its source material content, including discrete surface wastes resulting from uranium solution extraction processes, and other tailings having similar radiological characteristics. Underground ore bodies depleted by these solution extraction processes do not constitute "byproduct material" within this definition; [~~.~~]

(C) Any discrete source of radium-226 that is produced, extracted, or converted after extraction, for use for a commercial, medical, or research activity;

(D) Any material that has been made radioactive by use of a particle accelerator; and is produced, extracted, or converted for use for a commercial, medical, or research activity; and

(E) Any discrete source of naturally occurring radioactive material, other than source material, that is extracted or converted after extraction for use in a commercial, medical, or research activity and that the NRC, in consultation with the Administrator of the United States Environmental Protection Agency (EPA), the United States Secretary of Energy, the United States Secretary of Homeland Security, and the head of any other appropriate Federal agency, determines would pose a threat similar to the threat posed by a discrete source of radium-226 to the public health and safety or the common defense and security.

(17) CFR--Code of Federal Regulations.

(18) Class--A classification scheme for inhaled material according to its rate of clearance from the pulmonary region of the lung. Materials are classified as D, W, or Y, which applies to a range of clearance half-times: for Class D (Days) of less than ten days, for Class W (Weeks) from 10 to 100 days, and for Class Y (Years) of greater than 100 days. For purposes of the rules in this chapter, "lung class" and "inhalation class" are equivalent terms.

(19) Collective dose--The sum of the individual doses received in a given period of time by a specified population from exposure to a specified source of radiation.

(20) Committed dose equivalent ($H_{T,50}$) (CDE)--The dose equivalent to organs or tissues of reference (T) that will be received from an intake of radioactive material by an individual during the 50-year period following the intake.

(21) Committed effective dose equivalent ($H_{E,50}$) (CEDE)--The sum of the products of the weighting factors applicable to each of the body organs or tissues that are irradiated and the committed dose equivalent to each of these organs or tissues.

(22) Compact--The Texas Low-Level Radioactive Waste Disposal Compact established under Texas Health and Safety Code,

§403.006 and Texas Low-Level Radioactive Waste Disposal Compact Consent Act, Public Law Number 105-236 (1998).

(23) Compact waste--Low-level radioactive waste that:

(A) is generated in a host state or a party state; or

(B) is not generated in a host state or a party state, but has been approved for importation to this state by the compact commission under §3.05 of the compact established under Texas Health and Safety Code, §403.006.

(24) Compact waste disposal facility--The low-level radioactive waste land disposal facility licensed by the commission under Subchapter H of this chapter (relating to Licensing Requirements for Near-Surface Land Disposal of Low-Level Radioactive Waste) for the disposal of compact waste.

(25) Constraint (dose constraint)--A value above which specified licensee actions are required.

(26) Critical group--The group of individuals reasonably expected to receive the greatest exposure to residual radioactivity for any applicable set of circumstances.

(27) Curie (Ci)--See §336.4 of this title.

(28) Declared pregnant woman--A woman who has voluntarily informed the licensee, in writing, of her pregnancy and the estimated date of conception. The declaration remains in effect until the declared pregnant woman withdraws the declaration in writing or is no longer pregnant.

(29) Decommission--To remove (as a facility) safely from service and reduce residual radioactivity to a level that permits:

(A) release of the property for unrestricted use and termination of license; or

(B) release of the property under restricted conditions and termination of the license.

(30) Deep-dose equivalent (H_d) (which applies to external whole-body exposure)--The dose equivalent at a tissue depth of one centimeter (1,000 milligrams/square centimeter).

(31) Demand respirator--An atmosphere-supplying respirator that admits breathing air to the facepiece only when a negative pressure is created inside the facepiece by inhalation.

(32) Depleted uranium--The source material uranium in which the isotope uranium-235 is less than 0.711%, by weight, of the total uranium present. Depleted uranium does not include special nuclear material.

(33) Derived air concentration (DAC)--The concentration of a given radionuclide in air which, if breathed by the "reference man" for a working year of 2,000 hours under conditions of light work (inhalation rate of 1.2 cubic meters of air/hour), results in an intake of one ALI. DAC values are given in Table I, Column 3, of §336.359, Appendix B, of this title.

(34) Derived air concentration-hour (DAC-hour)--The product of the concentration of radioactive material in air (expressed as a fraction or multiple of the derived air concentration for each radionuclide) and the time of exposure to that radionuclide, in hours. A licensee shall take 2,000 DAC-hours to represent one ALI, equivalent to a committed effective dose equivalent of 5 rems (0.05 sievert).

(35) Discrete source--A radionuclide that has been processed so that its concentration within a material has been purposely increased for use for commercial, medical, or research activities.

(36) [~~(35)~~] Disposal--With regard to low-level radioactive waste, the isolation or removal of low-level radioactive waste from mankind and mankind's environment without intent to retrieve that low-level radioactive waste later.

(37) [~~(36)~~] Disposable respirator--A respirator for which maintenance is not intended and that is designed to be discarded after excessive breathing resistance, sorbent exhaustion, physical damage, or end-of-service-life renders it unsuitable for use. Examples of this type of respirator are a disposable half-mask respirator or a disposable escape-only self-contained breathing apparatus (SCBA).

(38) [~~(37)~~] Distinguishable from background--The detectable concentration of a radionuclide is statistically different from the background concentration of that radionuclide in the vicinity of the site or, in the case of structures, in similar materials using adequate measurement technology, survey, and statistical techniques.

(39) [~~(38)~~] Dose--A generic term that means absorbed dose, dose equivalent, effective dose equivalent, committed dose equivalent, committed effective dose equivalent, total organ dose equivalent, or total effective dose equivalent. For purposes of the rules in this chapter, "radiation dose" is an equivalent term.

(40) [~~(39)~~] Dose equivalent (H_T)--The product of the absorbed dose in tissue, quality factor, and all other necessary modifying factors at the location of interest. The units of dose equivalent are the rem and sievert (Sv).

(41) [~~(40)~~] Dose limits--The permissible upper bounds of radiation doses established in accordance with the rules in this chapter. For purposes of the rules in this chapter, "limits" is an equivalent term.

(42) [~~(41)~~] Dosimetry processor--An individual or organization that processes and evaluates individual monitoring devices in order to determine the radiation dose delivered to the monitoring devices.

(43) [~~(42)~~] Effective dose equivalent (H_E)--The sum of the products of the dose equivalent to each organ or tissue (H_T) and the weighting factor (w_T) applicable to each of the body organs or tissues that are irradiated.

(44) [~~(43)~~] Embryo/fetus--The developing human organism from conception until the time of birth.

(45) [~~(44)~~] Entrance or access point--Any opening through which an individual or extremity of an individual could gain access to radiation areas or to licensed radioactive materials. This includes portals of sufficient size to permit human access, irrespective of their intended use.

(46) [~~(45)~~] Exposure--Being exposed to ionizing radiation or to radioactive material.

(47) [~~(46)~~] Exposure rate--The exposure per unit of time.

(48) [~~(47)~~] External dose--That portion of the dose equivalent received from any source of radiation outside the body.

(49) [~~(48)~~] Extremity--Hand, elbow, arm below the elbow, foot, knee, and leg below the knee. The arm above the elbow and the leg above the knee are considered part of the whole body.

(50) [~~(49)~~] Federal facility waste--Low-level radioactive waste that is the responsibility of the federal government under the Low-Level Radioactive Waste Policy Act, as amended by the Low-Level Radioactive Waste Policy Amendments Act of 1985 (42 United States Code, §2021b - 2021j). Excluded from this definition is low-level radioactive waste that is classified as greater than Class

C in §336.362 of this title (relating to Appendix E. Classification and Characteristics of Low-Level Radioactive Waste).

(51) [~~(50)~~] Federal facility waste disposal facility--A low-level radioactive waste land disposal facility for the disposal of federal facility waste licensed under Subchapters H and J of this chapter.

(52) [~~(51)~~] Filtering facepiece (dust mask)--A negative pressure particulate respirator with a filter as an integral part of the facepiece or with the entire facepiece composed of the filtering medium, not equipped with elastomeric sealing surfaces and adjustable straps.

(53) [~~(52)~~] Fit factor--A quantitative estimate of the fit of a particular respirator to a specific individual, and typically estimates the ratio of the concentration of a substance in ambient air to its concentration inside the respirator when worn.

(54) [~~(53)~~] Fit test--The use of a protocol to qualitatively or quantitatively evaluate the fit of a respirator on an individual.

(55) [~~(54)~~] General license--An authorization granted by an agency under its rules which is effective without the filing of an application with that agency or the issuance of a licensing document to the particular person.

(56) [~~(55)~~] Generally applicable environmental radiation standards--Standards issued by the EPA under the authority of the Atomic Energy Act of 1954, as amended through October 4, 1996, that impose limits on radiation exposures or levels, or concentrations or quantities of radioactive material, in the general environment outside the boundaries of locations under the control of persons possessing or using radioactive material.

(57) [~~(56)~~] Gray (Gy)--See §336.3 of this title (relating to Units of Radiation Exposure and Dose).

(58) [~~(57)~~] Hazardous waste--Hazardous waste as defined in §335.1 of this title (relating to Definitions).

(59) [~~(58)~~] Helmet--A rigid respiratory inlet covering that also provides head protection against impact and penetration.

(60) [~~(59)~~] High radiation area--An area, accessible to individuals, in which radiation levels from radiation sources external to the body could result in an individual receiving a dose equivalent in excess of 0.1 rem (1 millisievert) in one hour at 30 centimeters from the radiation source or 30 centimeters from any surface that the radiation penetrates.

(61) [~~(60)~~] Hood--A respiratory inlet covering that completely covers the head and neck and may also cover portions of the shoulders and torso.

(62) [~~(61)~~] Host state--A party state in which a compact facility is located or is being developed. The State of Texas is the host state under the Texas Low-Level Radioactive Waste Disposal Compact, §2.01, established under Texas Health and Safety Code, §403.006.

(63) [~~(62)~~] Individual--Any human being.

(64) [~~(63)~~] Individual monitoring--The assessment of:

(A) dose equivalent by the use of individual monitoring devices; or

(B) committed effective dose equivalent by bioassay or by determination of the time-weighted air concentrations to which an individual has been exposed, that is, DAC-hours; or

(C) dose equivalent by the use of survey data.

(65) [~~(64)~~] Individual monitoring devices--Devices designed to be worn by a single individual for the assessment of dose equivalent such as film badges, thermoluminescence dosimeters (TLDs), pocket ionization chambers, and personal ("lapel") air sampling devices.

(66) [~~(65)~~] Inhalation class--See "Class."

(67) [~~(66)~~] Inspection--An official examination and/or observation including, but not limited to, records, tests, surveys, and monitoring to determine compliance with the Texas Radiation Control Act (TRCA) and rules, orders, and license conditions of the commission.

(68) [~~(67)~~] Internal dose--That portion of the dose equivalent received from radioactive material taken into the body.

(69) [~~(68)~~] Land disposal facility--The land, buildings and structures, and equipment which are intended to be used for the disposal of low-level radioactive wastes into the subsurface of the land. For purposes of this chapter, a "geologic repository" as defined in 10 CFR §60.2 as amended through October 27, 1988 (53 FR 43421) (relating to Definitions - high-level radioactive wastes in geologic repositories) is not considered a "land disposal facility."

(70) [~~(69)~~] Lens dose equivalent (LDE)--The external exposure of the lens of the eye and is taken as the dose equivalent at a tissue depth of 0.3 centimeter (300 mg/cm^2).

(71) [~~(70)~~] License--See "Specific license."

(72) [~~(71)~~] Licensed material--Radioactive material received, possessed, used, processed, transferred, or disposed of under a license issued by the commission.

(73) [~~(72)~~] Licensee--Any person who holds a license issued by the commission in accordance with the Texas Health and Safety Code, Chapter 401 (Radioactive Materials and Other Sources of Radiation) and the rules in this chapter. For purposes of the rules in this chapter, "radioactive material licensee" is an equivalent term. Unless stated otherwise, "licensee" as used in the rules of this chapter means the holder of a "specific license."

(74) [~~(73)~~] Licensing state--Any state with rules equivalent to the Suggested State Regulations for Control of Radiation relating to, and having an effective program for, the regulatory control of naturally occurring or accelerator-produced radioactive material (NARM) and which has been designated as such by the Conference of Radiation Control Program Directors, Inc.

(75) [~~(74)~~] Loose-fitting facepiece--A respiratory inlet covering that is designed to form a partial seal with the face.

(76) [~~(75)~~] Lost or missing licensed radioactive material--Licensed material whose location is unknown. This definition includes material that has been shipped but has not reached its planned destination and whose location cannot be readily traced in the transportation system.

(77) [~~(76)~~] Low-level radioactive waste--

(A) Except as provided by subparagraph (B) of this paragraph, low-level radioactive waste means radioactive material that:

(i) is discarded or unwanted and is not exempt by a Texas Department of State Health Services rule adopted under the Texas Health and Safety Code, §401.106;

(ii) is waste, as that term is defined by 10 CFR §61.2; and

(iii) is subject to:

(I) concentration limits established under this chapter; and

(II) disposal criteria established under this chapter.

(B) Low-level radioactive waste does not include:

(i) high-level radioactive waste defined by 10 CFR §60.2;

(ii) spent nuclear fuel as defined by 10 CFR §72.3;

(iii) transuranic waste as defined in this section;

(iv) byproduct material as defined by paragraph (16)(B) - (E) of this section;

(v) naturally occurring radioactive material (NORM) waste; or

(vi) oil and gas NORM waste.

(C) When used in this section, the references to 10 CFR sections mean those CFR sections as they existed on September 1, 1999, as required by Texas Health and Safety Code, §401.005.

(78) [~~(77)~~] Lung class--See "Class."

(79) [~~(78)~~] Member of the public--Any individual except when that individual is receiving an occupational dose.

(80) [~~(79)~~] Minor--An individual less than 18 years of age.

(81) [~~(80)~~] Mixed waste--A combination of hazardous waste, as defined in [~~30 TAC~~] §335.1 of this title (relating to Definitions) and low-level radioactive waste. The term includes compact waste and federal facility waste containing hazardous waste.

(82) [~~(81)~~] Monitoring--The measurement of radiation levels, radioactive material concentrations, surface area activities, or quantities of radioactive material and the use of the results of these measurements to evaluate potential exposures and doses. For purposes of the rules in this chapter, "radiation monitoring" and "radiation protection monitoring" are equivalent terms.

(83) Nationally tracked source--A sealed source containing a quantity equal to or greater than Category 1 or Category 2 levels of any radioactive material listed in §336.351 of this title (relating to Reports of Transactions Involving Nationally Tracked Sources). In this context a sealed source is defined as radioactive material that is sealed in a capsule or closely bonded, in a solid form and which is not exempt from regulatory control. It does not mean material encapsulated solely for disposal, or nuclear material contained in any fuel assembly, subassembly, fuel rod, or fuel pellet. Category 1 nationally tracked sources are those containing radioactive material at a quantity equal to or greater than the Category 1 threshold. Category 2 nationally tracked sources are those containing radioactive material at a quantity equal to or greater than the Category 2 threshold but less than the Category 1 threshold.

(84) [~~(82)~~] Naturally occurring or accelerator-produced radioactive material (NARM)--Any naturally occurring or accelerator-produced radioactive material except source material or special nuclear material.

(85) [~~(83)~~] Naturally occurring radioactive material (NORM) waste--Solid, liquid, or gaseous material or combination of materials, excluding source material, special nuclear material, and byproduct material, that:

(A) in its natural physical state spontaneously emits radiation;

(B) is discarded or unwanted; and

(C) is not exempt under rules of the Texas Department of State Health Services adopted under Texas Health and Safety Code, §401.106.

(86) [~~(84)~~] Near-surface disposal facility--A land disposal facility in which low-level radioactive waste is disposed of in or within the upper 30 meters of the earth's surface.

(87) [~~(85)~~] Negative pressure respirator (tight fitting)--A respirator in which the air pressure inside the facepiece is negative during inhalation with respect to the ambient air pressure outside the respirator.

(88) [~~(86)~~] Nonstochastic effect--A health effect, the severity of which varies with the dose and for which a threshold is believed to exist. Radiation-induced cataract formation is an example of a nonstochastic effect. For purposes of the rules in this chapter, "deterministic effect" is an equivalent term.

(89) [~~(87)~~] Occupational dose--The dose received by an individual in the course of employment in which the individual's assigned duties involve exposure to radiation and/or to radioactive material from licensed and unlicensed sources of radiation, whether in the possession of the licensee or other person. Occupational dose does not include dose received from background radiation, as a patient from medical practices, from voluntary participation in medical research programs, or as a member of the public.

(90) [~~(88)~~] Oil and gas naturally occurring radioactive material (NORM) waste--Naturally occurring radioactive material (NORM) waste that constitutes, is contained in, or has contaminated oil and gas waste as that term is defined in the Texas Natural Resources Code, §91.1011.

(91) [~~(89)~~] On-site--The same or geographically contiguous property that may be divided by public or private rights-of-way, provided the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing, as opposed to going along, the right-of-way. Noncontiguous properties owned by the same person but connected by a right-of-way that the property owner controls and to which the public does not have access, is also considered on-site property.

(92) Particle accelerator--Any machine capable of accelerating electrons, protons, deuterons, or other charged particles in a vacuum and designed to discharge the resultant particulate or other associated radiation at energies usually in excess of 1 million electron volts (MeV).

(93) [~~(90)~~] Party state--Any state that has become a party to the compact in accordance with Article VII of the Texas Low-Level Radioactive Waste Disposal Compact, established under Texas Health and Safety Code, §403.006.

(94) [~~(91)~~] Perpetual care account--The radiation and perpetual care account as defined in this section.

(95) [~~(92)~~] Personnel monitoring equipment--See "Individual monitoring devices."

(96) [~~(93)~~] Planned special exposure--An infrequent exposure to radiation, separate from and in addition to the annual occupational dose limits.

(97) [~~(94)~~] Positive pressure respirator--A respirator in which the pressure inside the respiratory inlet covering exceeds the ambient air pressure outside the respirator.

(98) [~~(95)~~] Powered air-purifying respirator (PAPR)--An air-purifying respirator that uses a blower to force the ambient air through air-purifying elements to the inlet covering.

(99) [~~(96)~~] Pressure demand respirator--A positive pressure atmosphere-supplying respirator that admits breathing air to the facepiece when the positive pressure is reduced inside the facepiece by inhalation.

(100) [~~(97)~~] Principal activities--Activities authorized by the license which are essential to achieving the purpose(s) for which the license is issued or amended. Storage during which no licensed material is accessed for use or disposal and activities incidental to decontamination or decommissioning are not principal activities.

(101) [~~(98)~~] Public dose--The dose received by a member of the public from exposure to radiation and/or radioactive material released by a licensee, or to any other source of radiation under the control of the licensee. It does not include occupational dose or doses received from background radiation, as a patient from medical practices, or from voluntary participation in medical research programs.

(102) [~~(99)~~] Qualitative fit test (QLFT)--A pass/fail test to assess the adequacy of respirator fit that relies on the individual's response to the test agent.

(103) [~~(100)~~] Quality factor (Q)--The modifying factor listed in Table I or II of §336.3 of this title that is used to derive dose equivalent from absorbed dose.

(104) [~~(101)~~] Quantitative fit test (QNFT)--An assessment of the adequacy of respirator fit by numerically measuring the amount of leakage into the respirator.

(105) [~~(102)~~] Quarter (Calendar quarter)--A period of time equal to one-fourth of the year observed by the licensee (approximately 13 consecutive weeks), providing that the beginning of the first quarter in a year coincides with the starting date of the year and that no day is omitted or duplicated in consecutive quarters.

(106) [~~(103)~~] Rad--See §336.3 of this title.

(107) [~~(104)~~] Radiation--Alpha particles, beta particles, gamma rays, x-rays, neutrons, high-speed electrons, high-speed protons, and other particles capable of producing ions. For purposes of the rules in this chapter, "ionizing radiation" is an equivalent term. Radiation, as used in this chapter, does not include non-ionizing radiation, such as radio- or microwaves or visible, infrared, or ultraviolet light.

(108) [~~(105)~~] Radiation and Perpetual Care Account--An account in the general revenue fund established for the purposes specified in the Texas Health and Safety Code, §401.305.

(109) [~~(106)~~] Radiation area--Any area, accessible to individuals, in which radiation levels could result in an individual receiving a dose equivalent in excess of 0.005 rem (0.05 millisievert) in one hour at 30 centimeters from the source of radiation or from any surface that the radiation penetrates.

(110) [~~(107)~~] Radiation machine--Any device capable of producing ionizing radiation except those devices with radioactive material as the only source of radiation.

(111) [~~(108)~~] Radioactive material--A naturally-occurring or artificially-produced solid, liquid, or gas that emits radiation spontaneously.

(112) [~~(109)~~] Radioactive substance--Includes byproduct material, radioactive material, low-level radioactive waste, source material, special nuclear material, source of radiation, and NORM waste, excluding oil and gas NORM waste.

(113) [~~(110)~~] Radioactivity--The disintegration of unstable atomic nuclei with the emission of radiation.

(114) [~~(111)~~] Radiobioassay--See "Bioassay."

(115) [~~(112)~~] Reference man--A hypothetical aggregation of human physical and physiological characteristics determined by international consensus. These characteristics shall be used by researchers and public health workers to standardize results of experiments and to relate biological insult to a common base. A description of "reference man" is contained in the International Commission on Radiological Protection report, ICRP Publication 23, "Report of the Task Group on Reference Man."

(116) [~~(113)~~] Rem--See §336.3 of this title.

(117) [~~(114)~~] Residual radioactivity--Radioactivity in structures, materials, soils, groundwater, and other media at a site resulting from activities under the licensee's control. This includes radioactivity from all licensed and unlicensed sources used by the licensee, but excludes background radiation. It also includes radioactive materials remaining at the site as a result of routine or accidental releases of radioactive material at the site and previous burials at the site, even if those burials were made in accordance with the provisions of 10 CFR Part 20.

(118) [~~(115)~~] Respiratory protection equipment--An apparatus, such as a respirator, used to reduce an individual's intake of airborne radioactive materials. For purposes of the rules in this chapter, "respiratory protective device" is an equivalent term.

(119) [~~(116)~~] Restricted area--An area, access to which is limited by the licensee for the purpose of protecting individuals against undue risks from exposure to radiation and radioactive materials. Restricted area does not include areas used as residential quarters, but separate rooms in a residential building shall be set apart as a restricted area.

(120) [~~(117)~~] Roentgen (R)--See §336.3 of this title.

(121) [~~(118)~~] Sanitary sewerage--A system of public sewers for carrying off waste water and refuse, but excluding sewage treatment facilities, septic tanks, and leach fields owned or operated by the licensee.

(122) [~~(119)~~] Sealed source--Radioactive material that is permanently bonded or fixed in a capsule or matrix designed to prevent release and dispersal of the radioactive material under the most severe conditions that are likely to be encountered in normal use and handling.

(123) [~~(120)~~] Self-contained breathing apparatus (SCBA)--An atmosphere-supplying respirator for which the breathing air source is designed to be carried by the user.

(124) [~~(121)~~] Shallow-dose equivalent (H_s) (which applies to the external exposure of the skin of the whole body or the skin of an extremity)--The dose equivalent at a tissue depth of 0.007 centimeter (seven milligrams/square centimeter).

(125) [~~(122)~~] SI--The abbreviation for the International System of Units.

(126) [~~(123)~~] Sievert (Sv)--See §336.3 of this title.

(127) [~~(124)~~] Site boundary--That line beyond which the land or property is not owned, leased, or otherwise controlled by the licensee.

(128) [~~(125)~~] Source material--

(A) Uranium or thorium, or any combination thereof, in any physical or chemical form; or

(B) ores that contain, by weight, 0.05% or more of uranium, thorium, or any combination thereof. Source material does not include special nuclear material.

(129) [~~(126)~~] Special form radioactive material--Radioactive material which is either a single solid piece or is contained in a sealed capsule that can be opened only by destroying the capsule and which has at least one dimension not less than five millimeters and which satisfies the test requirements of 10 CFR §71.75 as amended through September 28, 1995 (60 FR 50264) (Transportation of License Material).

(130) [~~(127)~~] Special nuclear material--

(A) Plutonium, uranium-233, uranium enriched in the isotope 233 or in the isotope 235, and any other material that the NRC, under the provisions of the Atomic Energy Act of 1954, §51, as amended through November 2, 1994 (Public Law 103-437), determines to be special nuclear material, but does not include source material; or

(B) any material artificially enriched by any of the foregoing, but does not include source material.

(131) [~~(128)~~] Special nuclear material in quantities not sufficient to form a critical mass--Uranium enriched in the isotope 235 in quantities not exceeding 350 grams of contained uranium-235; uranium-233 in quantities not exceeding 200 grams; plutonium in quantities not exceeding 200 grams; or any combination of these in accordance with the following formula: For each kind of special nuclear material, determine the ratio between the quantity of that special nuclear material and the quantity specified above for the same kind of special nuclear material. The sum of such ratios for all of the kinds of special nuclear material in combination shall not exceed 1. For example, the following quantities in combination would not exceed the limitation: (175 grams contained U-235/350 grams) + (50 grams U-233/200 grams) + (50 grams Pu/200 grams) = 1.

(132) [~~(129)~~] Specific license--A licensing document issued by an agency upon an application filed under its rules. For purposes of the rules in this chapter, "radioactive material license" is an equivalent term. Unless stated otherwise, "license" as used in this chapter means a "specific license."

(133) [~~(130)~~] State--The State of Texas.

(134) [~~(131)~~] Stochastic effect--A health effect that occurs randomly and for which the probability of the effect occurring, rather than its severity, is assumed to be a linear function of dose without threshold. Hereditary effects and cancer incidence are examples of stochastic effects. For purposes of the rules in this chapter, "probabilistic effect" is an equivalent term.

(135) [~~(132)~~] Supplied-air respirator (SAR) or airline respirator--An atmosphere-supplying respirator for which the source of breathing air is not designed to be carried by the user.

(136) [~~(133)~~] Survey--An evaluation of the radiological conditions and potential hazards incident to the production, use, transfer, release, disposal, and/or presence of radioactive materials or other sources of radiation. When appropriate, this evaluation includes, but is not limited to, physical examination of the location of radioactive material and measurements or calculations of levels of radiation or concentrations or quantities of radioactive material present.

(137) [~~(134)~~] Termination--As applied to a license, a release by the commission of the obligations and authorizations of the licensee under the terms of the license. It does not relieve a person of duties and responsibilities imposed by law.

(138) [~~(135)~~] Tight-fitting facepiece--A respiratory inlet covering that forms a complete seal with the face.

(139) [~~(136)~~] Total effective dose equivalent (TEDE)--The sum of the effective dose [~~deep-dose~~] equivalent for external exposures and the committed effective dose equivalent for internal exposures.

(140) [~~(137)~~] Total organ dose equivalent (TODE)--The sum of the deep-dose equivalent and the committed dose equivalent to the organ receiving the highest dose as described in §336.346(a)(6) of this title (relating to Records of Individual Monitoring Results).

(141) [~~(138)~~] Transuranic waste--For the purposes of this chapter, wastes containing alpha emitting transuranic radionuclides with a half-life greater than five years at concentrations greater than 100 nanocuries/gram.

(142) [~~(139)~~] Type A quantity (for packaging)--A quantity of radioactive material, the aggregate radioactivity of which does not exceed A_1 for special form radioactive material or A_2 for normal form radioactive material, where A_1 and A_2 are given in or shall be determined by procedures in Appendix A to 10 CFR Part 71 as amended through September 28, 1995 (60 FR 50264) (Packaging and Transportation of Radioactive Material).

(143) [~~(140)~~] Type B quantity (for packaging)--A quantity of radioactive material greater than a Type A quantity.

(144) [~~(141)~~] Unrefined and unprocessed ore--Ore in its natural form before any processing, such as grinding, roasting, beneficiating, or refining.

(145) [~~(142)~~] Unrestricted area--Any area that is not a restricted area.

(146) [~~(143)~~] User seal check (fit check)--An action conducted by the respirator user to determine if the respirator is properly seated to the face. Examples include negative pressure check, positive pressure check, irritant smoke check, or isoamyl acetate check.

(147) [~~(144)~~] Very high radiation area--An area, accessible to individuals, in which radiation levels from radiation sources external to the body could result in an individual receiving an absorbed dose in excess of 500 rads (five grays) in one hour at one meter from a source of radiation or one meter from any surface that the radiation penetrates.

(148) [~~(145)~~] Violation--An infringement of any provision of the Texas Radiation Control Act (TRCA) or of any rule, order, or license condition of the commission issued under the TRCA or this chapter.

(149) Waste--Low-level radioactive wastes containing source, special nuclear, or byproduct material that are acceptable for disposal in a land disposal facility. For the purposes of this definition, low-level radioactive waste means radioactive waste not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel, or byproduct material as defined in paragraph (16)(B) - (E) of this section.

(150) [~~(146)~~] Week--Seven consecutive days starting on Sunday.

(151) [~~(147)~~] Weighting factor (w_T) for an organ or tissue (T)--The proportion of the risk of stochastic effects resulting from irradiation of that organ or tissue to the total risk of stochastic effects when the whole body is irradiated uniformly. For calculating the effective dose equivalent, the values of w_T are:
Figure: 30 TAC §336.2(151)

[~~Figure: 30 TAC §336.2(147)~~]

(152) [~~(148)~~] Whole body--For purposes of external exposure, head, trunk including male gonads, arms above the elbow, or legs above the knee.

(153) [~~(149)~~] Worker--An individual engaged in activities under a license issued by the commission and controlled by a licensee, but does not include the licensee.

(154) [~~(150)~~] Working level (WL)--Any combination of short-lived radon daughters in one liter of air that will result in the ultimate emission of 1.3 x 10^5 MeV [~~million electron volts (MeV)~~] of potential alpha particle energy. The short-lived radon daughters are: for radon-222: polonium-218, lead-214, bismuth-214, and polonium-214; and for radon-220: polonium-216, lead-212, bismuth-212, and polonium-212.

(155) [~~(151)~~] Working level month (WLM)--An exposure to one working level for 170 hours (2,000 working hours per year divided by 12 months per year is approximately equal to 170 hours per month).

(156) [~~(152)~~] Year--The period of time beginning in January used to determine compliance with the provisions of the rules in this chapter. The licensee shall change the starting date of the year used to determine compliance by the licensee provided that the change is made at the beginning of the year and that no day is omitted or duplicated in consecutive years.

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

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SUBCHAPTER B. RADIOACTIVE SUBSTANCE FEES

30 TAC §336.103, §336.105

Statutory Authority

The amendments are proposed under the Texas Radiation Control Act, Texas Health and Safety Code (THSC), Chapter 401; THSC, §401.011, which provides the commission authority to regulate and license the disposal of radioactive substances, the commercial processing and storage of radioactive substances, and the recovery and processing of source material; §401.051, which authorizes the commission to adopt rules and guidelines relating to control of sources of radiation; §401.103, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; §401.104, which requires the commission to provide rules for licensing for the disposal of radioactive substances; §401.201, which provides authority to the commission to regulate the disposal of low-level radioactive waste; §401.301, which authorizes the commission to set fees by rule; and §401.412, which provides authority to the commission to regulate licenses for the disposal of radioactive substances. The proposed amendments are also authorized by Texas Water Code, §5.103, which provides the commission with the authority to adopt rules necessary to carry out its powers and duties under the water code and other laws of the state.

The proposed amendments implement THSC, Chapter 401, including §§401.011, 401.051, 401.057, 401.059, 401.103, 401.104, 401.151, 401.201, 401.301, and 401.412.

§336.103. Schedule of Fees for Subchapter H Licenses.

(a) An application for a low-level radioactive waste disposal site license under Subchapter H of this chapter (relating to Licensing Requirements for Near-Surface Land Disposal of Low-Level Radioactive Waste) shall be accompanied by a nonrefundable application processing fee of $500,000. If the commission's costs in processing an application under Subchapter H of this chapter exceed the $500,000 application processing fee, the commission may assess and collect additional fees from the applicant to recover the costs. Recoverable costs include costs incurred by the commission for administrative review, technical review, and hearings associated with the application.

(b) An applicant shall submit an annual fee for the actual costs incurred by the commission for hearings associated with an application for a low-level radioactive waste disposal site under Subchapter H of this chapter. The executive director shall send an invoice for the amount of the costs incurred during the period September 1 through August 31 of each year. Payment shall be made within 30 days following the date of the invoice.

(c) A holder of a license for a low-level radioactive waste disposal site issued under Subchapter H of this chapter shall submit an annual license fee for the services received. This fee shall recover for the state the actual expenses arising from the regulatory activities associated with the license. This fee shall include reimbursement for the salary and other expenses of the resident inspectors as provided by §336.743 of this title (relating to Resident Inspector). The executive director shall [~~send an~~] invoice for the amount of the costs incurred quarterly [~~during the period September 1 through August 31 of each year~~]. Payment shall be made within 30 days following the date of the invoice.

(d) An application for a major amendment of a license issued under Subchapter H of this chapter must be accompanied by an application fee of $50,000.

(e) An application for renewal of a license issued under Subchapter H of this chapter must be accompanied by an application fee of $300,000.

(f) The compact waste disposal facility license holder shall remit to the commission 5% of the gross receipts from compact waste received at the compact waste disposal facility and any federal facility waste received at the federal facility waste disposal facility. Payment shall be made within 30 days of the end of each quarter. The end of each quarter is the last day of the months of November, February, May, and August.

(g) The compact waste disposal facility license holder shall remit directly to the host county 5% of the gross receipts from compact waste received at the compact waste disposal facility and any federal facility waste received at the federal facility waste disposal facility as required in Texas Health and Safety Code, §401.244. Payment shall be made within 30 days of the end of each quarter. The end of each quarter is the last day of the months of November, February, May, and August.

§336.105. Schedule of Fees for Other Licenses.

(a) Each application for a license under Subchapter F of this chapter (relating to Licensing of Alternative Methods of Disposal of Radioactive Material), Subchapter G of this chapter (relating to Decommissioning Standards), Subchapter K of this chapter (relating to Commercial Disposal of Naturally Occurring Radioactive Material Waste from Public Water Systems), Subchapter L of this chapter (relating to Licensing of Source Material Recovery and By-product Material Disposal Facilities), or Subchapter M of this chapter (relating to Licensing of Radioactive Substances Processing and Storage Facilities) must be accompanied by an application fee as follows:

(1) facilities regulated under Subchapter F of this chapter: $50,000;

(2) facilities regulated under Subchapter G of this chapter: $10,000;

(3) facilities regulated under Subchapter K of this chapter: $50,000;

(4) facilities regulated under Subchapter L of this chapter: $463,096 for conventional mining; $322,633 for in situ mining; $325,910 for heap leach; and $374,729 for disposal only; or

(A) if the application fee is not sufficient to cover costs incurred by the commission, then the applicant shall submit a supplemental fee to recover the actual costs incurred by the commission for review of the application and any hearings associated with an application for commercial by-product material disposal under Subchapter L of this chapter in accordance with Texas Health and Safety Code, §401.301(g);

(B) the executive director shall invoice for the amount of the costs incurred quarterly. Payment shall be made within 30 days following the date of the invoice;

(5) facilities regulated under Subchapter M of this chapter: $3,830 for Waste Processing - Class I Exempt; $39,959 for Waste Processing - Class I; $94,661 for Waste Processing - Class II; and $273,800 for Waste Processing - Class III.

(b) An annual license fee shall be paid for each license issued under Subchapter F, Subchapter G, Subchapter K, Subchapter L, and Subchapter M of this chapter. The amount of each annual fee is as follows:

(1) facilities regulated under Subchapter F of this chapter: $25,000;

(2) facilities regulated under Subchapter G of this chapter: $8,400;

(3) facilities regulated under Subchapter K of this chapter: $25,000;

(4) facilities regulated under Subchapter L of this chapter that are operational: $60,929.50; or

(A) if the annual fee is not sufficient to cover costs incurred by the commission, a holder of a license for commercial by-product material disposal issued under Subchapter L of this chapter shall submit a supplemental license fee sufficient to recover the actual costs incurred by the commission. This fee shall recover for the state the actual expenses arising from the regulatory activities associated with the license in accordance with Texas Health and Safety Code, §401.412(d);

(B) the executive director shall invoice for the amount of the costs incurred quarterly. Payment shall be made within 30 days following the date of the invoice;

(5) facilities regulated under Subchapter L of this chapter that are in closure: $60,929.50;

(6) facilities regulated under Subchapter L of this chapter that are in post-closure: $52,011.50 for conventional mining; $26,006 for in situ mining; and $52,011.50 for disposal only;

(7) facilities regulated under Subchapter L of this chapter, if additional noncontiguous source material recovery facility sites are authorized under the same license, the annual fee shall be increased by 25% for each additional site and 50% for sites in closure;

(8) facilities regulated under Subchapter L of this chapter, if an authorization for disposal of by-product material is added to a license, the annual fee shall be increased by 25%;

(9) facilities regulated under Subchapter L of this chapter, the following one-time fees apply if added after an environmental assessment has been completed on a facility:

(A) $28,658 for in situ wellfield on noncontiguous property;

(B) $71,651 for in situ satellite;

(C) $11,235 for wellfield on contiguous property;

(D) $50,756 for non-vacuum dryer; or

(E) $71, 651 for disposal (including processing, if applicable) of by-product material; or

(10) facilities regulated under Subchapter M of this chapter: $3,830 for Waste Processing - Class I Exempt; $39,959 for Waste Processing - Class I; $94,661 for Waste Processing - Class II; and $273,800 for Waste Processing - Class III.

(c) An application for a major amendment of a license issued under Subchapter F, Subchapter G, Subchapter K, Subchapter L, or Subchapter M of this chapter must be accompanied by an application fee of $10,000.

(d) An application for renewal of a license issued under Subchapter F, Subchapter G, Subchapter K, Subchapter L, or Subchapter M of this chapter must be accompanied by an application fee of $35,000.

(e) Upon permanent cessation of all disposal activities and approval of the final decommissioning plan, holders of licenses issued under Subchapter F, Subchapter K, Subchapter L, or Subchapter M of this chapter shall use the applicable fee schedule for subsections (b) and (c) of this section.

(f) For any application for a license issued under this chapter, the commission may assess and collect additional fees from the applicant to recover costs. Recoverable costs include costs incurred by the commission for administrative review, technical review, and hearings associated with the application. The executive director shall send an invoice for the amount of the costs incurred during the period September 1 through August 31 of each year. Payment shall be made within 30 days following the date of the invoice.

(g) If a licensee remitted a biennial licensing fee to the Texas Department of State Health Services during the one year period prior to June 17, 2007, the licensee is not subject to an annual fee under subsection (b) of this section until the expiration of the second year for which the biennial fee was paid.

(h) The commission may charge an additional 5% of annual fee assessed under subsection (b) of this section and §336.103 of this title (relating to Schedule of Fees for Subchapter H Licenses). The fee is non-refundable and will be deposited to the perpetual care account.

(1) The fees collected by the agency in accordance with this subsection shall be deposited to the credit of the Radiation and Perpetual Care Account, until the fees collectively total $500,000.

(2) If the balance of fees collected in accordance with this subsection is subsequently reduced to $350,000 or less, the agency shall reinstitute assessment of the fee until the balance reaches $500,000.

(i) The holder of a license authorizing disposal of a radioactive substance from other persons shall remit to the commission 5% of the holder's gross receipts received from disposal operations under a license. Payment shall be made within 30 days of the end of each quarter. The end of each quarter is the last day of the months of November, February, May, and August. This subsection does not apply to the disposal of compact waste or federal facility waste.

(j) The holder of a license authorizing disposal of a radioactive substance from other persons shall remit directly to the host county 5% of the gross receipts disposal operations under a license as required in Texas Health and Safety Code, §401.271(2). Payment shall be made within 30 days of the end of each quarter. The end of each quarter is the last day of the months of November, February, May, and August. This subsection does not apply to the disposal of compact waste or federal facility waste.

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SUBCHAPTER C. GENERAL LICENSING REQUIREMENTS

30 TAC §336.210

Statutory Authority

The amendment is proposed under the Texas Radiation Control Act, Texas Health and Safety Code (THSC), Chapter 401; THSC, §401.011, which provides the commission authority to regulate and license the disposal of radioactive substances, the commercial processing and storage of radioactive substances, and the recovery and processing of source material; §401.051, which authorizes the commission to adopt rules and guidelines relating to control of sources of radiation; §401.103, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; §401.104, which requires the commission to provide rules for licensing for the disposal of radioactive substances; §401.201, which provides authority to the commission to regulate the disposal of low-level radioactive waste; §401.301, which authorizes the commission to set fees by rule; and §401.412, which provides authority to the commission to regulate licenses for the disposal of radioactive substances. The proposed amendment is also authorized by Texas Water Code, §5.103, which provides the commission with the authority to adopt rules necessary to carry out its powers and duties under the water code and other laws of the state.

The proposed amendment implements THSC, Chapter 401, including §§401.011, 401.051, 401.057, 401.059, 401.103, 401.104, 401.151, 401.201, 401.301, and 401.412.

§336.210. Emergency Plan for Responding to a Release.

(a) A new or renewal application for each specific license to possess radioactive materials in unsealed form, on foils or plated sources, or sealed in glass in excess of the quantities in subsection (e) of this section shall contain either:

(1) an evaluation showing that the maximum dose to a person off-site due to a release of radioactive material would not exceed 1 rem effective dose equivalent or 5 rems to the thyroid; or

(2) an emergency plan for responding to a release of radioactive material.

(b) One or more of the following factors may be used to support an evaluation submitted in accordance with subsection (a)(1) of this section:

(1) the radioactive material is physically separated so that only a portion could be involved in an accident;

(2) all or part of the radioactive material is not subject to release during an accident because of the way it is stored or packaged;

(3) the release fraction in the respirable size range would be lower than the release fraction in subsection (e) of this section due to the chemical or physical form of the material;

(4) the solubility of the radioactive material would reduce the dose received;

(5) facility design or engineered safety features in the facility would cause the release fraction to be lower than that in subsection (e) of this section;

(6) operating restrictions or procedures would prevent a release fraction as large as that in subsection (e) of this section; or

(7) other factors appropriate for the specific facility.

(c) An emergency plan for responding to a release of radioactive material submitted in accordance with subsection (a)(1) of this section shall include the following information.

(1) Facility description. A brief description of the licensee's facility and area near the site.

(2) Types of accidents. An identification of each type of radioactive materials accident for which protective actions may be needed.

(3) Classification of accidents. A classification system for classifying accidents as alerts or site area emergencies.

(4) Detection of accidents. Identification of the means of detecting each type of accident in a timely manner.

(5) Mitigation of consequences. A brief description of the means and equipment for mitigating the consequences of each type of accident, including those provided to protect workers onsite, and a description of the program for maintaining the equipment.

(6) Assessment of releases. A brief description of the methods and equipment to assess releases of radioactive materials.

(7) Responsibilities. A brief description of the responsibilities of licensee personnel should an accident occur, including identification of personnel responsible for promptly notifying off-site response organizations and the agency; also, responsibilities for developing, maintaining, and updating the plan.

(8) Notification and coordination. A commitment to and a brief description of the means to promptly notify off-site response organizations and request off-site assistance, including medical assistance for the treatment of contaminated injured onsite workers when appropriate. A control point shall be established. The notification and coordination shall be planned so that unavailability of some personnel, parts of the facility, and some equipment will not prevent the notification and coordination. The licensee shall also commit to notify the agency immediately after notification of the appropriate off-site response organizations and not later than one hour after the licensee declares an emergency. These reporting requirements do not supersede or release licensees from complying with the requirements in accordance with the Emergency Planning and Community Right-to-Know-Act of 1986, Title III, Publication L. 99-499 or other state or federal reporting requirements.

(9) Information to be communicated. A brief description of the types of information on facility status, radioactive releases, and recommended protective actions, if necessary, to be given to off-site response organizations and to the agency.

(10) Training. A brief description of the frequency, performance objectives, and plans for the training that the licensee will provide workers on how to respond to an emergency, including any special instructions and orientation tours the licensee would offer to fire, police, medical, and other emergency personnel. The training shall familiarize personnel with site-specific emergency procedures. Also, the training shall thoroughly prepare site personnel for their responsibilities in the event of accident scenarios postulated as most probable for the specific site, including the use of team training for such scenarios.

(11) Safe shutdown. A brief description of the means of restoring the facility to a safe condition after an accident.

(12) Exercises. Provisions for conducting quarterly communications checks with off-site response organizations at intervals not to exceed three months and biennial onsite exercises to test response to simulated emergencies. Communications checks with off-site response organizations shall include the check and update of all necessary telephone numbers. The licensee shall invite off-site response organizations to participate in the biennial exercises. Participation of off-site response organizations in biennial exercises, although recommended, is not required. Exercises shall use accident scenarios postulated as most probable for the specific site and the scenarios shall not be known to most exercise participants. The licensee shall critique each exercise using individuals not having direct implementation responsibility for the plan. Critiques of exercises shall evaluate the appropriateness of the plan, emergency procedures, facilities, equipment, training of personnel, and overall effectiveness of the response. Deficiencies found by the critiques shall be corrected.

(13) Hazardous chemicals. A certification that the applicant has met its responsibilities in accordance with the Emergency Planning and Community Right-to-Know Act of 1986, Title III, Publication L. 99-499, if applicable to the applicant's activities at the proposed place of use of the radioactive material.

(d) The licensee shall allow the off-site response organizations expected to respond in case of an accident 60 days to comment on the licensee's emergency plan before submitting it to the agency. The licensee shall provide any comments received within the 60 days to the agency with the emergency plan.

(e) The following indicates release fractions for radioactive material.
Figure: 30 TAC §336.210(e)
[~~Figure: 30 TAC §336.210(e)~~]

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

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SUBCHAPTER D. STANDARDS FOR PROTECTION AGAINST RADIATION

30 TAC §§336.305, 336.309, 336.331, 336.351, 336.357, 336.359

Statutory Authority

The amendments and new sections are proposed under the Texas Radiation Control Act, Texas Health and Safety Code (THSC), Chapter 401; THSC, §401.011, which provides the commission authority to regulate and license the disposal of radioactive substances, the commercial processing and storage of radioactive substances, and the recovery and processing of source material; §401.051, which authorizes the commission to adopt rules and guidelines relating to control of sources of radiation; §401.103, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; §401.104, which requires the commission to provide rules for licensing for the disposal of radioactive substances; §401.201, which provides authority to the commission to regulate the disposal of low-level radioactive waste; §401.301, which authorizes the commission to set fees by rule; and §401.412, which provides authority to the commission to regulate licenses for the disposal of radioactive substances. The proposed amendments and new sections are also authorized by Texas Water Code, §5.103, which provides the commission with the authority to adopt rules necessary to carry out its powers and duties under the water code and other laws of the state.

The proposed amendments and new sections implement THSC, Chapter 401, including §§401.011, 401.051, 401.057, 401.059, 401.103, 401.104, 401.151, 401.201, 401.301, and 401.412.

§336.305. Occupational Dose Limits for Adults.

(a) The licensee shall control the occupational dose to individual adults, except for planned special exposures under §336.310 of this title (relating to Planned Special Exposures), to the following dose limits:

(1) an annual limit, which is the more limiting of:

(A) the total effective dose equivalent being equal to 5 rems (0.05 sievert); or

(B) the sum of the deep-dose equivalent and the committed dose equivalent to any individual organ or tissue other than the lens of the eye being equal to 50 rems (0.5 sievert).

(2) the annual limits to the lens of the eye, to the skin of the whole body, and to the skin of the extremities, which are:

(A) a lens dose equivalent of 15 rems (0.15 sievert), and

(B) a shallow-dose equivalent of 50 rems (0.5 sievert) to the skin of the whole body or to the skin of any extremity.

(b) Doses received in excess of the annual limits, including doses received during accidents, emergencies, and planned special exposures, shall be subtracted from the limits for planned special exposures that the individual may receive during the current year and during the individual's lifetime. See §336.310(5)(A) and (B) of this title [~~(relating to Planned Special Exposures)~~].

(c) When the external exposure is determined by measurement with an external personal monitoring device, the deep-dose equivalent must be used in place of the effective dose equivalent, unless the effective dose equivalent is determined by a dosimetry method approved by the executive director. The assigned deep-dose equivalent must be for the part of the body receiving the highest exposure. The assigned [~~and~~] shallow-dose equivalent must be the dose averaged over the contiguous ten square centimeters of skin [~~for the part of the body~~] receiving the highest exposure. The deep-dose equivalent, lens dose equivalent, and shallow-dose equivalent may be assessed from surveys or other radiation measurements for the purpose of demonstrating compliance with the occupational dose limits, if the individual monitoring device was not in the region of highest potential exposure or the results of individual monitoring are unavailable.

(d) Derived air concentration (DAC) and annual limit on intake (ALI) values are specified in Table I of §336.359, Appendix B, of this title (relating to Appendix B. Annual Limits on Intake (ALI) and Derived Air Concentrations (DAC) of Radionuclides for Occupational Exposure; Effluent Concentrations; Concentrations for Release to Sanitary Sewerage) and may be used to determine the individual's dose and to demonstrate compliance with the occupational dose limits. See §336.346 of this title (relating to Records of Individual Monitoring Results).

(e) In addition to the annual dose limits, the licensee shall limit the soluble uranium intake by an individual to 10 milligrams in a week in consideration of chemical toxicity. See note 3 of §336.359, Appendix B, of this title [~~(relating to Annual Limits on Intake (ALI) and Derived Air Concentrations (DAC) of Radionuclides for Occupational Exposure; Effluent Concentrations; Concentrations for Release to Sanitary Sewerage)~~].

(f) The licensee shall reduce the dose that an individual may be allowed to receive in the current year by the amount of occupational dose received while employed by any other person. See §336.309(e) of this title (relating to Determination of Prior Occupational Dose).

§336.309. Determination of Prior Occupational Dose.

(a) For each individual who is likely to receive in a year an occupational dose requiring monitoring under §336.316 of this title (relating to Conditions Requiring Individual Monitoring of External and Internal Occupational Dose), the licensee shall[~~:~~]

[~~(1)~~] determine the occupational radiation dose received during the current year. [~~; and~~]

[~~(2) attempt to obtain the records of lifetime cumulative occupational radiation dose.~~]

(b) Before permitting an individual to participate in a planned special exposure, the licensee shall determine:

(1) the internal and external doses from all previous planned special exposures; and

(2) all doses in excess of the limits, including doses received during accidents and emergencies, received during the lifetime of the individual.

(c) In complying with the requirements of subsection (a) or (b) of this section, a licensee may:

(1) accept, as a record of the occupational dose that the individual received during the current year, a written signed statement from the individual, or from the individual's most recent employer for work involving radiation exposure, that discloses the nature and the amount of any occupational dose that the individual received during the current year; and

(2) accept, as the record of lifetime cumulative radiation dose, an up-to-date form "Cumulative Occupational Exposure History" (see §336.367, Appendix J of this title (relating to Appendix J. Cumulative Occupational Exposure History)) or equivalent, signed by the individual and countersigned by an appropriate official of the most recent employer for work involving radiation exposure, or the individual's current employer, if the individual is not employed by the licensee; and

(3) obtain reports of the individual's dose equivalent from the most recent employer for work involving radiation exposure, or the individual's current employer, if the individual is not employed by the licensee, by telephone, telegram, electronic media, or letter. The licensee shall request a written verification of the dose data if the authenticity of the transmitted report cannot be established.

(d) The licensee shall record individual exposure histories.

(1) The licensee shall record the exposure history of each individual, as required by subsection (a) or (b) of this section, on form "Cumulative Occupational Exposure History" (see §336.367, Appendix J of this title) or other clear and legible record which includes all of the information required on that form. The form or record shall show each period in which the individual received occupational exposure to radiation or radioactive material and shall be signed by the individual who received the exposure. For each period for which the licensee obtains reports, the licensee shall use the dose shown in the report in preparing form "Cumulative Occupational Exposure History" (see §336.367, Appendix J of this title) or equivalent. For any period for which the licensee does not obtain a report, the licensee shall place a notation on form "Cumulative Occupational Exposure History" (see §336.367, Appendix J of this title) or equivalent indicating the periods of time for which data are not available.

(2) Licensees are not required to separate historical dose, obtained and recorded before January 1, 1994, into external dose equivalent(s) and internal committed dose equivalent(s). Further, occupational exposure histories obtained and recorded on form "Cumulative Occupational Exposure History" (see §336.367, Appendix J of this title) or equivalent before January 1, 1994, would not have included effective dose equivalent but may be used in the absence of specific information on the intake of radionuclides by the individual.

(e) If the licensee is unable to obtain a complete record of an individual's current and previously accumulated occupational dose, the licensee shall assume:

(1) in establishing administrative controls under §336.305(f) of this title (relating to Occupational Dose Limits for Adults) for the current year, that the allowable dose limit for the individual is reduced by 1.25 rems (12.5 millisieverts) for each quarter for which records are unavailable and that the individual was engaged in activities that could have resulted in occupational radiation exposure; and

(2) that the individual is not available for planned special exposures.

(f) The licensee shall retain the records on form "Cumulative Occupational Exposure History" (see §336.367, Appendix J of this title) or equivalent until the executive director terminates each pertinent license requiring this record. The licensee shall retain records used in preparing form "Cumulative Occupational Exposure History" (see §336.367, Appendix J of this title) for three years after the record is made. This includes records required under the standards for protection against radiation in effect prior to January 1, 1994.

§336.331. Transfer of Radioactive Material.

(a) The licensee shall not transfer source material, byproduct material, or other licensed radioactive material except as authorized under the rules in this subchapter.

(b) Except as otherwise provided in the license and subject to the provisions of subsections (c) and (d) of this section, a licensee shall transfer source material, byproduct material, or other licensed radioactive material:

(1) to the agency (A licensee shall transfer material to the agency only after receiving prior approval from the agency. If the material to be transferred is special nuclear material, the quantity must not be sufficient to form a critical mass.);

(2) to the United States Department of Energy;

(3) to any person exempt from licensing requirements by the Texas Department of State Health Services (DSHS) [(~~TDH~~)] under the Texas Health and Safety Code, §401.106(a), the rules in this chapter, or exempt from the licensing requirements of the United States Nuclear Regulatory Commission (NRC) or an Agreement State, to the extent permitted by those exemptions;

(4) to any person authorized to receive this material under terms of a specific or a general license or its equivalent issued by the commission, DSHS [~~TDH~~], NRC, or any Agreement State, or to any person authorized to receive this material by the federal government; or

(5) as otherwise authorized by the commission in writing by DSHS [~~TDH~~], any Agreement State, or the federal government.

(c) Before transferring source material, byproduct material, or other radioactive material to a specific licensee of the commission, DSHS [~~TDH~~], NRC, or an Agreement State or to a general licensee who is required to register with DSHS [~~TDH~~], NRC, or an Agreement State prior to receipt of the source material, byproduct material, or other radioactive material, the licensee transferring the material shall verify that the transferee's license authorizes the receipt of the type, form, and quantity of radioactive material to be transferred.

(d) The following methods for the verification required by subsection (c) of this section are acceptable.

(1) The transferor shall possess and have read a current copy of the transferee's specific license or certificate of registration.

(2) The transferor may possess a written certification by the transferee that the transferee is authorized by the license or certificate of registration to receive the type, form, and quantity of radioactive material to be transferred, specifying the license or certificate of registration number, issuing agency, and expiration date.

(3) For emergency shipments, the transferor may accept oral certification by the transferee that the transferee is authorized by license or certificate of registration to receive the type, form, and quantity of radioactive material to be transferred, specifying the license or certificate of registration number, issuing agency, and expiration date, provided that the oral certification is confirmed in writing within ten days.

(4) The transferor may obtain other sources of information compiled by a reporting service from official records of the commission, DSHS [~~TDH~~], NRC, or an Agreement State as to the identity of licensees and registrants and the scope and expiration dates of licenses and registrations.

(5) When none of the methods of verification described in paragraphs (1) - (4) of this subsection are readily available or when a transferor desires to verify that information received by one of these methods is correct or up-to-date, the transferor may obtain and record confirmation from the commission, DSHS [~~TDH~~], NRC, or an Agreement State that the transferee is licensed to receive the source material, byproduct material, or other radioactive material.

(e) Transportation of radioactive material shall also be subject to applicable rules of the United States Department of Transportation, United States Postal Service, NRC, or DSHS [~~TDH~~].

(f) The licensee shall keep records showing the transfer of any source material, byproduct material, or other radioactive material.

(g) Transfer of low-level radioactive waste by a waste generator, waste collector, or waste processor who ships this waste either directly, or indirectly through a collector or processor, to a licensed land disposal facility shall also be subject to applicable rules of DSHS [~~TDH~~]. A commission licensee who transfers low-level radioactive waste for disposal at a licensed land disposal facility shall also be subject to applicable rules of DSHS [~~TDH~~] with respect to transfers.

(h) A licensed land disposal facility operator shall use and comply with the requirements of §336.363 of this title (relating to Appendix F. Requirements for Receipt of Low-Level Radioactive Waste for Disposal at Licensed Land Disposal Facilities and Uniform Manifests).

(i) Any licensee shipping byproduct material, as defined in §336.2(16)(C) - (E) of this title (relating to Definitions) concerning the definition of byproduct material, intended for ultimate disposal must document the information required on the shipping manifest and transfer this recorded manifest information to the intended consignee.

§336.351. Reports of Transactions Involving Nationally Tracked Sources.

(a) Each licensee who manufactures, transfers, receives, disassembles, or disposes of a nationally tracked source shall complete and submit to the United States Nuclear Regulatory Commission (NRC) a National Source Tracking Transaction Report as specified in paragraphs (1) - (6) of this subsection for each type of transaction.

(1) Each licensee who manufactures a nationally tracked source shall complete and submit to NRC a National Source Tracking Transaction Report. The report must include the following information:

(A) the name, address, and license number of the reporting licensee;

(B) the name of the individual preparing the report;

(C) the manufacturer, model, and serial number of the source;

(D) the radioactive material in the source;

(E) the initial source strength in becquerels (curies) at the time of manufacture; and

(F) the manufacture date of the source.

(2) Each licensee that transfers a nationally tracked source to another person shall complete and submit to NRC a National Source Tracking Transaction Report. Domestic transactions in which the na-

tionally tracked source remains in the possession of the licensee do not require a report to the National Source Tracking System. The report shall include the following information:

(A) the name, address, and license number of the reporting licensee;

(B) the name of the individual preparing the report;

(C) the name and license number of the recipient facility and the shipping address;

(D) the manufacturer, model, and serial number of the source or, if not available, other information to uniquely identify the source;

(E) the radioactive material in the source;

(F) the initial or current source strength in becquerels (curies);

(G) the date for which the source strength is reported;

(H) the shipping date;

(I) the estimated arrival date; and

(J) for nationally tracked sources transferred as waste under a Uniform Low-Level Radioactive Waste Manifest, the waste manifest number and the container identification of the container with the nationally tracked source.

(3) Each licensee that receives a nationally tracked source shall complete and submit to NRC a National Source Tracking Transaction Report. The report shall include the following information:

(A) the name, address, and license number of the reporting licensee;

(B) the name of the individual preparing the report;

(C) the name, address, and license number of the person that provided the source;

(D) the manufacturer, model, and serial number of the source or, if not available, other information to uniquely identify the source;

(E) the radioactive material in the source;

(F) the initial or current source strength in becquerels (curies);

(G) the date for which the source strength is reported;

(H) the date of receipt; and

(I) for material received under a Uniform Low-Level Radioactive Waste Manifest, the waste manifest number and the container identification with the nationally tracked source.

(4) Each licensee that disassembles a nationally tracked source shall complete and submit to NRC a National Source Tracking Transaction Report. The report shall include the following information:

(A) the name, address, and license number of the reporting licensee;

(B) the name of the individual preparing the report;

(C) the manufacturer, model, and serial number of the source or, if not available, other information to uniquely identify the source;

(D) the radioactive material in the source;

(E) the initial or current source strength in becquerels (curies);

(F) the date for which the source strength is reported; and

(G) the disassemble date of the source.

(5) Each licensee who disposes of a nationally tracked source shall complete and submit to NRC a National Source Tracking Transaction Report. The report shall include the following information:

(A) the name, address, and license number of the reporting licensee;

(B) the name of the individual preparing the report;

(C) the waste manifest number;

(D) the container identification with the nationally tracked source;

(E) the date of disposal; and

(F) the method of disposal.

(6) The reports discussed in paragraphs (1) - (6) of this subsection shall be submitted to NRC by the close of the next business day after the transaction. A single report may be submitted for multiple sources and transactions. The reports shall be submitted to the National Source Tracking System by using the following:

(A) the on-line National Source Tracking System;

(B) electronically using a computer-readable format;

(C) by facsimile;

(D) by mail to the address on the National Source Tracking Transaction Report Form (NRC Form 748); or

(E) by telephone with follow-up by facsimile or mail.

(7) Each licensee shall correct any error in previously filed reports or file a new report for any missed transaction within five business days of the discovery of the error or missed transaction. Such errors may be detected by a variety of methods such as administrative reviews or by physical inventories required by regulation. In addition, each licensee shall reconcile the inventory of nationally tracked sources possessed by the licensee against that licensee's data in the National Source Tracking System. The reconciliation shall be conducted during the month of January in each year. The reconciliation process shall include resolving any discrepancies between the National Source Tracking System and the actual inventory by filing the reports identified by paragraphs (1) - (6) of this subsection. By January 31 of each year, each licensee shall submit to the National Source Tracking System confirmation that the data in the National Source Tracking System is correct.

(8) Each licensee that possesses Category 1 or Category 2 nationally tracked sources listed in subsection (b) of this section shall report its initial inventory of Category 1 or Category 2 nationally tracked sources to the National Source Tracking System by January 31, 2009. The information may be submitted to NRC by using any of the methods identified by paragraph (6)(A) - (E) of this subsection. The initial inventory report shall include the following information:

(A) the name, address, and license number of the reporting licensee;

(B) the name of the individual preparing the report;

(C) the manufacturer, model, and serial number of each nationally tracked source or, if not available, other information to uniquely identify the source;

(D) the radioactive material in the sealed source;

(E) the initial or current source strength in becquerels (curies); and

(F) the date for which the source strength is reported.

(b) Nationally tracked source thresholds. The Terabecquerel (TBq) values are the regulatory standards. The curie values specified are obtained by converting from the TBq value. The curie values are provided for practical usefulness only and are rounded after conversion. The following table contains nationally tracked source thresholds.
Figure: 30 TAC §336.351(b)

§336.357. Increased Controls for Licensees that Possess Sources Containing Radioactive Material Quantities of Concern.

Licensees possessing sources containing radioactive material, at any given time, in quantities greater than or equal to the quantities of concern listed in paragraph (11) of this section shall:

(1) control access at all times to radioactive material and devices containing such radioactive material (devices) in quantities in accordance with paragraph (11) of this section; and

(2) limit access to such radioactive material and devices to only approved individuals who require access to perform their duties.

(A) The licensee shall allow only trustworthy and reliable individuals, approved in writing by the licensee, to have unescorted access to radioactive material quantities of concern and devices.

(B) The licensee shall approve for unescorted access only those individuals with job duties that require access to such radioactive material and devices. Personnel who require access to such radioactive material and devices to perform a job duty, but who are not approved by the licensee for unescorted access, must be escorted by an approved individual.

(C) For individuals employed by the licensee for three years or less, and for non-licensee personnel, such as physicians, physicists, house-keeping personnel, and security personnel under contract, trustworthiness and reliability shall be determined, at a minimum, by verifying employment history, education, and personal references. The licensee shall also, to the extent possible, obtain independent information to corroborate that provided by the employee (i.e., seeking references not supplied by the individual). For individuals employed by the licensee for longer than three years, trustworthiness and reliability shall be determined, at a minimum, by a review of the employees' employment history with the licensee.

(D) Service providers shall be escorted unless determined to be trustworthy and reliable by an NRC required background investigation as an employee of a manufacturing and distribution licensee. Written verification attesting to or certifying the person's trustworthiness and reliability shall be obtained from the manufacturing and distribution licensee providing the service.

(E) The licensee shall document the basis for concluding that there is reasonable assurance that an individual granted unescorted access is trustworthy and reliable, and does not constitute an unreasonable risk for unauthorized use of radioactive material quantities of concern. The licensee shall maintain a list of persons approved for unescorted access to such radioactive material and devices by the licensee.

(3) Each licensee shall have a documented program to monitor and immediately detect, assess, and respond to unauthorized access to radioactive material quantities of concern and devices in use or in storage. Enhanced monitoring shall be provided during periods of source delivery or shipment, where the delivery or shipment exceeds 100 times the values listed in paragraph (11) of this section.

(A) The licensee shall respond immediately to any actual or attempted theft, sabotage, or diversion of such radioactive material or of the devices. The response shall include requesting assistance from a Local Law Enforcement Agency (LLEA).

(B) The licensee shall have a pre-arranged plan with LLEA for assistance in response to an actual or attempted theft, sabotage, or diversion of such radioactive material or of the devices which is consistent in scope and timing with a realistic potential vulnerability of the sources containing such radioactive material. The pre-arranged plan shall be updated when changes to the facility design or operation affect the potential vulnerability of the sources.

(C) The licensee shall have a dependable means to transmit information between, and among, the various components used to detect and identify an unauthorized intrusion, to inform the assessor, and to summon the appropriate responder.

(D) After initiating appropriate response to any actual or attempted theft, sabotage, or diversion of radioactive material or of the devices, the licensee shall, as promptly as possible, notify the United States Nuclear Regulatory Commission (NRC) Operations Center at (301) 816-5100.

(E) The licensee shall maintain documentation describing each instance of unauthorized access and any necessary corrective actions to prevent future instances of unauthorized access.

(4) In order to ensure the safe handling, use, and control of licensed material in transportation for domestic highway and rail shipments by a carrier other than the licensee, for quantities that equal or exceed but are less than 100 times those listed in paragraph (11) of this section, per consignment, the licensee shall:

(A) use carriers which:

(i) use package tracking systems;

(ii) implement methods to assure trustworthiness and reliability of drivers;

(iii) maintain constant control and/or surveillance during transit; and

(iv) have the capability for immediate communication to summon appropriate response or assistance;

(B) verify and document that the carrier employs the measures in subparagraph (A) of this paragraph;

(C) contact the recipient to coordinate the expected arrival time of the shipment;

(D) confirm receipt of the shipment; and

(E) initiate an investigation to determine the location of the licensed material if the shipment does not arrive on or about the expected arrival time. When, through the course of the investigation, it is determined the shipment has become lost, stolen, or is missing, the licensee shall immediately notify the NRC Operations Center at (301) 816-5100. If, after 24 hours of investigating, the location of the material still cannot be determined, the radioactive material shall be deemed missing and the licensee shall immediately notify the NRC Operations Center at (301) 816-5100.

(5) For domestic highway and rail shipments, prior to shipping licensed radioactive material that exceeds 100 times the quantities in paragraph (11) of this section per consignment, the licensee shall:

(A) Notify the NRC Director, Office of Nuclear Material Safety and Safeguards United States Nuclear Regulatory Commission, Washington, DC 20555, in writing, at least 90 days prior to the anticipated date of shipment. The NRC will issue the Order to implement the Additional Security Measures (ASMs) for the transportation of Radioactive Material Quantities of Concern (RAM QC). The licensee shall not ship this material until the ASMs for the transportation of RAM QC are implemented or the licensee is notified otherwise, in writing, by the NRC.

(B) Once the licensee has implemented the ASMs for the transportation of RAM QC, the notification requirements in subparagraph (A) of this paragraph shall not apply to future shipments of licensed radioactive material that exceeds 100 times the quantities listed in paragraph (11) of this section. The licensee shall implement the ASMs for the transportation of RAM QC.

(6) If a licensee employs an Manufacturer/Distributor (M&D) licensee to take possession at the licensee's location of the licensed radioactive material and ship it under its M&D license, the requirements of paragraph (5)(A) and (B) of this section shall not apply.

(7) If the licensee is to receive radioactive material greater than or equal to the quantities in paragraph (11) of this section, per consignment, the licensee shall coordinate with the originator to:

(A) establish an expected time of delivery; and

(B) confirm receipt of transferred radioactive material. If the material is not received at the expected time of delivery, notify the originator and assist in any investigation.

(8) Each licensee who possesses mobile or portable devices containing radioactive material in quantities greater than or equal to the values listed in paragraph (11) of this section, shall:

(A) For portable devices, have two independent physical controls that form tangible barriers to secure the material from unauthorized removal when the device is not under direct control and constant surveillance by the licensee.

(B) For mobile devices:

(i) that are only moved outside of the facility (e.g., on a trailer), have two independent physical controls that form tangible barriers to secure the material from unauthorized removal when the device is not under direct control and constant surveillance by the licensee.

(ii) that are only moved inside a facility, have a physical control that forms a tangible barrier to secure the material from unauthorized movement or removal when the device is not under direct control and constant surveillance by the licensee.

(C) For devices in or on a vehicle or trailer, licensees shall also utilize a method to disable the vehicle or trailer when not under direct control and constant surveillance by the licensee.

(9) The licensee shall retain documentation required by these increased controls for inspection by the agency for three years after they are no longer effective.

(A) The licensee shall retain documentation regarding the trustworthiness and reliability of individual employees for three years after the individual's employment ends.

(B) Each time the licensee revises the list of approved persons required by paragraph (2)(E) of this section, or the documented program required by paragraph (3) of this section, the licensee shall retain the previous documentation for three years after the revision.

(C) The licensee shall retain documentation on each radioactive material carrier for three years after the licensee discontinues use of that particular carrier.

(D) The licensee shall retain documentation on shipment coordination, notifications, and investigations for three years after the shipment or investigation is completed.

(E) After the license is terminated or amended to reduce possession limits below the quantities of concern, the licensee shall retain all documentation required by these increased controls for three years.

(10) Detailed information generated by the licensee that describes the physical protection of radioactive material quantities of concern, is sensitive information and shall be protected from unauthorized disclosure.

(A) The licensee shall control access to its physical protection information to those persons who have an established need to know the information, and are considered to be trustworthy and reliable.

(B) The licensee shall develop, maintain, and implement policies and procedures for controlling access to, and for proper handling and protection against unauthorized disclosure of, its physical protection information for radioactive material covered by these requirements. The policies and procedures shall include the following:

(i) general performance requirement that each person who produces, receives, or acquires the licensee's sensitive information, protect the information from unauthorized disclosure;

(ii) protection of sensitive information during use, storage, and transit;

(iii) preparation, identification or marking, and transmission;

(iv) access controls;

(v) destruction of documents;

(vi) use of automatic data processing systems; and

(vii) removal from the licensee's sensitive information category.

(11) Radionuclide quantities of concern. The following methods shall be used to determine which sources of radioactive material require increased controls:

(A) include any single source equal to or greater than the quantity of concern;

(B) include multiple collocated sources of the same radionuclide when the combined quantity equals or exceeds the quantity of concern;

(C) for combinations of radionuclides, include multiple collocated sources of different radionuclides when the aggregate quantities satisfy the following unity rule: ((amount of radionuclide A) / (quantity of concern of radionuclide A)) + ((amount of radionuclide B) / (quantity of concern of radionuclide B)) + etc...> 1; and

(D) The following table contains quantities of radioactive materials to be used in determining a quantity of concern.

Figure: 30 TAC §336.357(11)(D)

§336.359. Appendix B. Annual Limits on Intake (ALI) and Derived Air Concentrations (DAC) of Radionuclides for Occupational Exposure; Effluent Concentrations; Concentrations for Release to Sanitary Sewerage.

(a) Introduction. For each radionuclide, Table I indicates the chemical form that is to be used for selecting the appropriate ALI or DAC value. The ALIs and DACs for inhalation are given for an aerosol with an activity median aerodynamic diameter (AMAD) of 1 micrometer and for three classes (D,W,Y) of radioactive material, which refer to their retention (approximately days, weeks, or years) in the pulmonary region of the lung. This classification applies to a range of clearance half-times for D of less than 10 days, for W from 10 to 100 days, and for Y greater than 100 days.

(1) The class (D, W, or Y) given in the column headed "Class" applies only to the inhalation ALIs and DACs given in Table I, Columns 2 and 3. Table II provides concentration limits for airborne and liquid effluents released to the general environment. Table III provides concentration limits for discharges to sanitary sewerage.

(2) The values in Tables I, II, and III are presented in the computer "E" notation. In this notation, a value of 6E-02 represents a value of 6×10^{-2} or 0.06, 6E+2 represents 6×10^{2} or 600, and 6E+0 represents 6×10^{0} or 6. Values are given in units of microcuries (µCi) or microcuries per milliliter (µCi/ml), as indicated.

(b) Table I, "Occupational Values". Note that the columns in Table I of this appendix captioned "Oral Ingestion ALI," "Inhalation ALI," and "DAC," are applicable to occupational exposure to radioactive material.

(1) The ALIs in this appendix are the annual intakes of a given radionuclide by "reference man" that would result in either a committed effective dose equivalent of 5 rems (0.05 sievert) (stochastic ALI) or a committed dose equivalent of 50 rems (0.5 sievert) to an organ or tissue (non-stochastic ALI). The stochastic ALIs were derived to result in a risk, due to irradiation of organs and tissues, comparable to the risk associated with deep dose equivalent to the whole body of 5 rems (0.05 sievert). The derivation includes multiplying the committed dose equivalent to an organ or tissue by a weighting factor, w_T. This weighting factor is the proportion of the risk of stochastic effects resulting from irradiation of the organ or tissue, T, to the total risk of stochastic effects when the whole body is irradiated uniformly. The values of w_T are listed under the definition of "weighting factor" in §336.2 of this title (relating to Definitions). The non-stochastic ALIs were derived to avoid non-stochastic effects, such as prompt damage to tissue or reduction in organ function.

(2) A value of $w_T = 0.06$ is applicable to each of the five organs or tissues in the "remainder" category receiving the highest dose equivalents, and the dose equivalents of all other remaining tissues may be disregarded. The following parts of the GI tract--stomach, small intestine, upper large intestine, and lower large intestine--are to be treated as four separate organs.

(3) Note that the dose equivalents for an extremity, skin, and lens of the eye are not considered in computing the committed effective dose equivalent but are subject to limits that must be met separately. When an ALI is defined by the stochastic dose limit, this value alone is given.

(4) When an ALI is determined by the non-stochastic dose limit to an organ, the organ or tissue to which the limit applies is shown, and the ALI for the stochastic limit is shown in parentheses. The following abbreviated organ or tissue designations are used:

(A) LLI wall = lower large intestine wall;

(B) St wall = stomach wall;

(C) Blad wall = bladder wall; and

(D) Bone surf = bone surface.

(5) The use of the ALIs listed first, the more limiting of the stochastic and non-stochastic ALIs, will ensure that non-stochastic effects are avoided and that the risk of stochastic effects is limited to an acceptably low value. If, in a particular situation involving a radionuclide for which the non-stochastic ALI is limiting, use of that non-stochastic ALI is considered unduly conservative, the licensee may use the stochastic ALI to determine the committed effective dose equivalent. However, the licensee shall also ensure that the 50-rem (0.5 sievert) dose equivalent limit for any organ or tissue is not exceeded by the sum of the external deep dose equivalent plus the internal committed dose equivalent to that organ (not the effective dose). For the case where there is no external dose contribution, this would be demonstrated if the sum of the fractions of the nonstochastic ALIs (ALI_{ns}) that contribute to the committed dose equivalent to the organ receiving the highest dose does not exceed 1 (i.e., Sigma (intake in µCi of each radionuclide/ALI_{ns}) ≤ 1.0). If there is an external deep-dose equivalent contribution of H_d, then this sum must be less than 1 - (H_d/50), instead of ≤ 1.0.

(6) The DAC values are derived limits intended to control chronic occupational exposures. The relationship between the DAC and the ALI is given by:
Figure: 30 TAC §336.359(b)(6) (No change.)

(7) The DAC values relate to one of two modes of exposure: either external submersion or the internal committed dose equivalents resulting from inhalation of radioactive materials. The DAC values based upon submersion are for immersion in a semi-infinite cloud of uniform concentration and apply to each radionuclide separately.

(8) The ALI and DAC values include contributions to exposure by the single radionuclide named and any in-growth of daughter radionuclides produced in the body by decay of the parent. However, intakes that include both the parent and daughter radionuclides shall be treated by the general method appropriate for mixtures.

(9) The values of ALI and DAC do not apply directly when the individual both ingests and inhales a radionuclide, when the individual is exposed to a mixture of radionuclides by either inhalation or ingestion or both, or when the individual is exposed to both internal and external irradiation (see §336.306 of this title (relating to Compliance with Requirements for Summation of External and Internal Doses)). When an individual is exposed to radioactive materials which fall under several of the translocation classifications of the same radionuclide (i.e., Class D, Class W, or Class Y), the exposure may be evaluated as if it were a mixture of different radionuclides.

(10) It shall be noted that the classification of a compound as Class D, W, or Y is based on the chemical form of the compound and does not take into account the radiological half-life of different radionuclides. For this reason, values are given for Class D, W, and Y compounds, even for very short-lived radionuclides.

(c) Table II, "Effluent Concentrations". The columns in Table II of this appendix captioned "Effluent Concentrations," "Air," and "Water" are applicable to the assessment and control of dose to the public, particularly in the implementation of the provisions of §336.314 of this title (relating to Compliance with Dose Limits for Individual Members of the Public). The concentration values given in Columns 1 and 2 of Table II are equivalent to the radionuclide concentrations which, if inhaled or ingested continuously over the course of a year, would produce a total effective dose equivalent of 0.05 rem (0.5 millisievert).

(1) Consideration of non-stochastic limits has not been included in deriving the air and water effluent concentration limits be-

cause non-stochastic effects are presumed not to occur at or below the dose levels established for individual members of the public. For radionuclides, where the non-stochastic limit was governing in deriving the occupational DAC, the stochastic ALI was used in deriving the corresponding airborne effluent limit in Table II. For this reason, the DAC and airborne effluent limits are not always proportional.

(2) The air concentration values listed in Table II, Column 1, were derived by one of two methods. For those radionuclides for which the stochastic limit is governing, the occupational stochastic inhalation ALI was divided by 2.4 x 10^9 ml, relating the inhalation ALI to the DAC and then divided by a factor of 300. The factor of 300 is composed of a factor of 50 to relate the 5-rem (0.05 sievert) annual occupational dose limit to the 0.1 rem (1 millisievert) limit for members of the public, a factor of 3 to adjust for the difference in exposure time and the inhalation rate for a worker and that for members of the public; and a factor of 2 to adjust the occupational values (derived for adults) so that they are applicable to other age groups.

(3) For those radionuclides for which submersion (external dose) is limiting, the occupational DAC in Table I, Column 3, was divided by 219. The factor of 219 is composed of a factor of 50 and a factor of 4.38 relating occupational exposure for 2,000 hours/year to full-time exposure (8,760 hours/year). Note that an additional factor of 2 for age considerations is not warranted in the submersion case.

(4) The water concentrations were derived by taking the most restrictive occupational stochastic oral ingestion ALI and dividing by 7.3 x 10^7 ml. The factor of 7.3 x 10^7 ml is composed of the factors of 50 and 2 and a factor of 7.3 x 10^5 ml which is the annual water intake of "reference man."

(5) Note 6 of this appendix provides groupings of radionuclides that are applicable to unknown mixtures of radionuclides. These groupings, including occupational inhalation ALIs and DACs, air and water effluent concentrations, and releases to sewerage, require demonstrating that the most limiting radionuclides in successive classes are absent. The limit for the unknown mixture is defined when the presence of one of the listed radionuclides cannot be definitely excluded either from knowledge of the radionuclide composition of the source or from actual measurements.

(d) Table III, "releases to sewers." The monthly average concentrations for release to sanitary sewerage are applicable to the provisions in §336.215 of this title (relating to Disposal by Release into Sanitary Sewerage). The concentration values were derived by taking the most restrictive occupational stochastic oral ingestion ALI and dividing by 7.3 x 10^6 ml. The factor of 7.3 x 10^6 ml is composed of a factor of 7.3 x 10^5 ml, the annual water intake by "reference man," and a factor of 10, such that the concentrations, if the sewage released by the licensee were the only source of water ingested by a "reference man" during a year, would result in a committed effective dose equivalent of 0.5 rem (5 millisieverts).

Figure: 30 TAC §336.359(d)

[~~Figure: 30 TAC §336.359(d)~~]

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

Filed with the Office of the Secretary of State on July 22, 2011.

TRD-201102789

Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: September 4, 2011
For further information, please call: (512) 239-2548

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SUBCHAPTER E. NOTICES, INSTRUCTIONS, AND REPORTS TO WORKERS AND INSPECTIONS

30 TAC §336.405

Statutory Authority

The amendment is proposed under the Texas Radiation Control Act, Texas Health and Safety Code (THSC), Chapter 401; THSC, §401.011, which provides the commission authority to regulate and license the disposal of radioactive substances, the commercial processing and storage of radioactive substances, and the recovery and processing of source material; §401.051, which authorizes the commission to adopt rules and guidelines relating to control of sources of radiation; §401.103, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; §401.104, which requires the commission to provide rules for licensing for the disposal of radioactive substances; §401.201, which provides authority to the commission to regulate the disposal of low-level radioactive waste; §401.301, which authorizes the commission to set fees by rule; and §401.412, which provides authority to the commission to regulate licenses for the disposal of radioactive substances. The proposed amendment is also authorized by Texas Water Code, §5.103, which provides the commission with the authority to adopt rules necessary to carry out its powers and duties under the water code and other laws of the state.

The proposed amendment implements THSC, Chapter 401, including §§401.011, 401.051, 401.057, 401.059, 401.103 401.104, 401.151, 401.201, 401.301, and 401.412.

§336.405. Notifications and Reports to Individuals.

(a) Radiation exposure data for an individual and the results of any measurements, analyses, and calculations of radioactive material deposited or retained in the body of an individual shall be reported to the individual as specified in this section. The information reported shall include data and results obtained under commission rules, orders, or license conditions, as shown in records maintained by the licensee under commission rules. Each notification and report shall be in writing; shall include appropriate identifying data such as the name of the licensee, the name of the individual, and the individual's social security number; shall include the individual's exposure information; and shall contain the statement "This report is furnished to you under the provisions of 30 Texas Administrative Code, Chapter 336, Subchapter E. You shall preserve this report for further reference."

(b) Each licensee shall make dose information available to workers [~~advise each worker annually of the worker's dose~~] as shown in records maintained by the licensee under §336.346 of this title (relating to Records of Individual Monitoring Results). The licensee shall provide an annual report to each individual monitored under §336.316 of this title (relating to Conditions Requiring Individual Monitoring of External and Internal Occupational Dose) of the dose received in that monitoring year if:

(1) the individual's occupational dose exceeds 1 millisievert (mSv) (100 millirem (mrem)) total effective dose equivalent or 1 mSv (100 mrem) to any individual organ or tissue; or

(2) the individual requests his or her annual dose report in writing.

(c) A former worker may request a report of the worker's exposure to radiation and/or radioactive material from the licensee.

(1) At the request of a worker formerly engaged in licensed activities controlled by the licensee, each licensee shall furnish to the worker a report of the worker's exposure to radiation and/or to radioactive material:

(A) as shown in records maintained by the licensee under §336.346 of this title [(relating to Records of Individual Monitoring Results)] for each year the worker was required to be monitored under the provisions of §336.316 of this title [(relating to Conditions Requiring Individual Monitoring of External and Internal Occupational Dose)]; and

(B) for each year the worker was required to be monitored under the monitoring requirements in effect before January 1, 1994.

(2) This report must be furnished within 30 days from the time the request is made or within 30 days after the exposure of the individual has been determined by the licensee, whichever is later. This report must cover the period of time that the worker's activities involved exposure to radiation from radioactive materials licensed by the commission and must include the dates and locations of licensed activities in which the worker participated during this period.

(d) When a licensee is required under §336.335 of this title (relating to Reporting Requirements for Incidents), §336.352 of this title (relating to Reports of Exposures, Radiation Levels, and Concentrations of Radioactive Material Exceeding the Limits), §336.353 of this title (relating to Reports of Planned Special Exposures), or §336.355 of this title (relating to Reports of Individual Monitoring) to report to the executive director any exposure of an individual to radiation or radioactive material, the licensee shall also provide the individual a report of that individual's exposure data. This report must be transmitted at a time not later than the transmittal to the executive director.

(e) At the request of a worker who is terminating employment with the licensee that involved exposure to radiation or radioactive materials, during the current year, each licensee shall provide at termination to each worker, or to the worker's designee, a written report regarding the radiation dose received by that worker from operations of the licensee during the current year or fraction thereof. If the most recent individual monitoring results are not available at that time, a written estimate of the dose shall be provided together with a clear indication that this is an estimate.

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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Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

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For further information, please call: (512) 239-2548

TITLE 34. PUBLIC FINANCE

PART 6. TEXAS MUNICIPAL RETIREMENT SYSTEM

CHAPTER 127. MISCELLANEOUS RULES

34 TAC §127.3

The Board of Trustees ("Board") of the Texas Municipal Retirement System ("TMRS") proposes an amendment to 34 TAC §127.3, concerning the Board's authority to adopt rules to limit the annual benefit payable under Title 8, Subtitle G of the Texas Government Code (the "TMRS Act") to the extent necessary to conform with applicable limitations on benefit payments set forth in §415 of the Internal Revenue Code ("IRC") as the IRC applies from time to time to TMRS. IRC §415 establishes maximum limitations on benefits paid under a qualified plan. Texas Government Code §854.007 of the TMRS Act provides that if the amount of a benefit payment under the TMRS Act would exceed the limitations provided by IRC §415, and its amendments and regulations promulgated thereunder, then TMRS shall reduce the amount of the benefit to comply with IRC §415. Texas Government Code §855.608 further provides that benefits payable under the TMRS Act that would otherwise be limited under IRC §415 and Texas Government Code §854.007 shall be paid out of an excess benefit arrangement created for this purpose.

The proposed amendment amends §127.3 to correct a scrivener's error in subsection (a) and to add a new subsection (b) to specifically state certain rules applicable when testing benefits for IRC §415 limits, including: (i) providing that the §415 limit applicable to a member's benefit will be increased from time to time to reflect the adjusted §415 dollar limit established by the Secretary of the Treasury from time to time; (ii) specifying that increases in the §415 dollar limit will apply after a member's separation from service; (iii) clarifying that benefits will comply with the adjusted §415 limits in each year during which payments are made; (iv) providing that, for benefits commencing prior to age 62 or after age 65, the applicable §415 limit will be adjusted to the extent, if any, required by the Treasury Regulations and subject to other applicable IRC §415 rules; and (v) specifying that for §415 testing purposes: the limitation year is the calendar year, the stability period is one calendar year, and the look-back period will be the month of September each year. The amendment further provides that, in the event a member participates in another qualified defined benefit plan maintained by his/her employer, and if the benefits provided under all the plans would exceed the §415 limit, then the benefits under such other plans will be reduced first in order to avoid exceeding the §415 limit and reduced under the TMRS system only to the extent necessary to avoid exceeding the limit.

The proposed amendment of §127.3 implements the authority granted to the Board in Texas Government Code §855.607 to adopt rules that modify the plan to the extent the Board considers necessary for the retirement system to be considered a qualified plan. Pursuant to §855.607, rules adopted by the Board relating to plan qualifications issues are considered a part of the plan. On February 25, 2011, the Board approved the publication of the rule amendment proposal for comment.

David Gavia, Executive Director of TMRS, has determined that for the first five-year period the amendment is in effect there will

be no fiscal implications for state or local governments as a result of administering the amendment as proposed.

Mr. Gavia also has determined that for each year of the first five years that the proposed amendment would be in effect the public benefit anticipated as a result of administering the proposed amendment would be more specificity as to the applicable rules for testing compliance with IRC §415 limits, including applying increases in the limits established by the Secretary of the Treasury from time to time, and clarifying that when a member is participating in more than one defined benefit plan maintained by their employer then the benefits under such other plans will be reduce first in order to avoid exceeding the §415 limit. Individuals who might be affected by the amendment are TMRS members and retirees, though to the extent the IRC §415 limits might limit a person's benefits payable from the qualified plan, Texas Government Code §854.007 provides that such benefits shall be paid out of an excess benefit arrangement created for this purpose. Small businesses will not be affected by this amendment.

Comments may be submitted in writing to Christine M. Sweeney, General Counsel, TMRS, P.O. Box 149153, Austin, Texas 78714-9153; faxed to (512) 225-3786; or submitted electronically to Ms. Sweeney at *csweeney@tmrs.com.* Comments must be received no later than 30 days from the date of publication of the proposed amendment in the *Texas Register.*

Statutory Authority: The amendment is proposed under Texas Government Code, §855.607, which authorizes the Board to adopt rules that modify the plan to the extent the Board considers necessary for the retirement system to be considered a qualified plan; and Texas Government Code §855.102, which grants the Board authority to adopt rules necessary or desirable for the efficient administration of the retirement system.

Cross-reference to Statute: The proposed amendment implements Texas Government Code §854.007, which provides that in the event the amount of a benefit payment would exceed the limitations provided by §415, Internal Revenue Code of 1986, and its subsequent amendments, and the regulations under that section, the retirement system shall reduce the amount of the benefit to comply with that section.

§127.3. Conformity with Internal Revenue Code: Preservation of Benefits.

(a) Pursuant to the authority of the board of trustees to act under the Act, and in accordance with the amendments to § [~~Section~~] 415 of the Internal Revenue Code as set forth in Public Law 104-188, the annual benefit payable under the Act shall not be reduced under §854.007 of the Act except in conformity with those limitations on the payment of benefits set forth in the Internal Revenue Code as that Code applies from time to time to the Texas Municipal Retirement System.

(b) Effective for limitation years beginning on or after January 1, 2010, the following paragraphs (1) - (5) of this subsection shall apply:

(1) The defined benefit payable to a member of the system shall not exceed the applicable limits under Internal Revenue Code §415(b), as periodically adjusted by the Secretary of the Treasury pursuant to Internal Revenue Code §415(d). This limit adjustment shall also apply to a member who has had a severance from employment or, if earlier, an annuity starting date. Benefits that are subject to Internal Revenue Code §415(b) shall comply with the foregoing limit in each year during which payments are made. The foregoing limit shall be adjusted pursuant to the requirements of Internal Revenue Code §415(b)(2)(C) and (D) relating to the commencement of benefits at a date prior to age 62 or after age 65, subject to other applicable rules under Internal Revenue Code §415.

(2) No adjustment shall be required to a benefit subject to an automatic benefit increase feature described in Treasury Regulation §1.415(b)-1(c)(5).

(3) To the extent that Internal Revenue Code §415 and the Treasury Regulations thereunder require that an interest rate under Internal Revenue Code §417(e) apply, the applicable stability period shall be one calendar year beginning January 1, and the look-back month shall be the fourth full calendar month preceding the first day of the stability period (September).

(4) If a member is, or has ever been, a participant in another qualified defined benefit plan (without regard to whether the plan has been terminated) maintained by the member's employer, as determined pursuant to Internal Revenue Code §§414(b), 414(c), and 415, the sum of the participant's benefits payable annually in the form of a straight life annuity from all such plans may not exceed the limit described in paragraph (1) of this subsection. Where the member's employer-provided benefits under all such defined benefit plans (determined as of the same age) would exceed the limit described in paragraph (1) of this subsection applicable at that age, the benefits accrued under all such other plans shall be reduced first in order to avoid exceeding the limit and shall be reduced under the system only to the extent that the reduction under such other plans is insufficient to avoid exceeding the limit.

(5) The defined benefit payable to a member of the system plan shall be determined in accordance with the requirements of Internal Revenue Code §415(b) and the Treasury Regulations thereunder. The limitation year is the calendar year.

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 July 22, 2011.

TRD-201102792
David R. Gavia
Executive Director
Texas Municipal Retirement System
Earliest possible date of adoption: September 4, 2011
For further information, please call: (512) 225-3754

34 TAC §127.4

The Board of Trustees ("Board") of the Texas Municipal Retirement System ("TMRS") proposes an amendment to 34 TAC §127.4, concerning Credited Service under the Uniformed Services Employment and Reemployment Rights Act. The section contains rules relating to contributions, benefits, and service credit to comply with the Uniformed Services Employment and Reemployment Rights Act (38 U.S.C. §4301 et.seq.) ("USERRA") and §414(u) of the Internal Revenue Code of 1986, as amended ("IRC"). The proposed amendment modifies the introductory paragraph of §127.4(c)(2) and adds a new subsection (c)(2)(J) to specify that an eligible TMRS member will be permitted to deposit employee contributions to his or her individual account that would have been made to the account during periods of confirmed uniformed service provided the deposits are made to the account no later than three times the length of the member's immediate past period of uniformed service, not to exceed five years, and clarifies that the deposits

be made only while the member is employed with the reemploying municipality. The proposed amendment also makes nonsubstantive changes to subsections (a)(1), (a)(3), (b)(7), (c)(2)(B), and (c)(2)(C) to correct a scrivener's error and to clarify existing text. On February 25, 2011, the Board approved the publication of this rule amendment proposal for comment.

David Gavia, Executive Director of TMRS, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local governments as a result of administering the amendment as proposed.

Mr. Gavia also has determined that for each year of the first five years that the proposed amendment would be in effect the public benefit anticipated as a result of administering the proposed amendment would be clarification of the length of time an eligible TMRS member is permitted to deposit employee contributions to his or her individual account that would have been made to the account during periods of confirmed uniformed service and that the deposits be made only while the member is employed with the re-employing municipality. Individuals who are eligible TMRS members who desire to make employee contributions allowed pursuant to USERRA and the TMRS Act may be affected with regard to the timing of their deposits. Individuals who are eligible TMRS members and have served in the uniformed services may be affected with regard to the timing of their deposits to the extent that they desire to make employee contributions allowed pursuant to USERRA and the TMRS Act. Small businesses will not be affected by this rule.

Comments may be submitted in writing to Christine M. Sweeney, General Counsel, TMRS, P.O. Box 149153, Austin, Texas 78714-9153; faxed to (512) 225-3786; or submitted electronically to Ms. Sweeney at *csweeney@tmrs.com.* Comments must be received no later than 30 days from the date of publication of the proposed amendment in the *Texas Register.*

Statutory Authority: The amendment is proposed under Texas Government Code §853.506, which authorizes the Board to modify the terms of the Texas Government Code, Title 8, Subtitle G (the TMRS Act) for the purpose of compliance with USERRA, and Texas Government Code §855.102, which grants the Board authority to adopt rules necessary or desirable for the efficient administration of the retirement system.

Cross-reference to Statute: The proposed amendment implements Texas Government Code §853.506, which provides that contributions, benefits, and service credits for qualified military service will be provided in accordance with IRC §414(u) and allows the Board to adopt rules that modify the terms of the TMRS Act for the purpose of compliance with USERRA.

§127.4. Credited Service under the Uniformed Services Employment and Reemployment Rights Act.

(a) Definitions.

(1) Eligible Member--An employee of a participating municipality who is or would be considered to be employed in a position eligible for membership but who leaves employment with that municipality to perform service in the uniformed services; whose employer was notified of the obligation or intention of the employee to perform service in the uniformed services; who is released or discharged from such service on or after December 12, 1994, under honorable conditions; whose cumulative period of service in the uniformed services with respect to that participating municipality does not exceed five years not including periods excluded under 38 USC §4312(c) [~~38 USC §1412(c)~~]; who applies for reemployment with that participating municipality within 90 days of release or discharge from the uniformed services, or after recovery from an illness or injury incurred in, or aggravated during, the performance of service in the uniformed services (but such recovery period does not exceed two years); and who is reemployed by the participating municipality.

(2) Uniformed Services--The Armed Forces of the United States of America; the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty; the commissioned corps of the Public Health Service; and any other category of persons designated by the President in time of war or national emergency.

(3) Service in the Uniformed Services--The performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes active duty, active duty for training, inactive [~~initial active~~] duty for training, [~~inactive duty training, full-time~~] National Guard duty under Federal statute, and a period for which an employee is absent from a position of employment for the purpose of an examination of to determine the fitness of the employee to perform such duty.

(4) Participating Municipality--A municipality as defined in §851.001(9) of the Act (including entities having the status of a municipality under Government Code, §852.005 of the Act) that is participating in the Texas Municipal Retirement System at the time the eligible member leaves employment with the municipality to perform service in the uniformed services; or a municipality that is not participating in the System at the time the employee leaves employment with the municipality to perform service in the uniformed services but commences participating during the period of the employee's performance of duty in a uniformed service.

(b) Certification of Eligibility by Participating Municipality. An eligible member will be credited with current service in accordance with the Uniformed Services Employment and Reemployment Rights Act (the USERRA) (38 USC §4301 et seq.) upon certification by the participating municipality on forms provided by the system:

(1) that the eligible member's reemployment application is timely;

(2) that [~~That~~] the eligible member has not exceeded the service limitations set forth in the USERRA;

(3) that the eligible member was not released or discharged from the uniformed service under other than honorable conditions;

(4) the period in which the eligible member performed service in the uniformed services;

(5) that the eligible member did not receive service credit for the period of uniformed service;

(6) the estimated compensation that the eligible member would have received from the municipality but for the period of service in the uniformed services; and

(7) the eligible member's date of reemployment with the participating municipality.

(c) Crediting of Current Service under the USERRA.

(1) An eligible member shall be credited with one month of current service credit for each month or part of a month in which:

(A) the eligible member performed service in the uniformed services; and

(B) a person who begins military service prior to the 16th day of a calendar month, or terminates military service after the 15th day of a calendar month is considered to have served a full month; and

(C) the participating municipality participated in the system.

(2) An [~~On or before the last day of the fifth calendar year following the year in which the eligible member was reemployed, the~~] eligible member may, but is not required to, deposit with the system any or all employee contributions that would have been deposited to his/her individual account for each period during which he/she performed service in the uniformed services if the eligible member had been employed with the participating municipality during the period of uniformed service. Deposits under this provision are subject to the following rules:

(A) The total deposits may not exceed the amount the eligible member would have been required to contribute had the eligible member remained continuously employed by the participating municipality throughout the period of service in the uniformed services.

(B) The compensation upon which allowable deposits will be calculated is the estimated compensation that the eligible member would have received from the participating municipality but for the period of service in the uniformed services.

(C) For purposes of determining the amount of current service credit and allowable monetary credit, months of uniformed service and estimated compensation shall be calculated from the later of the date the eligible member entered service in the uniformed services [~~service~~] or the date the participating municipality commenced participation in the system.

(D) Within the allowable period for making deposits and subject to the maximum total amount of deposits, an eligible member may make deposits at any time and in any amount.

(E) Deposits must be paid directly to the system by the eligible member, will be treated as after-tax contributions, and may not be returned until the member terminates from all covered employment in this system.

(F) Deposits will be allocated prospective interest only, and in the same manner as interest is allocated on member contributions to individual accounts.

(G) Deposits, when received by the system, shall be credited to the eligible person's individual account and shall be considered to be contributions attributable to the months of uniformed service performed beginning with the earliest month of uniformed service.

(H) For vesting and funding purposes, current service credit, and any monetary credit arising from voluntary deposits, shall be considered as having been earned through service with the reemploying municipality and as having been credited during the period of uniformed service.

(I) An eligible member receiving service credit for a specific month pursuant to §853.506 may not receive service credit for the same month under any other provision of the Act.

(J) Deposits must be made during a time period starting with the date of an eligible member's reemployment with the participating municipality and continuing for up to three (3) times the length of the member's immediate past period of uniformed service, with the repayment period not to exceed five (5) years. Deposits may be made only during this period and while the member is employed with the post-service reemploying municipality.

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 July 22, 2011.

TRD-201102793

David R. Gavia

Executive Director

Texas Municipal Retirement System

Earliest possible date of adoption: September 4, 2011

For further information, please call: (512) 225-3754

WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 3. OIL AND GAS DIVISION

16 TAC §3.79, §3.86

Proposed amended §3.79 and §3.86, published in the January 21, 2011, issue of the *Texas Register* (36 TexReg 198), are withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on July 22, 2011.

TRD-201102766

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS
SUBCHAPTER E. CERTIFICATION, LICENSING AND REGISTRATION

16 TAC §25.109

Proposed amended §25.109, published in the January 21, 2011, issue of the *Texas Register* (36 TexReg 209), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on July 22, 2011.

TRD-201102767

SUBCHAPTER H. ELECTRICAL PLANNING
DIVISION 1. RENEWABLE ENERGY RESOURCES AND USE OF NATURAL GAS

16 TAC §25.173

Proposed amended §25.173, published in the January 21, 2011, issue of the *Texas Register* (36 TexReg 209), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on July 22, 2011.

TRD-201102768

SUBCHAPTER I. TRANSMISSION AND DISTRIBUTION
DIVISION 2. TRANSMISSION AND DISTRIBUTION APPLICABLE TO ALL ELECTRIC UTILITIES

16 TAC §25.211

Proposed amended §25.211, published in the January 21, 2011, issue of the *Texas Register* (36 TexReg 209), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on July 22, 2011.

TRD-201102769

ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 26. FOOD AND NUTRITION DIVISION

SUBCHAPTER A. TEXAS PUBLIC SCHOOL NUTRITION POLICY

4 TAC §26.6

The Texas Department of Agriculture (the department) adopts an amendment to §26.6, concerning Foods of Minimal Nutritional Value (FMNV), without changes to the proposed text as published in the June 17, 2011, issue of the *Texas Register* (36 TexReg 3673).

The amendment to §26.6(c) is adopted to clarify a provision of the Texas Public School Nutrition Policy relating to foods of minimal nutritional value. The department has received numerous questions about this provision. The adopted amendment to §26.6(c) provides that for the purposes of implementation of the Texas Public School Nutrition Policy, the department does not recognize the exceptions the United States Department of Agriculture has made and listed for certain foods of minimal nutritional value.

No comments were received on the proposal.

The amendment is adopted under the Texas Agriculture Code, §12.0025, which authorizes the department to administer the National School Lunch Program, the School Breakfast Program, and the Summer Food Service Program; and §12.016 which authorizes the department to adopt rules as necessary for the administration of its powers and duties under the Texas Agriculture 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 July 22, 2011.

TRD-201102775
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: August 11, 2011
Proposal publication date: June 17, 2011
For further information, please call: (512) 463-4075

TITLE 13. CULTURAL RESOURCES

PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

CHAPTER 7. LOCAL RECORDS

SUBCHAPTER D. RECORDS RETENTION SCHEDULES

13 TAC §7.125

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figures in 13 TAC §7.125 are not included in the print version of the Texas Register. The figures are available in the on-line version of the August 5, 2011, issue of the Texas Register.)

The Texas State Library and Archives Commission adopts an amendment to §7.125, regarding local government retention schedules for the records of CC (County Clerks), DC (District Clerks), LC (Justice and Municipal Courts), PS (Public Safety Agencies), and SD (Public School Districts) with changes to the proposed text as published in the April 29, 2011, issue of the *Texas Register* (36 TexReg 2687).

The adopted amendments update these retention schedules.

Numerous comments from local government Records Management Officers (RMOs) were received during the comment period. These comments and the resulting changes to the proposed text are identified in this preamble.

Responses to comments on Local Schedule SD (Public School Districts)

The only comment received for Local Schedule SD was an agreement with changes made by the agency.

Responses to comments on Local Schedule CC (County Clerks)

Comment: A county RMO and a District Clerk recommended removing records series CC1600-04a (Criminal Case Papers - DWI/DUID Convections) so the retention period of all County Court misdemeanor cases is the same. They note that the case papers are not the only way to prove prior convictions and that the Minutes of the case, which are permanent, could be used instead.

Response: The agency removed the records series as requested.

Comment: A county RMO recommended amending the record description for record CC1925-04 (Consolidated Scholastic Census Rolls) to include students enrolled in private schools.

Response: The agency changed the record description as requested.

Comment: A county RMO recommended removing records series CC1700-06, CC1700-08, and CC1700-10 because statutes require they be destroyed by law enforcement agencies so should never be sent to County Clerks.

Response: The agency removed the records series as requested.

Responses to comments on Local Schedule DC (District Clerks)

Comment: A county RMO noted a record was mis-numbered. The record was identified as CC1700-19 but should have been DC2100-16.

Response: The record was assigned the correct number of DC2100-16.

Comment: A county RMO recommended removing records series DC2100-06, DC2100-08, and DC2100-10 because statutes require they be destroyed by law enforcement agencies so should never be sent to District Clerks.

Response: The agency removed the records series as requested.

Responses to comments on Local Schedule LC (Justice and Municipal Courts)

Comment: A county RMO recommended removing the reference to minutes in the retention note on page 5 because local courts are not courts of record and do not create minutes.

Response: Because Government Code §29.010(c) states municipal court clerks are to "keep minutes of the proceedings of the court" the agency retained the reference to minutes in the retention note.

Comment: A county RMO requested the retention period for LC2350-07 (Fee Books) and LC2425-02 (Cost Deposit Records) be changed from "FE + 5 years" to "5 years from date of last item."

Response: The agency retained the "fiscal year end" retention period to aid in the retention and disposition of these financial records.

Comment: A county RMO recommended removing records series LC2450-02, LC2450-04, and LC2450-06 because statutes require they be destroyed by law enforcement agencies so should never be sent to Justice or Municipal clerks.

Response: The agency removed the records series as requested.

Comment: A county RMO recommended removing record series LC2450-05 (Juvenile Delinquency Records (First Offender Program), Report On) because the report would not be filed with a Justice or Municipal court.

Response: The agency removed the record series as requested.

Comment: A county RMO recommended removing record series LC2450-12 (Juvenile Record (Juvenile Court Minutes)) because justice courts do not create minutes.

Response: Because Government Code §29.010(c) states municipal court clerks are to "keep minutes of the proceedings of the court" the agency retained the record series

Responses to comments on Local Schedule PS (Public Safety Agencies)

Comment: A county RMO requested the retention period for PS4100-05 (Dispatch reports) be reverted to the previous retention period of 1 year from the new retention period of 2 years.

Response: The agency's Commission increased the retention period to match that of PS4125-01 (Activity Logs or Dockets) and PS4075-01(e) (Internal Affairs Investigation Records) to ensure there is a record of an officer's whereabouts in the event of a complaint or Internal Affairs investigation.

Comment: A county RMO requested the retention period for PS4150-07 (Incident Reports) be reverted to the previous retention period of 2 years from the new retention period of 3 years.

Response: The agency's Commission increased the retention period to ensure local governments did not destroy the records before the statute of limitations for tort filing had elapsed.

Comment: A county RMO recommended removing records series PS4225-14(a), PS4225-14(b), and 4225-14(c) because the records are court records and would not be held by a public safety agency.

Response: The agency removed the records series as requested.

Comment: A county RMO recommended including the phrase "(Prosecuting Attorney's)" to the record title for record series PS4225-20(c) (Juvenile Case Papers) to be consistent with the record title for PS4225-20(a) and PS4225-20(b).

Response: The agency added the phrase to the record title as requested.

Comment: A county RMO requested the phrase "record group" be changed to "record series" in the retention note for item PS4325-01 (Police Academy Records).

Response: Because the retention note applies to all records series within PS4325-01 not to any single record series the agency retained the original wording.

Comment: A county RMO requested a new record series to cover operational records of jails.

Response: The agency will conduct an investigation to see if these records should be added to a future schedule, but at this time the records will not be included.

The amendment is adopted under Government Code §441.158 that permits the commission to adopt minimum retention periods for local governments and under Government Code §441.160 that allows the commission to revise the schedules.

The amendment affects the Government Code §441.158 and §441.160.

§7.125. Records Retention Schedules.

(a) The following records retention schedules, required to be adopted by rule under Government Code §441.158(a) are adopted.

(1) Local Schedule GR: Records Common to All Local Governments, 4th Edition.
Figure: 13 TAC §7.125(a)(1)

(2) Local Schedule PW: Records of Public Works and other Services, 2nd Edition.
Figure: 13 TAC §7.125(a)(2)

(3) Local Schedule CC: Records of County Clerks, 3rd Edition.
Figure: 13 TAC §7.125(a)(3)

(4) Local Schedule DC: Records of District Clerks, 3rd Edition.
Figure: 13 TAC §7.125(a)(4)

(5) Local Schedule PS: Records of Public Safety Agencies, 3rd Edition.
Figure: 13 TAC §7.125(a)(5)

(6) Local Schedule SD: Records of Public School Districts, 2nd Edition.
Figure: 13 TAC §7.125(a)(6)

(7) Local Schedule JC: Records of Public Junior Colleges, 2nd Edition.
Figure: 13 TAC §7.125(a)(7)

(8) Local Schedule LC: Records of Justice and Municipal Courts, 2nd Edition.
Figure: 13 TAC §7.125(a)(8)

(9) Local Schedule TX: Records of Property Taxation, 3rd Edition.
Figure: 13 TAC §7.125(a)(9)

(10) Local Schedule EL: Records of Elections and Voter Registration, 2nd Edition.
Figure: 13 TAC §7.125(a)(10)

(11) Local Schedule HR: Records of Public Health Agencies, 2nd Edition.
Figure: 13 TAC §7.125(a)(11)

(12) Local Schedule UT: Records of Utility Services, 2nd Edition.
Figure: 13 TAC §7.125(a)(12)

(b) The retention periods in the records retention schedules adopted under subsection (a) of this section serve to amend and replace the retention periods in all editions of the county records manual published by the commission between 1978 and 1988. The retention periods in the manual, which were validated and continued in effect by Government Code §441.159, until amended, are now without effect.

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 July 25, 2011.

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Edward Seidenberg
Deputy Director
Texas State Library and Archives Commission
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Proposal publication date: April 29, 2011
For further information, please call: (512) 463-5459

TITLE 22. EXAMINING BOARDS

PART 11. TEXAS BOARD OF NURSING

CHAPTER 217. LICENSURE, PEER ASSISTANCE AND PRACTICE

22 TAC §217.21

Introduction. The Texas Board of Nursing (Board) adopts new §217.21 (relating to Remedial Education Course Providers and Remedial Education Courses) with changes to the proposed text published in the May 27, 2011, issue of the *Texas Register.*

Reasoned Justification. The Board formally proposed new §217.21 in the May 27, 2011, issue of the *Texas Register* (36 TexReg 3244). A public hearing on the rule proposal was held on June 29, 2011. In response to written comments on the published proposal and comments received during the public hearing, the Board has changed some of the proposed language in the text of the rule as adopted. The changes, however, do not materially alter issues raised in the proposal, introduce new subject matter, or affect persons other than those previously on notice.

The Board has made changes to §217.21(d)(2)(B), (D), and (E) as adopted in response to comments that the proposed rule was too limiting and would prohibit potentially qualified remedial education course instructors (instructors) from teaching certain remedial education courses (courses). The proposed rule required all instructors to hold a master's degree in nursing from an approved or accredited institution and to have a minimum of five years of professional nursing experience. A commenter representing an organization pointed out that these requirements would unnecessarily prohibit individuals holding other advanced academic degrees from teaching courses in their fields of expertise. The commenter went on to state that such individuals possess specific knowledge that would be beneficial to a nurse attending a course and that this knowledge may not be possessed by a master's prepared nurse without the same credentials or experience.

As a result of these comments, the Board considered changes to §217.21(d)(2) as proposed. Although the Board does not agree with all of the suggestions made by the commenters, the Board does agree that individuals holding advanced academic degrees in fields of study other than nursing should be given the opportunity to qualify as instructors, provided that the individuals hold a current professional nursing license and possess a certain amount of professional nursing experience. The Board has modified the rule text as adopted in this regard. First, adopted §217.21(d)(2)(B) has been modified as adopted to permit an instructor to hold either a master's degree in nursing from an approved or accredited institution or a doctoral degree, that in the Board's opinion, relates to an area of study relevant to the course content the instructor will be teaching. Second, adopted §217.21(d)(2)(D) has been modified to require an instructor to have a minimum of three years recent professional nursing experience. "Professional nursing experience" may include any activity, assignment, or task in which a nurse utilizes his/her nursing knowledge, judgment, or skills. Finally, adopted §217.21(d)(2)(E) has been modified to refer to all professional licensing boards and disciplinary authorities, instead of being strictly limited to nursing boards and nursing disciplinary authorities. The Board believes that these revisions address a portion of the commenters' stated concerns.

New §217.21 is being adopted under the authority of the Occupations Code §§301.303, 301.452, 301.453, and 301.151 and is necessary to establish, through rule, an approval process for providers and courses. The new section also creates new fees for the approval and renewal of courses. Amendments implementing these new fees and affecting 22 TAC §223.1 (relating to Fees) are being simultaneously adopted in this edition of the *Texas Register.*

The Board's mission is to protect the health, safety, and welfare of the public. One way in which the Board fulfills this obligation is

by regulating the conduct of its licensees. When a licensee commits a violation of the Nursing Practice Act (Occupations Code Chapter 301), the Board is authorized under §301.452(b) and §301.453 to take disciplinary action against the licensee. The goal of the disciplinary action is to identify the unsafe, incompetent, or illegal conduct of the licensee and effectuate its remediation. Very often, a licensee's conduct will demonstrate a nursing knowledge, skills, or judgment deficit. If the Board believes that this deficit can be successfully remediated, the Board will routinely require the licensee to complete certain courses. In order for courses to serve their intended purpose, however, the courses must be well developed, based upon sound educational principles, taught by qualified instructors, and offered by qualified providers.

Historical Perspective

The Board has approved relatively few providers over the past several years, approving 6 providers in 2004, 2005, and 2006; 7 providers in 2007; 8 providers in 2008 and 2009; and 10 providers in 2010. Historically, approved providers have been sole proprietors, licensed as registered nurses, the majority holding advanced academic degrees, with varied backgrounds in clinical practice and teaching experience. As a result, these providers offered courses that were well developed and content appropriate. Over the past year, however, Staff has received an increased number of inquiries and applications from individuals seeking to become Board-approved providers who lack professional nursing experience, educational experience, and advanced academic degrees. Further, Staff has reviewed several course proposals that were poorly organized, contained inappropriate or inaccurate material, failed to incorporate techniques to address the needs of adult learners, and, in some cases, were mere recitations of information contained on the Board's website. Many applicants simply did not possess the requisite nursing expertise to develop and sponsor quality courses. Courses play a large role in the Board's efforts to correct and prevent nursing errors from re-occurring. The quality of the Board's approved courses and providers are essential in effectuating this goal. As a result, the Board has determined that it is necessary to specify, through rule, the requirements that a course and provider applicant must meet in order to be approved by the Board. Adopted §217.21 is necessary to implement these requirements.

New Requirements

Adopted §217.21(a) is necessary to set forth the purpose of the new section. Courses can serve as a highly effective form of remediation for a licensee's nursing knowledge, judgment, or skills deficit, provided the courses are well developed, based upon sound educational principles, taught by qualified instructors, and offered by qualified providers. The requirements of the new section are intended to ensure that providers are properly credentialed and qualified to offer quality courses that meet the Board's standards and requirements.

Adopted §217.21(b) and (c) define the applicability of the new section. Not all courses will be subject to the requirements of the new section. Adopted §217.21(b) and (c) make clear that only those courses meeting the following criteria will be subject to the requirements of the new section: (i) the course is a nursing jurisprudence and ethics, medication administration, physical assessment, pharmacology, or nursing documentation course; (ii) the course has not already been approved or accredited by a licensing authority or organization recognized by the Board; and (iii) the course is required to be completed as part of a Board disciplinary or eligibility order. If a course meets all of these criteria, it will be subject to the requirements of the new section. If a course does not meet all of these criteria, it will not be subject to the requirements of the new section.

For example, under the requirements of the new section, a course in nursing documentation that has already been approved by another state board of nursing or by the National Council for State Boards of Nursing (NCSBN) will not be subject to the requirements of the new section. In this example, the course has already been reviewed and vetted by an organization whose mission and purpose is similar to that of the Board. As a result, the quality of the course has already been appropriately evaluated by a competent party and does not need to be evaluated a second time. The new requirements also do not affect a course that comprises a portion of a "refresher course" under the Board's rules or a course that satisfies a licensee's continuing competency obligations under the Nursing Practice Act. The purpose of a remedial education course differs from the purpose of a continuing competency course or a refresher course. Unlike continuing competency courses, remedial education courses are designed to address targeted deficiencies in a licensee's nursing practice and must be developed and evaluated toward that end. As such, the requirements of the new section apply only to remedial education courses and do not encompass continuing competency courses or refresher courses.

Adopted §217.21(d) prescribes two sets of requirements. The first set of requirements apply to providers. The second set of requirements apply to instructors. Under the adopted requirements, a provider must apply for approval by submitting a completed application to the Board. The application must contain requisite contact information and an attestation that the applicant will comply with the requirements of the new section. Further, the applicant must describe its process for evaluating the credentials and teaching competency of its course instructors. This requirement is especially important, as the new section prescribes several specific qualifications that a course instructor must meet. An applicant must be able to show its ability to adequately assess the qualifications, credentials, and nursing expertise of its instructors prior to receiving approval from the Board. By requiring an applicant to demonstrate its ability to appropriately evaluate the qualifications of its instructors, the Board ensures that approved providers utilize only qualified individuals as course instructors.

Adopted §217.21(d) also requires the renewal of a provider's initial approval. Pursuant to the new subsection, a provider's approval is valid for a period of up to twenty-four months from the date of issuance and expires on the last day of March in odd-numbered years. Further, a provider must renew its approval by submitting a completed renewal application to the Board. These requirements allow the Board to review a provider's qualifications on a regular basis to ensure ongoing compliance with the Board's requirements, specifically those regarding instructor qualifications. A provider's continued compliance with the Board's requirements should result in consistently high quality courses.

Adopted §217.21(d) also exempts certain providers from renewing their approval with the Board. Under the new subsection, a provider that has been previously approved by the Board on, or prior to, the effective date of the new section will not be required to renew its Board approval. Notwithstanding this exemption, however, the Board has determined that all providers must re-

new the approval of any courses they offer in order to ensure that the course content remains current, appropriate, and consistent with changes in nursing practice.

Adopted §217.21(d) also prescribes several requirements that apply to course instructors. First, a course instructor must hold a current license or privilege to practice as a registered nurse in the state in which the course will be provided. Under this requirement, a course may be completed in another state, provided that the provider and the course meet the requirements of the new section and are approved by the Board. This requirement provides additional flexibility to licensees by allowing a licensee to complete a required course in the most convenient and cost effective venue. Second, a course instructor must hold a master's degree in nursing from an approved or accredited institution or a doctoral degree, that in the Board's opinion, relates to an area of study relevant to the course content the instructor will be teaching. Individuals with doctoral degrees in fields of study other than nursing may have knowledge and expertise that would be beneficial to a nurse attending a remedial education course. As such, the adopted rule permits these individuals the opportunity to qualify as an instructor, provided they are able to meet the remaining requirements of the rule. Third, a course instructor must show evidence of teaching abilities and maintaining current knowledge, clinical expertise, and safety in the subject matter the instructor will teach. This requirement is important to ensure that instructors not only have subject matter expertise in the specific area they are teaching, but also that they have experience in teaching and are familiar with adult learning principles. Fourth, a course instructor must have a minimum of three years recent professional nursing experience. This requirement helps ensure that students are provided the most up to date and current information regarding nursing practice and regulation. Finally, a course instructor may not be the subject of a current eligibility or disciplinary order from a professional licensing board or disciplinary authority or have a history of more than one eligibility or disciplinary order from a professional licensing board or disciplinary authority. By limiting an instructor's own disciplinary history, the Board is first ensuring that instructors are capable of conforming to the requirements of the Nursing Practice Act and Board rules and policies. If an instructor also holds a professional license related to his/her doctoral degree, the Board is also ensuring that the individual is capable of complying with those professional licensing requirements, as well. Collectively, these requirements are designed to ensure that an instructor is appropriately qualified and adequately prepared to provide meaningful instruction to licensees in need of practice remediation. Taken together, these requirements should result in higher quality remedial education instructors, which should, in turn, result in higher quality courses and more successful licensee remediation.

Adopted §217.21(e) prescribes the requirements that apply to courses. Under the new requirements, all providers must submit a completed course application to the Board, along with the appropriate non-refundable fee. The amount of the fee is addressed in a separate Board rule, located at 22 TAC §223.1 (relating to Fees), which is being simultaneously adopted in this edition of the *Texas Register.* The application must include a thorough description of the course, including a detailed course content outline and specified, measurable learning objectives. A provider must also identify the skills and/or knowledge that the course is designed to enhance and explain how adult educational and learning principles will be utilized throughout the course. A provider must also describe how a licensee's participation in the course will be monitored, how a licensee's completion of the course will be measured, and how the effectiveness of the course will be evaluated. The new section also makes clear that a course must meet the requirements specified in the Board's eligibility or disciplinary order for the specific type of course. For example, the Board may require a licensee to complete an assessment course that is six hours in length, but is comprised of a didactic and clinical component. As such, a provider must ensure that its assessment course is comprised of a didactic and clinical component and is at least six hours in length. The content of each course must also be consistent with the Nursing Practice Act and the Board's rules, positions statements, and eligibility and disciplinary policies. These requirements are significant for several reasons.

First, the requirements encourage thoughtful deliberation and course development, which should result in cohesive, comprehensive courses. Second, the requirements ensure that appropriate nursing principles are included in the courses. Third, the requirements encourage providers to stay abreast of changes in nursing practice and procedure. As a whole, the requirements are intended to produce comprehensive, well-developed courses.

Because some courses are comprised of didactic or clinical components, or both, new §217.21(f) is necessary to allow courses to be completed in the manner specified by the Board.

Adopted §217.21(g) prescribes the requirements that apply to a course's renewal. Under the adopted new subsection, the approval of a course is only valid until the approval of the sponsoring provider expires. At that time, the course's approval may be simultaneously renewed with the provider's approval, so long as the course continues to meet the requirements of the adopted new section. This requirement serves two important purposes. First, the requirement simplifies the renewal process for providers. Under the new requirements, providers may renew their approval and the approval of their courses at the same time by filing a single renewal application. As a result, renewals should be processed more quickly and efficiently. Second, the requirement ensures that a provider and its courses are reviewed at least every two years to ensure ongoing compliance with the Board's requirements, specifically those related to instructor qualifications and course quality. Adopted §217.21(g) also makes clear that any course that was approved by the Board prior to, or on the effective date of the new section, must be timely renewed after March 31, 2013, when such approval expires. The ongoing monitoring of providers and courses is one way to prevent inappropriate, ineffective, or outdated course content from appearing in Board-approved courses. Finally, the adopted new section requires providers to pay a non-refundable renewal fee for the renewal of each course they offer. The amount of the fee is addressed in a separate Board rule, located at 22 TAC §223.1 (relating to Fees). That section is being adopted simultaneously in this edition of the *Texas Register.*

Adopted §217.21(h) authorizes the Board to withdraw the approval of any provider that fails to maintain compliance with the requirements of the new section. Further, the new subsection authorizes the Board to withdraw the approval of any course that falls below the standards specified in the adopted new section. Over the years, the Board has received complaints from licensees and other members of the public regarding providers and courses. The requirements authorize the Board to timely take action when a provider or course falls below the minimum

standards established by the Board by withdrawing the approval of the course or provider.

By consistently approving only those providers and courses that meet the adopted requirements, by regularly monitoring and reviewing providers and courses for ongoing compliance with the Board's requirements, and by withdrawing Board approval from providers and courses that are unable to consistently meet the Board's requirements, the Board anticipates that better quality courses will be developed and offered by providers.

How the Sections Will Function. Adopted §217.21(a) sets forth the purpose of the new section. First, adopted new §217.21(a) states that, in situations where an individual has demonstrated a knowledge, judgment, or skills deficit, the Board believes that remedial education courses can serve as an effective form of remediation provided that the courses are well developed, based on sound educational principles, and taught by qualified instructors. Second, adopted new §217.21(a) establishes the requirements for the approval of such providers and courses.

Adopted new §217.21(b) defines the term "remedial education course" as an educational course that: (i) meets the requirements of §217.21(e); (ii) is not currently accredited or approved by a licensing authority or organization recognized by the Board; (iii) is designed to address an individual's competency deficiencies; and (iv) is required to be completed by the Board as part of a disciplinary and/or eligibility order. Adopted new §217.21(b) defines the term "remedial education provider" as an individual or organization that meets the requirements of §217.21(d) and is approved by the Board to offer a remedial education course to an individual.

Adopted new §217.21(c) states that a provider seeking to offer a course in nursing jurisprudence and ethics, medication administration, physical assessment, pharmacology, and nursing documentation must be approved by the Board prior to offering the course to an individual.

Adopted new §217.21(d) requires a provider applicant to submit a completed application to the Board. Further, adopted new §217.21(d)(1) specifies the items that the Board may require in order to approve or disapprove the application, including: (i) the name, physical address, and mailing address of the provider applicant; (ii) the name and contact information of the provider applicant's designated authorized representative; (iii) the process used by the provider applicant for evaluating the credentials and teaching competency of its instructors; (iv) a statement certifying that the provider applicant will comply with the requirements set forth in the adopted new section; and (v) any other relevant information reasonably necessary to approve or disapprove the application, as specified by the Board.

Adopted new §217.21(d)(2) requires all provider applicants to certify that their course instructors: (i) hold a current license or privilege to practice as a registered nurse in the state in which the course will be provided; (ii) hold a master's degree in nursing from an approved or accredited institution or a doctoral degree, that in the Board's opinion, relates to an area of study relevant to the course content; (iii) have shown evidence of teaching abilities and maintaining current knowledge, clinical expertise, and safety in the subject matter the instructor will teach; (iv) have a minimum of three years current professional nursing experience; and (v) are not the subject of a current eligibility or disciplinary order from a professional licensing board and/or disciplinary authority or have a history of more than one eligibility or disciplinary order from a professional licensing board and/or disciplinary authority.

Adopted new §217.21(d)(3) requires an approved provider to maintain as a part of its records a written statement from each instructor certifying that the instructor is qualified as an instructor, the basis of qualification, and that the instructor agrees to comply with all course requirements outlined in the new section. Further, adopted new §217.21(d)(3) requires an approved provider to maintain verification of an individual's participation and completion of a course and all information described or required under the adopted new section for a period of not less than five years.

Adopted new §217.21(d)(4) sets forth the requirements related to the renewal of a provider's Board approval. First, adopted new §217.21(d)(4) provides that the approval of a provider is valid for a period of up to twenty-four months from the date of issuance and shall expire on the last day of the month of March in odd-numbered years. Second, adopted new §217.21(d)(4) states that a provider must renew its approval by submitting a renewal application to the Board in advance of its renewal date. Third, adopted §217.21(d)(4) states that a provider that has been approved by the Board prior to, or on the effective date of the adopted section, is not required to renew its approval, but must seek the Board's approval and the renewal of such approval for each course it seeks to offer.

Adopted §217.21(e) requires a provider to submit a course application to the Board for each course the provider wishes to offer and pay the required fee specified by 22 TAC §223.1 (relating to Fees), which is not refundable.

Further, adopted §217.21(e)(1) specifies the information that the application must include, such as (i) a statement identifying the knowledge, skills, or abilities an individual is expected to obtain through completion of the course; (ii) a detailed course content outline, measurable learning objectives, and the length of the course in hours; (iii) a description of how adult educational and learning principles are reflected in the course; (iv) a method of verifying an individual's participation and successful completion of the course; (v) a method of evaluation by which a provider measures how effectively the course meets its objectives and provides for input; and (vi) any other relevant information reasonably necessary to approve or disapprove the application, as specified by the Board.

Adopted §217.21(e)(2) states that the course content of a course must meet the requirements specified by the Board for each type of course and be consistent with the following: (i) the Occupations Code Chapters 301, 303, 304, and 305; (ii) 22 TAC Chapters 211 - 227; (iii) Board position statements 15.1 - 15.26; (iv) the Board's adopted Eligibility and Disciplinary Sanction Policies regarding Sexual Misconduct; Fraud, Theft and Deception; Nurses with Substance Abuse, Misuse, Substance Dependency, or other Substance Use Disorder; and Lying and Falsification; and (v) the Board's adopted Guidelines for Criminal Conduct.

Adopted §217.21(f) states that courses may consist of classroom, classroom equivalent, or clinical courses, as specified by the Board.

Adopted §217.21(g) states that, unless withdrawn or otherwise provided, a course is approved until the approval of the sponsoring provider expires. Further, adopted new §217.21(g) states that the approval of a course may be renewed simultaneously with the renewal of the approval of the sponsoring provider if the provider certifies on the renewal application that the course continues to meet the requirements of the new section. The approval of a course that has been approved by the Board prior to,

or on the effective date of the new section, will expire on March 31, 2013, and must be timely renewed. Additionally, its renewal will be valid for up to twenty-four months from the date of issuance and shall expire on the last day of the month of March in odd-numbered years. Finally, adopted new §217.21(g) requires all providers to pay the required course renewal fee specified by 22 TAC §223.1, which is not refundable.

Adopted new §217.21(h) authorizes the Board to withdraw the approval of a provider that fails to maintain compliance with the requirements of the adopted new section. Further, adopted new §217.21(h) states that, if the Board withdraws the approval of a provider, the provider shall cease offering all courses upon notice from the Board. Additionally, the Board may withdraw the approval of a course if it fails to comply with the requirements of the adopted new section. If the Board withdraws the approval of a course, the sponsoring provider shall cease offering the course upon notice from the Board. Finally, adopted new §217.21(h) provides that notice is presumed to be effective on the third day after the date on which the Board mails the notice.

Summary of Comments and Agency Response.

Comment: A commenter representing the Texas chapter of the American Association of Nurse Attorneys (TAANA-Texas) states that the proposed rule limits potential instructors too broadly and removes potentially qualified instructors from providing remedial education courses. The commenter states that there are potential course providers that possess advanced degrees, as well as extensive experience, that would be prohibited from providing valuable information and instruction in a remedial education course. Some examples provided by the commenter include a nurse attorney who teaches jurisprudence, ethics, boundary violations, or documentation; a pharmacist who teaches pharmacology; a medical doctor who teaches assessment; or a psychiatrist who teaches boundary violations or ethics. The commenter states that each of these doctorally prepared professionals would possess specific knowledge which would benefit a nurse attending a remedial education course, and in some cases, the knowledge may not be possessed by a master's prepared nurse without those credentials or experience. The commenter further states that changing the language of the proposed rule will continue to address the Board's concern that qualified and competent instructors provide the courses, while not limiting the pool of instructors. The commenter asks the Board to change the language of the proposed rule text to allow an instructor to: (i) hold a current license or privilege to practice as a registered nurse (RN) or a current license or privilege to practice in an area of study relevant to the remedial education course content; (ii) hold a master's degree in nursing or a doctoral degree in an area of study relevant to the course content from an approved or accredited institution; (iii) require an instructor to show evidence of teaching abilities and maintaining current knowledge, clinical expertise, and safety in the subject matter the instructor will teach; (iv) require an instructor to have a minimum of five years professional experience in nursing or in the area of study relevant to the remedial education course content; and (v) prohibit an instructor from being the subject of a current eligibility or disciplinary order from a professional licensing board and/or disciplinary authority or from having a history of more than one eligibility or disciplinary order from a professional licensing board and/or disciplinary authority.

A commenter representing the Texas Nurses Association (TNA) states that the comments and wording provided to the Board by TAANA-Texas appear reasonable and that TNA would support the change provided by TAANA-Texas, provided that the Board does not believe the proposed change would weaken the quality of remedial education courses approved by the Board.

Agency Response: The Board is committed to protecting and promoting the welfare of the people of Texas by ensuring that each person holding a license as a nurse in the State of Texas is competent to practice safely. The Board believes that enacting rules that strengthen the quality of remedial education courses approved by the Board is one way to support this mission. The Board agrees with the commenters that the proposed wording of the rule could unnecessarily limit some potentially qualified individuals from providing remedial education courses. However, the Board disagrees that a doctoral degree, even in an appropriately related area of study, is an adequate substitute for a professional nursing license or relevant nursing experience. As such, the Board has modified a portion of the rule text as adopted to address these issues.

First, the Board declines to eliminate or modify the requirement that an instructor hold a current professional nursing license or privilege to practice. This requirement is necessary to preserve the integrity of remedial education courses approved by the Board. Unlike continuing competency courses or prerequisite, non-nursing courses, remedial education courses are specifically tailored to address an individual's demonstrated nursing deficits. As such, these courses often include complex content requirements and clinical components. Although some types of professional experience and expertise in a related area of practice may be helpful to a general understanding of such requirements, an instructor must be able to apply specific nursing concepts and principles to an individual's nursing practice in order to effectively remediate an individual's particular deficit. Such knowledge may only be obtained through nursing education and experience. In order to reiterate and clarify the importance of such nursing experience, the Board has also modified the rule text as adopted to require an instructor to have at least three years of current professional nursing experience. This change lessens the number of years of professional nursing experience an instructor must have, but requires that the experience be recent in time in order to ensure that the most current information is made available to the student. Further, the Board is not limiting a nurse's nursing experience to a clinical role. The Board recognizes that many nurses practice in non-traditional nursing roles, such as nursing administration, regulation, or education and believes that a variety of nursing experience can enhance the value of a remedial education course. As such, the Board has defined "professional nursing experience" in the rule text as adopted to include any activity, assignment, or task in which a nurse utilizes his/her nursing knowledge, judgment, or skills. Finally, the Board has modified the rule text as adopted in order to allow an instructor to hold either a master's degree in nursing or a doctoral degree that, in the Board's opinion, relates to an area of study that is relevant to the course content the instructor will be teaching. This change addresses a portion of the commenters' concerns in that it provides individuals with advanced academic degrees in fields of study other than nursing the opportunity to qualify as remedial education course providers. For example, under the rule text as adopted, a nurse attorney holding a doctorate degree in jurisprudence could teach a remedial education course in nursing jurisprudence and ethics. Not only does a nurse attorney possess knowledge of relevant nursing concepts and principles, but the nurse attorney also understands underlying legal concepts and considerations as they relate to the practice

of nursing. In such cases, the remedial education course would be enhanced by the supplemental knowledge and experience of the nurse attorney. Similarly, individuals holding doctorate degrees in other related fields of practice may also be considered for approval by the Board under the adopted rule, so long as they are able to successfully demonstrate that the particular doctorate degree appropriately relates to the course content they wish to teach.

The Board believes the modifications to the rule text as adopted serve to improve the quality of remedial education courses approved by the Board. Better quality remedial education courses should result in more successful remediation, ultimately resulting in safer nursing care for the citizens of Texas.

Names of Those Commenting For and Against the Proposal.

For: None.

Against: None.

For, with changes: The American Association of Nurse Attorneys, Texas Chapter; Texas Nurses Association.

Neither for nor against, with changes: None.

Statutory Authority. The new section is adopted under the Occupations Code §§301.303, 301.452, 301.453, and 301.151.

Section 301.303(a) provides that the Board may recognize, prepare, or implement continuing competency programs for license holders under Chapter 301 and may require participation in continuing competency programs as a condition of renewal of a license. Further, the programs may allow a license holder to demonstrate competency through various methods, including: (i) completion of targeted continuing education programs; and (ii) consideration of a license holder's professional portfolio, including certifications held by the license holder.

Section 301.303(b) provides that the Board may not require participation in more than a total of 20 hours of continuing education in a two-year licensing period.

Section 301.303(c) states that, if the Board requires participation in continuing education programs as a condition of license renewal, the Board by rule shall establish a system for the approval of programs and providers of continuing education.

Section 301.303(e) provides that the Board may adopt other rules as necessary to implement §301.303.

Section 301.303(f) states that the Board may assess each program and provider under §301.303 a fee in an amount that is reasonable and necessary to defray the costs incurred in approving programs and providers.

Section 301.303(g) states that the Board by rule may establish guidelines for targeted continuing education required under Chapter 301. Further, the rules adopted under §301.303(g) must address: (i) the nurses who are required to complete the targeted continuing education program; (ii) the type of courses that satisfy the targeted continuing education requirement; (iii) the time in which a nurse is required to complete the targeted continuing education; (iv) the frequency with which a nurse is required to meet the targeted continuing education requirement; and (v) any other requirement considered necessary by the Board.

Section 301.452(a) defines "intemperate use" as including practicing nursing or being on duty or on call while under the influence of alcohol or drugs.

Section 301.452(b) states that a person is subject to denial of a license or to disciplinary action under Subchapter J for: (i) a violation of Chapter 301, a rule or regulation not inconsistent with Chapter 301, or an order issued under Chapter 301; (ii) fraud or deceit in procuring or attempting to procure a license to practice professional nursing or vocational nursing; (iii) a conviction for, or placement on deferred adjudication community supervision or deferred disposition for, a felony or for a misdemeanor involving moral turpitude; (iv) conduct that results in the revocation of probation imposed because of conviction for a felony or for a misdemeanor involving moral turpitude; (v) use of a nursing license, diploma, or permit, or the transcript of such a document, that has been fraudulently purchased, issued, counterfeited, or materially altered; (vi) impersonating or acting as a proxy for another person in the licensing examination required under §301.253 or §301.255; (vii) directly or indirectly aiding or abetting an unlicensed person in connection with the unauthorized practice of nursing; (viii) revocation, suspension, or denial of, or any other action relating to, the person's license or privilege to practice nursing in another jurisdiction; (ix) intemperate use of alcohol or drugs that the Board determines endangers or could endanger a patient; (x) unprofessional or dishonorable conduct that, in the Board's opinion, is likely to deceive, defraud, or injure a patient or the public; (xi) adjudication of mental incompetency; (xii) lack of fitness to practice because of a mental or physical health condition that could result in injury to a patient or the public; or (xiii) failure to care adequately for a patient or to conform to the minimum standards of acceptable nursing practice in a manner that, in the Board's opinion, exposes a patient or other person unnecessarily to risk of harm.

Section 301.452(c) provides that the Board may refuse to admit a person to a licensing examination for a ground described under §301.452(b).

Section 301.452(d) states that the Board by rule shall establish guidelines to ensure that any arrest information, in particular information on arrests in which criminal action was not proven or charges were not filed or adjudicated, that is received by the Board under §301.452 is used consistently, fairly, and only to the extent the underlying conduct relates to the practice of nursing.

Section 301.453(a) states that, if the Board determines that a person has committed an act listed in §301.452(b), the Board shall enter an order imposing one or more of the following: (i) denial of the person's application for a license, license renewal, or temporary permit; (ii) issuance of a written warning; (iii) administration of a public reprimand; (iv) limitation or restriction of the person's license, including: (A) limiting to or excluding from the person's practice one or more specified activities of nursing; or (B) stipulating periodic Board review; (v) suspension of the person's license; (vi) revocation of the person's license; or (vii) assessment of a fine.

Section 301.453(b) states that, in addition to or instead of an action under §301.453(a), the Board, by order, may require the person to: (i) submit to care, counseling, or treatment by a health provider designated by the Board as a condition for the issuance or renewal of a license; (ii) participate in a program of education or counseling prescribed by the Board, including a program of remedial education; (iii) practice for a specified period under the direction of a registered nurse or vocational nurse designated by the Board; or (iv) perform public service the Board considers appropriate.

Section 301.453(c) states that the Board may probate any penalty imposed on a nurse and may accept the voluntary surrender of a license. The Board may not reinstate a surrendered license unless it determines that the person is competent to resume practice.

Section 301.453(d) states that, if the Board suspends, revokes, or accepts surrender of a license, the Board may impose conditions for reinstatement that the person must satisfy before the Board may issue an unrestricted license.

Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

§217.21. Remedial Education Course Providers and Remedial Education Courses.

(a) Purpose. In situations where an individual has demonstrated a knowledge, judgment, or skills deficit, the Board believes that educational courses can serve as an effective form of remediation provided that the courses are well developed, based on sound educational principles, and taught by qualified instructors. This section establishes the requirements for the approval of remedial education course providers and remedial education courses.

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

(1) Remedial education course--An educational course that:

(A) meets the requirements of subsection (e) of this section;

(B) is not currently accredited or approved by a licensing authority or organization recognized by the Board;

(C) is designed to address an individual's competency deficiencies; and

(D) is required to be completed by the Board as part of a disciplinary and/or eligibility order.

(2) Remedial education course provider--An individual or organization that meets the requirements of subsection (d) of this section and is approved by the Board to offer a remedial education course to an individual.

(c) Approval Required. A remedial education course in nursing jurisprudence and ethics, medication administration, physical assessment, pharmacology, and nursing documentation must be approved by the Board. A remedial education course provider seeking to offer one of these remedial education courses must be approved by the Board prior to offering the course to an individual.

(d) Remedial Education Course Providers. A remedial education course provider applicant seeking initial approval from the Board must submit a completed remedial education course provider application to the Board. The provider applicant must verify the application by attesting to the truth and accuracy of the information in the application.

(1) Application. The Board may require the following items in order to approve or disapprove the application:

(A) the name, physical address, and mailing address of the provider applicant;

(B) the name and contact information of the provider applicant's designated authorized representative;

(C) the process used by the provider applicant for evaluating the credentials and teaching competency of its instructors;

(D) a statement certifying that the provider applicant will comply with all requirements set forth in this section; and

(E) any other relevant information reasonably necessary to approve or disapprove the application, as specified by the Board.

(2) Course Instructors. Provider applicants must certify that all course instructors meet the following requirements:

(A) An instructor must hold a current license or privilege to practice as a registered nurse (RN) in the state in which the remedial education course will be provided;

(B) An instructor must hold a master's degree in nursing from an approved or accredited institution or a doctoral degree, that in the Board's opinion, relates to an area of study relevant to the course content;

(C) An instructor must show evidence of teaching abilities and maintaining current knowledge, clinical expertise, and safety in the subject matter the instructor will teach;

(D) An instructor must have a minimum of three years recent professional nursing experience. Professional nursing experience includes any activity, assignment, or task in which a nurse utilizes his/her nursing knowledge, judgment, or skills; and

(E) An instructor may not be the subject of a current eligibility or disciplinary order from a professional licensing board and/or disciplinary authority or have a history of more than one eligibility or disciplinary order from a professional licensing board and/or disciplinary authority.

(3) Records.

(A) An approved remedial education course provider must maintain as a part of the provider's records a written statement from each instructor certifying that the instructor is qualified as an instructor, the basis of qualification, and that the instructor agrees to comply with all course requirements outlined in this section.

(B) An approved remedial education course provider must maintain verification of an individual's participation and completion of a remedial education course and all information described or required under this section for a period of not less than five years.

(4) Renewal. The Board's approval of a remedial education course provider is valid for a period of up to twenty four months from the date of issuance and shall expire on the last day of the month of March in odd numbered years. A remedial education course provider must renew its Board approval by submitting a renewal application to the Board in advance of its renewal date. A remedial education course provider that has been approved by the Board prior to, or on the effective date of this section, is not required to renew its approval, but must seek the Board's approval and the renewal of such approval for each remedial education course it seeks to offer.

(e) Remedial Education Courses. A remedial education course provider must submit a completed remedial education course application to the Board for each course the provider wishes to offer and pay the required fee specified by §223.1 of this title (relating to Fees), which is not refundable.

(1) Application. A remedial education course application must include the following:

(A) a statement identifying the knowledge, skills, or abilities an individual is expected to obtain through completion of the remedial education course;

(B) a detailed course content outline, measurable learning objectives, and the length of the remedial education course in hours;

(C) a description of how adult educational and learning principles are reflected in the remedial education course;

(D) a method of verifying an individual's participation and successful completion of the remedial education course;

(E) a method of evaluation by which a remedial education course provider measures how effectively the remedial education course meets its objectives and provides for input; and

(F) any other relevant information reasonably necessary to approve or disapprove the application, as specified by the Board.

(2) Course content. The course content must:

(A) meet the requirements specified by the Board for each type of course; and

(B) be consistent with the following:

(i) the Occupations Code Chapters 301, 303, 304, and 305;

(ii) Chapters 211 - 227 of this title;

(iii) Board position statements 15.1 - 15.26;

(iv) the Board's adopted Eligibility and Disciplinary Sanction Policies regarding Sexual Misconduct; Fraud, Theft and Deception; Nurses with Substance Abuse, Misuse, Substance Dependency, or other Substance Use Disorder; and Lying and Falsification; and

(v) the Board's adopted Guidelines for Criminal Conduct.

(f) Remedial education courses may consist of classroom, classroom equivalent, or clinical courses, as specified by the Board.

(g) Renewal. Unless withdrawn or otherwise provided herein, a remedial education course is approved until the approval of the sponsoring remedial education course provider expires. The approval of a remedial education course may be renewed simultaneously with the renewal of the approval of the sponsoring remedial education course provider if the provider certifies on the renewal application that the remedial education course continues to meet the requirements of this section. The approval of a remedial education course that has been approved by the Board prior to, or on the effective date of this section, will expire on March 31, 2013, and must be timely renewed. Its renewal will be valid for up to twenty four months from the date of issuance and shall expire on the last day of the month of March in odd numbered years. All remedial education course providers must pay the required remedial education course renewal fee specified by §223.1 of this title, which is not refundable.

(h) Withdrawal of Approval. The Board may withdraw the approval of a remedial education course provider that fails to maintain compliance with the requirements of this section. If the Board withdraws the approval of a remedial education course provider, the provider shall cease offering all remedial education courses upon notice from the Board. The Board may withdraw the approval of a remedial education course if it fails to comply with the requirements of this section. If the Board withdraws the approval of a remedial education course, the sponsoring remedial education course provider shall cease offering the course upon notice from the Board. Notice is presumed to be effective on the third day after the date on which the Board mails the notice.

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 July 22, 2011.

TRD-201102762
Jena Abel
Assistant General Counsel
Texas Board of Nursing
Effective date: August 11, 2011
Proposal publication date: May 27, 2011
For further information, please call: (512) 305-6822

CHAPTER 223. FEES

22 TAC §223.1

Introduction. The Texas Board of Nursing (Board) adopts amendments to §223.1 (relating to Fees) without changes to the proposed text published in the May 27, 2011, issue of the *Texas Register* (36 TexReg 3253) and will not be republished.

Reasoned Justification. The amendments are adopted under the authority of the Occupations Code §§301.155(a), 301.303, 301.452, 301.453, and 301.151 and are necessary to establish new fees for the approval and renewal of remedial education courses.

Remedial Education Courses

The Board's mission is to protect the health, safety, and welfare of the public. One way in which the Board fulfills this obligation is by identifying the unsafe, incompetent, or illegal conduct of its licensees. Very often, a licensee's conduct will demonstrate a nursing knowledge, skills, or judgment deficit. If the Board believes that this deficit can be successfully remediated, the Board will routinely require the licensee to complete certain remedial education courses. The Board has determined that remedial education courses may serve as one effective form of remediation, so long as the courses are well developed, based upon sound educational principles, taught by qualified instructors, and offered by qualified remedial education course providers. In order to ensure that all remedial education courses meet these standards, the Board is simultaneously adopting a new process for reviewing and approving remedial education course providers and remedial education courses in this edition of the *Texas Register.* This new approval process will require all remedial education courses to meet certain prescribed criteria. Further, the new process will require all remedial education course providers to pay a fee for the initial approval and renewal of a remedial education course. These fees are necessary to defray a portion of the costs associated with reviewing, approving, and renewing remedial education courses. The adopted amendments are necessary to implement these new fees.

Historical Perspective

In 2004, the Board approved 6 remedial education course providers. In 2007, the Board approved 7 providers. In 2008 and 2009, the Board approved 8 providers. In 2010, the Board

approved 10 providers. Currently, 10 providers appear on the Board's approved remedial education course provider list. Based on this historical data, and an increased number of inquiries over the past year from individuals interested in becoming Board-approved remedial education course providers, the Board anticipates that the number of provider and course applications will continue to increase over the next few years. Remedial education course providers and remedial education courses must be reviewed by Board Staff for initial approval and renewal. Reviewing these applications takes a considerable amount of Staff time, particularly when an applicant has submitted a course content outline that is incomplete or contains insufficient information to support Board approval or renewal. Over the past year, Board Staff has received an increased number of remedial education course applications that were poorly organized, contained inappropriate or inaccurate material, failed to incorporate techniques to address the needs of adult learners, and, in some cases, were mere recitations of information contained on the Board's website. Additional Staff time must be spent in reviewing these applications and assisting the applicants in correcting the outstanding deficiencies in their submissions. Further, all approved remedial education courses must be renewed approximately every two years. Although the renewal of an approved remedial education course is not normally as onerous a process as the initial approval of the course, Board staff must still thoroughly review each course to ensure that it continues to meet the Board's requirements. Currently, on average, each approved provider offers 2-4 remedial education courses. Board staff is not only responsible for reviewing new provider and course applications for approval, but Staff remains responsible for reviewing approximately 20-40 approved remedial education courses for renewal every two years. This review process is in addition to Staff's other assigned duties and responsibilities. The Board anticipates the number of new provider and course applications to increase over the next few years. Further, the Board anticipates the number of existing providers and courses to at least remain at current levels. As such, it is likely that Board Staff will be required to spend additional time and resources in reviewing new course applications for approval, as well as continuing to review approved course applications for renewal. The Board anticipates that the funds generated by the adopted new fees may be utilized in the future to defray a portion of the costs associated with the review, approval, and renewal of remedial education courses. Additionally, the Board anticipates that the adopted fees will encourage the submission of more organized and complete course applications, which should further reduce the costs associated with the approval and renewal of courses.

The Board is authorized by the Occupations Code §301.155 to establish fees in amounts reasonable and necessary to cover the costs of administering the Nursing Practice Act. The Board has determined that a $300 fee for the initial approval of a remedial education course and a $100 fee for the renewal of a remedial education course is appropriate and reasonable, based upon the following considerations. First, although a remedial education course provider is required to submit an application to the Board for review and initial approval, the provider is not required to submit a filing fee with the application. Additionally, although the provider must also renew its approval approximately every two years, the provider is not required to pay a renewal fee to the Board. Rather, the Board has decided to implement a minimal fee for the initial approval and renewal of each remedial education course a provider chooses to offer. The adopted new fees are directly related to the time and resources spent in reviewing and approving remedial education course applications, whether for initial approval or for renewal. Remedial education course applications include detailed course content outlines, measurable learning objectives, and descriptions detailing the manner in which the courses meet certain Board objectives. In addition to reviewing this information, Staff must also ensure that the proposed courses meet the content specific requirements of the Board's eligibility and disciplinary orders. A comprehensive review is required to ensure that each proposed course meets all of the Board's prescribed criteria. Further, additional time and resources must be expended when an application is incomplete or when a course has been poorly organized. In these cases, Staff must spend additional time and resources in assisting applicants with correcting such deficiencies. The adopted fees are intended to defray a portion of the costs associated with the time intensive review of remedial education course applications. Further, the Board does not regulate the fees that are charged by approved remedial education course providers for their courses. As a result, many providers charge hundreds, and even thousands of dollars, for the courses they offer, particularly if a clinical component is required. As such, the Board fully anticipates that approved providers will be able to successfully offset the minimal fees required by the adopted rule.

How the Sections Will Function. Adopted §223.1(a)(25) states that the Board will require a $300 fee for the approval of each remedial education course. Adopted §223.1(a)(26) states that the Board will require a $100 fee for the renewal of each approved remedial education course.

Summary of Comments and Agency Response. The Board did not receive any comments on the proposal.

Statutory Authority. The amendments are adopted under the Occupations Code §§301.155(a), 301.303, 301.452, 301.453, and 301.151.

Section 301.155(a) provides that the Board by rule shall establish fees in amounts reasonable and necessary to cover the costs of administering the Occupations Code Chapter 301. Further, §301.155(a) provides that the Board may not set a fee that existed on September 1, 1993, in an amount less than the amount of that fee on that date.

Section 301.303(a) provides that the Board may recognize, prepare, or implement continuing competency programs for license holders under Chapter 301 and may require participation in continuing competency programs as a condition of renewal of a license. Further, the programs may allow a license holder to demonstrate competency through various methods, including: (i) completion of targeted continuing education programs; and (ii) consideration of a license holder's professional portfolio, including certifications held by the license holder.

Section 301.303(b) provides that the Board may not require participation in more than a total of 20 hours of continuing education in a two-year licensing period.

Section 301.303(c) states that, if the Board requires participation in continuing education programs as a condition of license renewal, the Board by rule shall establish a system for the approval of programs and providers of continuing education.

Section 301.303(e) provides that the Board may adopt other rules as necessary to implement §301.303.

Section 301.303(f) states that the Board may assess each program and provider under §301.303 a fee in an amount that is

reasonable and necessary to defray the costs incurred in approving programs and providers.

Section 301.303(g) states that the Board by rule may establish guidelines for targeted continuing education required under Chapter 301. Further, the rules adopted under §301.303(g) must address: (i) the nurses who are required to complete the targeted continuing education program; (ii) the type of courses that satisfy the targeted continuing education requirement; (iii) the time in which a nurse is required to complete the targeted continuing education; (iv) the frequency with which a nurse is required to meet the targeted continuing education requirement; and (v) any other requirement considered necessary by the Board.

Section 301.452(a) defines "intemperate use" as including practicing nursing or being on duty or on call while under the influence of alcohol or drugs.

Section 301.452(b) states that a person is subject to denial of a license or to disciplinary action under Subchapter J for: (i) a violation of Chapter 301, a rule or regulation not inconsistent with Chapter 301, or an order issued under Chapter 301; (ii) fraud or deceit in procuring or attempting to procure a license to practice professional nursing or vocational nursing; (iii) a conviction for, or placement on deferred adjudication community supervision or deferred disposition for, a felony or for a misdemeanor involving moral turpitude; (iv) conduct that results in the revocation of probation imposed because of conviction for a felony or for a misdemeanor involving moral turpitude; (v) use of a nursing license, diploma, or permit, or the transcript of such a document, that has been fraudulently purchased, issued, counterfeited, or materially altered; (vi) impersonating or acting as a proxy for another person in the licensing examination required under §301.253 or §301.255; (vii) directly or indirectly aiding or abetting an unlicensed person in connection with the unauthorized practice of nursing; (viii) revocation, suspension, or denial of, or any other action relating to, the person's license or privilege to practice nursing in another jurisdiction; (ix) intemperate use of alcohol or drugs that the Board determines endangers or could endanger a patient; (x) unprofessional or dishonorable conduct that, in the Board's opinion, is likely to deceive, defraud, or injure a patient or the public; (xi) adjudication of mental incompetency; (xii) lack of fitness to practice because of a mental or physical health condition that could result in injury to a patient or the public; or (xiii) failure to care adequately for a patient or to conform to the minimum standards of acceptable nursing practice in a manner that, in the Board's opinion, exposes a patient or other person unnecessarily to risk of harm.

Section 301.452(c) provides that the Board may refuse to admit a person to a licensing examination for a ground described under §301.452(b).

Section 301.452(d) states that the Board by rule shall establish guidelines to ensure that any arrest information, in particular information on arrests in which criminal action was not proven or charges were not filed or adjudicated, that is received by the Board under §301.452 is used consistently, fairly, and only to the extent the underlying conduct relates to the practice of nursing.

Section 301.453(a) states that, if the Board determines that a person has committed an act listed in §301.452(b), the Board shall enter an order imposing one or more of the following: (i) denial of the person's application for a license, license renewal, or temporary permit; (ii) issuance of a written warning; (iii) administration of a public reprimand; (iv) limitation or restriction of the person's license, including: (A) limiting to or excluding from the person's practice one or more specified activities of nursing; or (B) stipulating periodic Board review; (v) suspension of the person's license; (vi) revocation of the person's license; or (vii) assessment of a fine.

Section 301.453(b) states that, in addition to or instead of an action under §301.453(a), the Board, by order, may require the person to: (i) submit to care, counseling, or treatment by a health provider designated by the Board as a condition for the issuance or renewal of a license; (ii) participate in a program of education or counseling prescribed by the Board, including a program of remedial education; (iii) practice for a specified period under the direction of a registered nurse or vocational nurse designated by the Board; or (iv) perform public service the Board considers appropriate.

Section 301.453(c) states that the Board may probate any penalty imposed on a nurse and may accept the voluntary surrender of a license. The Board may not reinstate a surrendered license unless it determines that the person is competent to resume practice.

Section 301.453(d) states that, if the Board suspends, revokes, or accepts surrender of a license, the Board may impose conditions for reinstatement that the person must satisfy before the Board may issue an unrestricted license.

Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

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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Jena Abel
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Texas Board of Nursing
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For further information, please call: (512) 305-6822

PART 29. TEXAS BOARD OF PROFESSIONAL LAND SURVEYING

CHAPTER 661. GENERAL RULES OF PROCEDURES AND PRACTICES

SUBCHAPTER D. APPLICATIONS, EXAMINATIONS, AND LICENSING

22 TAC §661.41

The Texas Board of Professional Land Surveying adopts an amendment to §661.41, concerning Applications, adding an additional requirement as part of the applicant's application. The amendment is adopted without changes to the proposed

text as published in the May 6, 2011, issue of the *Texas Register* (36 TexReg 2815) and will not be republished.

The amendment requires the applicant to send in sample survey reports as part of their application for licensure.

No comments were received regarding adoption of this rule.

The amendment is adopted pursuant to Title 6, Occupations Code, Subtitle C, §1071.151, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-201102759
Frank DiTucci
Executive Director
Texas Board of Professional Land Surveying
Effective date: August 10, 2011
Proposal publication date: May 6, 2011
For further information, please call: (512) 239-5263

22 TAC §661.55

The Texas Board of Professional Land Surveying adopts an amendment to §661.55, concerning Surveying Firms Registration. It will clarify information that will be required when filing a surveying firm registration form. The amendment is adopted without changes to the proposed text as published in the May 6, 2011, issue of the *Texas Register* (36 TexReg 2816) and will not be republished.

The amendment adds language to the existing rule so that more information is required on the firm registration form and this will enable the board to have needed information regarding ownership of surveying firms. It also adds provisions as to what will happen if a surveying firm loses their surveyor due to hardship, death, accident or serious illness.

No comments were received regarding adoption of this amendment.

The amendment is adopted pursuant to Title 6, Occupations Code, Subtitle C, §1071.151, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Texas Board of Professional Land Surveying
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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 91. CANCER

SUBCHAPTER A. CANCER REGISTRY

25 TAC §§91.1 - 91.12

The Executive Commissioner of the Texas Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts amendments to §§91.1 - 91.12, concerning the operation of the Texas Cancer Registry without changes to the proposed text as published in the April 15, 2011, issue of the *Texas Register* (36 TexReg 2351) and, therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

The amendments are necessary to maintain compliance with federal requirements for operation of state central cancer registries found in 42 U.S.C., §§280e - 280e-4, which allow the state to remain eligible for federal grants, and maintain compliance with Health and Safety Code, Chapter 82 (Texas Cancer Incidence Reporting Act). The amendments concern the reporting of cases of cancer for the recognition, prevention, cure or control of those diseases, and will facilitate participation in the national program of cancer registries.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 91.1 - 91.12 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed.

SECTION-BY-SECTION SUMMARY

Minor editorial changes to §§91.1 - 91.5 and §§91.7 - 91.10 correct formatting and enhance clarity in rules.

Amendments to §91.4 provide clarification that clinical laboratories are not required to report data items they do not collect and includes a reference to the language in §91.6 regarding conditions under which non-electronic reports of cancer will be accepted. Amendments to §91.6 provide clarification of the specific reporting methodologies that apply to health care facilities, clinical laboratories and health care practitioners and the conditions under which non-electronic reports of cancer will be accepted. Amendments to §91.11 correct the agency address. Amendments to §91.12 correct the agency address and establish guidelines for conducting studies where cancer registry data are used to identify potential participants and patient contact is involved.

COMMENTS

The department, on behalf of the commission, did not receive any comments regarding the proposed rules during the comment period.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

STATUTORY AUTHORITY

The amendments are authorized by Health and Safety Code, §82.006, which authorizes the department to adopt rules considered necessary to implement the Texas Cancer Incidence Reporting Act; Health and Safety Code, §82.008(e), which requires the department to adopt procedures that insure adequate notice is given to the health care facility for access to data; Health and Safety Code, §82.009(b), which requires rules to insure the confidentiality of data collected; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the rules implements Government Code, §2001.039.

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 July 25, 2011.

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Lisa Hernandez
General Counsel
Department of State Health Services
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For further information, please call: (512) 776-6972

TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 101. GENERAL AIR QUALITY RULES

SUBCHAPTER A. GENERAL RULES

30 TAC §101.27

The Texas Commission on Environmental Quality (TCEQ or commission) adopts the amendment to §101.27 *with changes* to the proposed text as published in the March 11, 2011, issue of the *Texas Register* (36 TexReg 1641), and the text will be republished.

Background and Summary of the Factual Basis for the Adopted Rule

The commission collects annual fees from sources that are subject to the permitting requirements of the Federal Clean Air Act (FCAA), Titles IV and V as required by Texas Health and Safety Code (THSC), Texas Clean Air Act (TCAA), §382.0621, Operating Permit Fee. THSC, §382.0621 states the commission shall collect an annual fee based on emissions for each source that is subject to the FCAA, Title V. The revenue collected from the emissions fee is deposited in the Operating Permits Fees Account 5094, as required by THSC, §382.0622(b)(1).

As part of its air program activities, the commission implements a United States Environmental Protection Agency (EPA)-approved program (FCAA, Titles IV and V, referred to hereafter as "Title V"). In order to obtain this approval, FCAA, §7661a(b)(3)(A) provides that state law must require sources subject to the operating permit program pay an annual fee "sufficient to cover all reasonable (direct and indirect) costs required to develop and administer the permit program requirements."

Additionally, this fee must be dedicated for use only on Title V activities. These activities include, but are not limited to, the costs for preparing applicable regulations; reviewing and issuing permits, ambient air monitoring, modeling, implementing and enforcing any Title IV or V permits, and preparing emissions inventories. These requirements in state law are reflected in THSC, §382.0621 and §382.0622.

In direct support of the Title V program, the commission conducts investigations at Title V sites or in-office file reviews to determine whether the entity is operating in accordance with applicable rules, permits, or orders of the commission or applicable state enforceable federal rules. Investigations include citizen complaint response and scheduled and unscheduled investigations at sources subject to Title V in order to assist in the development and enforcement of Title V permits and applicable rules. The staff complete on-site reviews to characterize ambient conditions of an area and operates stationary and photochemical assessment monitoring stations throughout the state in order to establish compliance with the National Ambient Air Quality Standards (NAAQS), conduct monitoring around Title V sources, and verify conditions are as represented in permit applications.

All permitting activity at a major site is considered to be Title V permitting activity. Office of Permitting and Registration staff supports revising, amending, and altering permits due to state implementation plan (SIP) changes, rule changes, and new source review (NSR) activities. Staff also coordinate notice and comment hearings and support rule development efforts that affect Title V sources.

In support of the Title V program, commission staff also collect, assess, and report emissions inventory information from Title V sites, implement the Title V fee program, perform data analysis, and complete modeling of emission inventory data in support of nonattainment and near-nonattainment area control strategy development for SIP planning and submittal. The commission is also responsible for developing SIP revisions, submitting the SIP revisions to the EPA, and strategies to attain and maintain the NAAQS. This rule revision includes regulations affecting Title V source activities.

The Office of Legal Services staff provides support with enforcement cases, Title V and NSR permitting activities, and with rulemaking. Legal staff prepare cases for administrative enforcement, participate in SIP rule development and demonstrations, and enforcement with Title V issues. Legal staff also provide legal support for all Title V permitting activities, and provide legal advice and briefings on matters related to permitting.

The existing rule language in §101.27 structures the emissions fees as a billed system. The emissions fee rate per ton is based on a base rate of $25 per ton modified by the rate of change of the consumer price index (CPI) and percentage of the carbon monoxide (CO) fraction of total emissions assessed a fee the previous year. This fee is commonly referred to as the air emissions fee (AEF) rate and, by calculation, using the aforementioned parameters, is currently set at $33.58 per ton for Fiscal Year (FY) 2011, down from $33.71 in FY 2010. Fees are due on all regulated pollutants (all criteria and any pollutant that is permitted at a site) emitted from the site during the last full cal-

endar year preceding the beginning of the fiscal year that a fee is due. Therefore, FY 2011 fees are based on Calendar Year 2009 emissions. Emissions in excess of 4,000 tons per pollutant at a site are currently excluded from being assessed a fee. This is a statutory cap found in THSC, §382.0621(d).

Beginning in FY 2009, annual expenditures, i.e., funds used to administer the Title V permit program in Texas, exceeded annual revenue in the form of emissions fees. Revenue was $32.7 million and the total Title V obligation was $34.7 million. Fund surpluses will keep the fund balance positive until FY 2012. Beginning in FY 2012, emissions fee revenue based on FY 2011 projections, in conjunction with the fund balance, will be insufficient to adequately fund the operating costs associated with the Title V program. The FY 2011 projected cost to administer the Title V program is $34.7 million while the revenues are projected to be $26 million for FY 2011.

The AEF revenue has declined as a result of emissions decreasing at an average rate of 5% annually over the past eight fiscal years. Although CPI has increased by an average rate of change of 3% over the past eight fiscal years, the CPI increased by only 0.19% for FY 2009 and 1.47% for FY 2010. Additionally, all categories of emissions have decreased annually since 2001; the reductions have been most notable in emissions other than CO largely because of regulations targeted on other criteria pollutants such as ozone precursors. Consequently, the CO fraction has increased from 22.0% to 24.47% over the last eight fiscal years, further reducing the annual revenue. Thus, in spite of a slight increase in the recent CPI, revenue has fallen from $35.5 million in FY 2007 and $32.7 million in FY 2009 to a projected $26 million in FY 2011.

Although revenue has declined, the Title V operating obligation has not. Despite the decline in emissions, for example, Title V permits must be renewed every five years. Existing Title V sites revise their operating permits frequently due to changes in operations and equipment or changes to applicable state or federal requirements. The number of emissions inventories reviewed has remained consistent since 2004. Mobile monitoring resource allocation has remained nearly constant since 2004. Regulatory and non-regulatory stationary ozone monitors are not funded by Title V. However, the number of ozone monitors has increased since 2004 from 98 to 128, and the data from these monitors are used in Title V activities.

As a portion of the combined salary and operating costs (excluding fringe and indirect), Title V salary costs have increased slightly from $22.3 million in FY 2004 to $24.5 million in FY 2010. Over a similar time period, budgeted full-time staff was 472 in FY 2006 and fell slightly to 464 in FY 2010. Despite staff reduction, a 8.3% increase in cost over a seven-year period is attributable to an increase in staff costs including state mandated cost of living pay increases.

New sources may become subject to Title V as a result of the federal impending revisions to the National Ambient Air Quality Standard. The impact of incorporating these sources into the Title V program is not yet known but may increase the Title V budget. However, these sources are not expected to be large emitters nor would the revenue based on their emissions be sufficient to make up the budget shortfall.

In the adopted rule, the commission is removing the CO fraction to collect at least $35 million in FY 2012 and incorporating the flexibility to adjust the base rate annually as needed up to a set cap. The adopted flexibility in the base rate will also enable the commission to incorporate any new workload in its budget as a result of changing federal standards or state mandates related to Title V sources. Advantages to the adopted adjustable base rate also include the flexibility to compensate for fluctuating CPI, declining emissions rates, and new regulations.

Section Discussion

The commission adopts the amendment to §101.27(f) to remove the CO fraction from the fee rate calculation and replace the base rate of $25 per ton with an adjustable base rate. The base rate is adjustable up to a cap of $45 per ton in subsequent years. The base rate will be set at $25 per ton for FY 2012.

The commission had proposed replacing the base rate of $25 per ton with $35 per ton for FY 2012. The commission solicited comments about the appropriateness of removing the CO fraction from the emissions fee equation. The CO fraction provided a discount on emissions fees based on the amount of CO emissions assessed a fee the previous year. With removal of the CO fraction, the base rate will not need to be set at $35 per ton as originally proposed in the rule. The base rate can be maintained at $25 per ton for FY 2012 to adequately fund the state's Title V program.

The commission received comments supporting the removal of the CO fraction from the fee equation. It will be easier to estimate a fee rate because the fee calculation equation will be simplified and more predictable by removing one of the parameters that varies annually. However, commenters did not support both removing the CO fraction and increasing the base rate to $35 per ton in FY 2012. Based on comments received, the commission is adopting the amendments to §101.27(f) to remove the CO fraction and revise the base fee amount by deleting the fixed $25 base amount and in its place is setting a lower than proposed adjustable base rate of $25 per ton in FY 2012. As was intended with the proposal, the adopted fee equation meets the requirement that the Title V program needs to maintain sufficient funding. The adopted rule also provides flexibility to adjust the base rate up to a maximum base rate amount of $45 per ton that could be assessed in subsequent years.

The removal of the CO fraction from the fee calculation equation with the base rate of $25 per ton for FY 2012 is estimated to generate approximately the same amount of overall revenue as in the original proposed rule. The adopted changes are expected to generate an additional $9 million in revenue in FY 2012. Establishing an initial base of $25 per ton, with removing the CO fraction, will generate an estimated revenue of $35 million for FY 2012 if emissions decline 5% and the CPI increases 2% from the previous year. The commission estimates the average impact to sites will remain approximately the same as in the proposed rule, that had a base rate of $35 per ton in FY 2012 and kept the CO fraction in the equation. The average impact to sites is estimated to be 35% if emissions continue to decline 5% and the CPI increases 2%.

The cost to administer the Title V program is estimated to be $35 million while the revenues are expected to be $26 million in FY 2011. This shortfall is expected to continue if the rule were not amended. The adopted changes are expected to generate an additional $9 million in revenue in FY 2012. Revenue is anticipated to continue to decrease in subsequent years because of the declining emissions. Thus, removal of the CO fraction is not a long-term solution, and an increase in the base rate in subsequent years may be required to provide sufficient revenue. For example, if emissions continue to decline at the current average

rate of 5% per year and the CPI increases at 2% per year, a base rate of $35 per ton combined with the continued removal of the CO fraction may be required to generate $35 million in revenue by FY 2018. Thus, the adopted rule language allows the commission to annually adjust the base rate, as required, to generate adequate revenue to fund the state's Title V program. An adjustable base rate allows the commission flexibility to adjust to changes in the program that affect the fee revenue or obligations. Changes could include the fluctuating CPI, legislative mandates, and changes in staffing patterns.

The removal of the CO fraction and maximum amount are an increase above the fixed dollar amount currently in the rule. The adopted change in §101.27(f) will remove the CO fraction and leave the base rate at $25 per ton for FY 2012 and allow future adjustments to the base rate. Although the CO fraction is removed, fees are still assessed on all regulated pollutants, including CO, up to a cap of 4,000 tons per pollutant.

No standard agency practice exists for determining what percentage of the anticipated expenditures constitutes an adequate or appropriate fee amount. A common accounting practice is to generate revenue sufficient to have enough cash per year to account for 105% of expected expenditures. The fees corresponding to 5% above expected program expenses are expected to cover the additional unknown expenditures of the account. Thus, starting in FY 2013, the commission will adjust the base rate to cover 105% of the expected obligation for the FY. Any surplus in the fund balance from a previous year's revenue will be included in estimating future adjustments. The estimate will be made each spring when the commission sends the billing notices to the Title V companies. In addition to eliminating the negative fund balance starting in FY 2012, this practice should maintain smaller positive fund balances in future fiscal years than experienced historically.

Final Regulatory Impact Analysis Determination

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking action is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. "Major environmental rule" means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, 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 amendment to §101.27 are not intended to protect the environment or reduce risks to human health from environmental exposure to air pollutants. These changes are specifically intended to adjust the base rate for assessing fees from Title V sources and to provide future flexibility in assessing these fees. Therefore, the commission finds that it is not a "major environmental rule." Additionally, the fee collected under the adopted revision to Chapter 101 generally should not 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. By federal and state statute, emission fees are to be assessed and collected from Title V sources sufficient to fund the Title V permitting program.

As defined in the Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability requirements of a "major environmental rule." Specifically, the emissions fee is required under federal law to be sufficient to support the air permit program under FCAA, Title V (42 United States Code (USC), §§7661 - 7661f), which includes, but is not limited to, issuance of acid rain permits under FCAA, Title IV (§§7651 - 7651o). The emissions fee is also required by state law, THSC, TCAA, §382.0621 and §382.0622, to be sufficient to support the Title IV and Title V programs. This adopted rule does not exceed an express requirement of federal or state law. The rule does not exceed a requirement of a delegation agreement, but the emissions fee is specifically required by EPA's approval of the Title V programs to the commission. The rule was not developed solely under the general powers of the agency but was specifically developed and authorized under TCAA, §§382.011, 382.017, 382.0621, and 382.0622.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No comments were received on the draft regulatory impact analysis determination.

Takings Impact Assessment

The commission conducted a takings impact evaluation for the adopted rule in accordance with Texas Government Code, §2007.043. The specific purpose of the adopted rulemaking is to ensure sufficient funding of the Title V permit program as required under federal and state law. Promulgation and enforcement of the adopted rule will not burden private, real property because this is a fee rule that supports air quality programs of the commission. Although the adopted rule revision does not directly prevent a nuisance or prevent an immediate threat to life or property, the change in the emissions fee requirements does fulfill a federal mandate under 42 USC, §§7661 - 7661f. The emissions fee is also required by state law, THSC, §382.0621 and §382.0622, to be sufficient to support the Title V programs. Consequently, the adopted amendment to the fee requirements is an action reasonably taken to fulfill an obligation mandated by federal and state law. Therefore, this adopted rulemaking action will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted rulemaking and found the adoption is a rulemaking identified in the Coastal Coordination Act Implementation Rule, 31 TAC §505.11(b)(4), relating to rules subject to the Coastal Management Program, and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council and determined that the rulemaking is procedural in nature and will have no substantive effect on commission actions subject to the CMP and is, therefore, consistent with CMP goals and policies.

The commission invited public comment regarding the consistency with the coastal management program during the public comment period. No comments were received.

Effect on Sites Subject to the Federal Operating Permits Program

Owners and operators of Title V sites may be required to pay higher annual emissions fees. The emissions fee is required under federal law to be sufficient to support the permit program under Title V. The emissions fee is also required by state law, THSC, §382.0621 and §382.0622, to be sufficient to support the Title V programs. The intent of this adopted amendment is to collect sufficient revenue to support the permit program under Title V as required by state and federal law.

Public Comment

The commission offered two public hearings on this proposal, in Houston on April 4, 2011, and in Austin on April 7, 2011. However, there were no commenters signed up to speak in Austin, so this hearing was not held. The comment period closed April 11, 2011.

Written comments were received from: Association of Electric Companies of Texas, Inc (AECT), Calpine Corporation (Calpine), City of Kingsville Landfill (City of Kingsville), CPS Energy (CPS), Dow Chemical (Dow), Exxon Mobil (Exxon), Luminant Power (Luminant), North American Insulation Manufacturer's Association (NAIMA), Solvay Solexis, Incorporated (Solvay), Texas Oil and Gas Association (TxOGA), and the Texas Chemical Council (TCC).

Three commenters supported raising the rate to support the program and one supported a smaller increase, if one were needed. Three commenters were silent with respect to supporting an actual rate increase but urged the commission to look for efficiencies in the program to cut costs. One commenter did not state anything with respect to the rate increase but requested a longer notice for rate increases. However, three commenters were against raising the fee rate. Four of the commenters suggested a rule change that the Title V sources that pay the inspection fee into the Clean Air Account should pay into the Title V account instead.

Response to Comments

CPS Energy supported changing the base rate to accommodate the proper funding of the program.

The commission thanks the commenter for its support.

The City of Kingsville stated that raising the fee will raise its operating budget. Calpine added that the mid-year change in the fee will result in available operations funds being reduced to fund the fee increase.

The commission acknowledges that the fee rate for each ton of emissions emitted, up to 4,000 tons per pollutant, will increase for each site. At the current rate of revenue generation, FY 2012 revenue will be insufficient to fully fund the Title V program in FY 2012 unless the rule is changed. To collect an adequate fee in FY 2012, the rule must be effective by the end of FY 2011. Federal rule requires the Title V program to be fully funded, and consequently, the commission is adopting this rule revision at this time in order to generate sufficient revenue to fully fund the Title V program in the next fiscal year. The rule was not changed in response to this comment.

Calpine recommended that the commission include mechanisms in the rule that will minimize the fiscal impact of the initial and future fee rate changes such as providing for a minimum of 12 months notice of rate changes.

The commission will provide as much notice as possible for any future fee increase but is currently unable to support a 12-month notice of a rate change. As stated in the Background and Summary of the Factual Basis for the Adopted Rule section of this rulemaking, this change is based upon an expected shortfall in FY 2012 that must be addressed immediately. A fee rate cannot be established until the CPI and the emissions are known. The actual emissions used in the basis of the fee calculation are not known until spring. The CPI varies monthly and the average CPI number is not known until mid-September. The fees are billed in November after the average CPI is developed by the United States Bureau of Labor Statistics. For example, the FY 2012 fees will be based on calendar-year 2010 emissions, which are determined in spring 2011 and the CPI in mid-September 2011. The rule was not changed in response to this comment.

The TCC states that relying on fee increases is not acceptable in light of the growing budgetary constraints by many government programs.

In order to obtain approval for administering the Title V program, FCAA, §7661a(b)(3)(A) provides that state law must require sources subject to the operating permit program pay an annual fee sufficient to cover all reasonable costs required to develop and administer the Title V program. It is the commission's understanding that the EPA rules require fees as a funding source for the program and that the fees must adequately fund the program. Due to falling revenue, as a result of decreasing emissions and flat CPI, increases in the program fees per ton of emissions are necessary to adequately fund the program obligations. The rule was not changed in response to this comment.

NAIMA stated that enacting the fee increase will demoralize the Texas economy without decreasing global emissions.

Controlling global emissions is out of the scope of the state Title V program. However, the increase in fees will return the Title V program revenue to within $0.5 million less than the level in 2007. The commission recognizes that the adopted rule results in an increase in the fee rate per ton of emissions and the current economy is less robust. However, the commission is required to adequately fund the Title V program and a fee increase is required to fully fund the obligations of the program. The rule was not changed in response to this comment.

Dow Chemical stated that the rule should limit future years' fee increases. The TCC added the rule did not contain any restraints on future years' increases and further recommended that the commission establish the suggested policy setting the funding at 105% of the budget in rule.

In each Texas legislative session, the legislature sets an appropriation amount for the Title V account for the biennium. The commission cannot spend more than the amount in the appropriation for direct operations costs. As addressed in the preamble, the commission's intended practice on fee assessment is to estimate and assess a fee to generate sufficient revenue that does not exceed 105% of the budget. Any surpluses from the previous year will be included in estimating future adjustments.

The commission will not assess emission fees in excess of the amount estimated to fund direct and indirect costs associated with the Title V program. The fee has a collection rate of above 95% but if TCEQ were to set in rule the assessment at a cap of 105% it would require a 99% collections rate to ensure the program remains fully funded. This would place a large amount of stress on the account and would require that the agency use

fund balances in certain years if revenue collections are below 99%. The fund balance has already been depleted and cannot be used as a reliable source to supplement revenue shortages. The commission may need to have the ability to assess rates in excess of 105% in order to fully fund the program in certain years. Thus, the 105% funding level remains a goal.

Due to uncontrollable variables of the fee (emissions and CPI), the commission will need to adopt an adjustable rate to ensure adequate funding annually for the program. Under the adopted rule, the commission has set a maximum base rate of $45 per ton and will not charge that amount unless it is required to generate sufficient revenue.

The new structure will be implemented in a manner to prevent the development of a large fund balance in Title V Operating Permit Fees account and the fee rate will only be increased as needed. The maximum rate will not impact the fee unless the uncontrollable variables of fees require it, but it is not anticipated to be required for a number of years because the CO fraction is removed in the adopted rule. The rule is amended in §101.27(f)(1) to reflect the removal of the CO fraction, establishment of an adjustable base rate, and for FY 2012, set a base rate at $25 per ton.

Solvay opposed the rate increase and stated that a 40% increase is unacceptable and out of line with typical inflationary cost increases. The TCC stated that the $10 increase in fee is very large.

The increase returns the revenue to $0.5 million less than the amount collected in 2007 and is required to compensate for decreases in fee revenue experienced by the program. The fee rate has been held at a lower level because a large fund surplus covered annual program funding shortfalls since FY 2009. The fund surplus is now exhausted, and a fee increase is needed to cover program obligations. Because emissions are declining at a rate of approximately 5% per year, the overall average fee increase from all sources is estimated to be approximately 35%. The amount will vary at each site, depending on the relative change in emissions at that site. The rule was not changed in response to this comment.

AECT stated that the TCEQ should evaluate all options prior to raising the fee. TxOGA stated that if a rate increase were required, it supported a $30 per ton increase instead of the proposed $35 per ton. AECT requested the commission ascertain that the proposed increase in the fee rate and other changes to the formula are the only solution to adequately and appropriately fund the Title V program

In order to obtain approval for administering the Title V program, FCAA, §502(b)(3)(A) and 40 CFR §70.9 provide that the state's Title V program must require sources subject to the operating permit program pay an annual fee sufficient to cover all reasonable costs required to develop and administer the Title V program. The fee revenue generated is fully dedicated to Title V activities, and the program is funded only by the Title V fees.

Starting in FY 2009, fee revenue fell below obligations. Surpluses will keep the fund positive until FY 2012 when this shortfall is expected to exceed $8 million dollars if not addressed. The commission is adopting a fee rate increase because of the estimated shortfall in future years if a rate change is not adopted. To simplify equation and improve its predictability, the CO fraction is removed, and to provide flexibility needed as a result of decreasing emissions and a flat CPI, an adjustable base rate is adopted in §101.27(f)(1).

The commission, in its proposal, recommended a fee base rate increase to $35 per ton, not a net increase of $35 per ton and requested comments on removing the CO fraction. By removing the CO fraction, the commission is adopting a change from the rule proposal. Additionally, the adjustable base rate will be kept at $25 per ton for FY 2012.

Solvay asked the commission to simplify the change by making it escalate/de-escalate according to some price index to be consistent with what is occurring in the market place.

The fee increase is required to offset the revenue decreases experienced by the program. To be certain, economic conditions are reflected in the fee calculation through the CPI; however the FCAA requires that fees assessed are based on emissions and are sufficient to cover all reasonable direct and indirect costs for the Title V program. The average CPI that allows for cost of living increase in the fee rate has not been sufficiently high to compensate for the rapidly decreasing emissions in the state. As a result, Title V revenue from these sources has been decreasing. Despite decreasing emissions, Title V obligations are not declining in cost. Revenue was $36.9 million in 2004 and exceeded the program obligation of $32.3 million by $4.5 million. The revenue continued to fall but remained greater than the program obligation until 2009. The surpluses generated in the program allowed the fund to remain positive through FY 2011. The rule was not changed in response to this comment.

CPS Energy supported removing the CO fraction of the equation used to calculate the annual emission fee rate. The equation will be more stable and therefore make budgeting easier for the company and the state.

The commission thanks the commenter for its support. The rule is amended in §101.27(f)(1) to reflect the removal of the CO fraction.

Exxon Mobil, TCC, and Dow Chemical stated that the commission should not both increase the base rate to $35 per ton and remove the CO fraction. TxOGA added that removing the CO fraction alone will raise the fee rate 33%. Solvay does not believe that removing the CO fraction and lessening the base rate will generate the $9 million in revenue that the TCEQ believes will occur. The TCC stated that if the CO fraction were removed, the increase in the base rate should be adjusted accordingly to generate sufficient revenue to fund the Title V program.

The commission concurs that it is not necessary to increase the base rate to $35 per ton if the CO fraction is removed. The commission estimates that removal of the CO fraction should generate sufficient revenue in FY 2012. By removing the CO fraction without changing the base rate, the fee is expected to generate a total of $35 million in FY 2012.

However, beginning in FY 2013, removal of the CO fraction, by itself, may not generate sufficient funds. Consequently, the FY 2013 base rate may still need to be adjusted to compensate for a relatively flat CPI and projected emissions decreases. For FY 2013 fees, the base rate is estimated to increase by $1.00 per ton if the average CPI increase remains at 2% and the emissions decline 5%. Based on average emissions reductions of 5% per year and a CPI growth of 2% per year, TCEQ projects that fees will be limited to $30 per ton or less for the next three bienniums with the removal of the CO fraction. This projection is based on $35 million annual program costs.

Due to uncontrollable variables (emissions and CPI) the commission adopted an adjustable rate to ensure adequate funding

annually for the program. Under the adopted rule, the commission has set a maximum base rate of $45 per ton and will not charge that amount unless it is required to generate sufficient revenue.

The rule is amended in §101.27(f)(1) to reflect the removal of the CO fraction and establishment of an adjustable base rate. The base rate will be set at $25 ton for FY 2012.

Exxon Mobil, Luminant, Dow Chemical, TCC, and City of Kingsville recommended that the commission look for efficiencies in the Title V program and discontinue performing discretionary activities in order to contain program costs prior to raising the fee. AECT listed several activities that it did not believe should be funded by Title V, including rule development, all permitting activity, photochemical modeling, operating stationary and photochemically reactive ambient monitoring stations, and performing data analysis in support of nonattainment and near-nonattainment areas. The TCC questioned whether modeling for control strategy development for state implementation planning and submissions should be funded under the Title V account. The TCC suggested that the commission should exercise as much flexibility as possible within statutory guidance to maintain program funding.

The commission is committed to meeting program requirements while minimizing future increases in program costs. The commission is reviewing all options for maintaining an adequate funding level for the Title V program, including appropriate program efficiencies and cost-reduction measures. Historically, program expenditure increases have been modest. Between 2004 and 2011, program costs have increased 8.3%, an average of 1.2% per year, while revenue dropped 29%. In order to minimize program costs while implementing additional required program requirements, the agency has increased program efficiencies.

The FCAA requires the fees assessed from Title V sources are sufficient to cover all reasonable (direct *and indirect)* costs required to administer and develop the operating permits program. *(See* FCAA, §502(b)(3)(A)). EPA guidance states that Title V program activities "are those which are necessary for the issuance and implementation of the Title V permits." *(Grant-Fee Transition: Questions and Answers, Office of Air and Radiation,* U.S. EPA, July 21, 1994.) These activities include, but are not limited to, the costs for preparing applicable regulations; reviewing and issuing permits, ambient air monitoring, modeling, implementing and enforcing any Title IV or V permits, and preparing emissions inventories. These requirements in state law are reflected in THSC, §382.0621 and §382.0622. As EPA further elaborated in the 1992 final 40 CFR Part 70 rulemaking: " . . . the fee provisions of title V mandate that the permit fees be collected in sufficient amount to support several air pollution control program activities that are relevant to title V sources and implemented through the operating permit program. This is clear from the list of such activities in §502(b)(3)(A) of the Act, which includes some activities that are not strictly part of the permitting program, but for which costs related to stationary sources must be recovered." (57 FR 32250, 32292)

EPA's longstanding Title V fee guidance clearly indicates that fee activities include implementing and enforcing applicable requirements, which in turn include implementing and enforcing Title I permits (Prevention of Significant Deterioration (PSD)/Nonattainment (NA) and minor New Source Review (NSR)) issued to Title V sources. *(See* specifically: Memo from John S, Seitz Director, Office of Air Quality Planning and Standards, U.S. EPA, Reissuance of Guidance on Agency Review of State Fee Schedules for Operating Permits Programs Under Title V, August 4, 1993, and the associated Matrix of Title V-Related and Air Grant-Eligible Activities, available at *http://www.epa.gov/Region7/air/title5/t5memos/fees.pdf).*

The EPA-approved Texas Title V program, 30 TAC Chapter 122, lists all preconstruction permits issued under 30 TAC Chapter 106, Permits by Rule (PBR) and 30 TAC Chapter 116, New Source Review (NSR) as applicable requirements under Title V and therefore are included in the Title V program. Therefore, these permits at Title V sources are considered "Title V activities."

NSR permit requirements such as permitting maintenance, startup, and shutdown (MSS) activities, converting flexible permits to permits with individual emission limits, and NSR permits that require PSD and nonattainment review at Title V major sources are additional examples of "Title V activities" that add to the workload of the agency. The rule was not changed in response to this comment.

The TCC commented that it does not support a long-term solution of increasing base fees over the next several years to compensate for reduced revenues resulting from decreasing emissions. The TCC also stated that the TCEQ should develop a long range plan that includes efficiency measures rather than relying solely on fee increases.

The commission agrees with the concept of increasing efficiency and has implemented efficiency measures in the past and continues to look for appropriate streamlining changes to the Title V program.

The TCEQ has evaluated and implemented measures to streamline the issuance of Title V permits. TCEQ no longer requires a pre-site inspection prior to sending the permit to public notice which has reduced agency resources required for permit review and reduced permit issuance times by 90-120 days. The change also allows inspections to be scheduled according to the usual inspection schedule and not be impacted by the permitting process.

TCEQ has automated the production of Title V permits using database tools that reproduce applicable federal and state requirements from agency and contractor-developed flowcharts. Also, permits are now sent directly to permit applicants for the resolution of any technical deficiencies, reducing permit review times for both TCEQ staff and applicants. Additionally, TCEQ uses the EPA grants to fund the use of contractors to develop and maintain many of these automated permitting tools in order to reduce the TCEQ staff resources that would be dedicated to these tasks.

Other areas within the agency have also developed databases and process to improve efficiency within the state's Title V program. The TCEQ has developed a web-based Emissions Inventory system that supports electronic submissions of emissions that will reduce TCEQ resources associated with printing, mailing, and entering emissions data. These increases in efficiency have resulted in the agency minimizing cost increases to program administration over the past 7-plus years.

The AECT and Luminant commented that the costs for of the TCEQ's Title V program should have decreased over time because the workload should have decreased over time. AECT stated that since initial issuance has been accomplished for virtually all existing major sites and there are very few Greenfield

sites, the Title V program should be processing a large percentage of permit renewals, which is assumed to be less resource intensive.

The commission respectfully disagrees with this comment. Title V permits must reflect changes in applicable requirements that occur during their five-year life cycles. Operational changes at sites generate revisions to existing Title V permits. In addition, there have been several new federal rules promulgated that trigger a large number of Title V permit revisions. Examples include the engine and boiler Maximum Achievable Control Technology (MACT) and amendments to several federal and SIP rules, such as 30 TAC Chapters 115 (Control of Air Pollution from Volatile Organic Compounds) and 117 (Control of Air Pollution From Nitrogen Compounds).

These same operational and regulatory changes that trigger revisions often are present during the processing of renewals. Also, off-permit and operational flexibility changes are frequently made during the course of a permit's five-year term and become a part of the renewal. Therefore, the TCEQ's Air Permits Division (APD) has found that Title V renewals are generally larger and more complex than when a permit was initially issued.

In addition to processing the permit revisions themselves, APD has invested significant resources to provide guidance to applicants and to automate, as much as possible, the matching of emission unit attributes to the applicable monitoring, reporting, recordkeeping, and testing requirements. With every new rule and rule change, the various permitting tools must be maintained. Over time, these maintenance costs have increased due to sheer number of new and amended regulations that are currently on the books compared to when Texas was delegated initial Title V program approval.

Also, APD's work load has increased since initial program approval due to actions taken to respond to various EPA requirements concerning the use of general operating permits (GOPs). Based on these comments, GOPs have over time become increasingly focused and resulted in several changes to various GOPs and an increase in the number of site operating permits due to changes in qualification criteria. As stated in a previous response to comment, the commission has initiated many streamlining processes in the permitting programs while still complying with Title V program requirements. However, recent EPA objections and public petitions on several commission-issued operating permits has increased staff work load and threatened some of these efficiency efforts. Continued EPA objections may actually increase program costs in the future. The effort to administer the program in other sections of the agency remains the same although the emissions have decreased. For example, the number of emissions inventories submitted by industry and reviewed by staff has remained constant since 2004. The number of mobile monitors has remained approximately the same but the number of stationary monitors has increased slightly and will increase in the future due to new NAAQS monitoring network requirements. Compliance Certification is a perpetual part of the Title V program. The FCAA Stationary Source Compliance Monitoring Strategy requires review of compliance certification and deviation reports for all Title V sources annually as well as review of all federally enforceable regulation at Title V sites on a consistent basis. The number of investigation activities related to the TCEQ Office of Compliance and Enforcement's Office Compliance Certification has remained steady. The number of Title V compliance investigations directly correlates to the number of active permits. Therefore, the number of investigations conducted has not decreased.

Fulfilling these activities are needed for the commission to meet the statutory and regulatory requirements of Title V program and, thus, maintain federal program approval. The rule was not changed in response to this comment.

The TCC, Luminant, and AECT stated the rule penalizes industry for emissions reductions that are a direct result of the billions of dollars invested by industry in additional control strategies and improvements in best management practices. NAIMA stated that companies should be rewarded for reducing emissions.

The commission acknowledges the significant contribution sources have made towards reducing emissions and improving the air quality and understands the commenters' concern regarding the increase in emission fees despite efforts that have reduced emissions. However, the commission also recognizes that in order to maintain EPA approval of the Title V program it is obligated to adequately fund the program through user fees as required by the CFR and authorized by the THSC. As discussed in the preamble, the program must collect sufficient funds to cover the Title V program requirements. The rule was not changed in response to this comment.

Exxon Mobil, the TCC, TxOGA, and Dow Chemical commented that to reduce the obligation on all Title V sources, the Title V sources paying the inspection fee should pay into the Title V emissions account. TxOGA added that all Title V sources should pay the Title V fee even if it is smaller. TxOGA added if a site were subject to both fees, then it should pay the emissions fee even if it is lower.

Currently sites that are subject to both the inspection fee (§101.24) and the emissions fee (§101.27) pay the higher of the two per language in both rules. To have sites pay only the Title V fee would require amendment to both of the fee rules. Because §101.24 was not open for revision, such an action is outside the scope of this rulemaking.

Inspection fee revenue collected under §101.24 from Title V sources is currently deposited to the FCAA account, not the Title V Federal Operating Permits account. The commission examined the possibilities of transferring the funding to the Title V Operating Permits Fees account. Through the review, the commission determined that it does not have the authority to deposit or transfer revenue collected from the inspection fee to the Operating Permit Fees account. If the commission had the authority to deposit fee collected from Title V sources currently paying the inspection fee and deposit the funds into the Title V Operating Permit Fees account, it would only generate approximately $1.3 million per year. This amount would not have a significant impact on the Title V revenue shortage and would reduce deposits to the FCAA account. This shortfall would still require the commission to increase emission fees by $8 million per year. The rule was not changed in response to this comment.

NAIMA stated that the benefits to the environment from mineral wool products should be taken into consideration in fee increases. These products provide significant environmental benefits in reducing emissions through energy efficiency.

The commission's understanding is that the FCAA does not allow for weighing the environmental benefits of one type of industry for assessing this fee. The Title V fee is assessed on actual

emissions emitted or on permitted allowable. The rule was not changed in response to this comment.

NAIMA requested the commission make an exception to the fee increase based on small businesses as defined by the Small Business Association by the number of employees, not the EPA which based the definition for a major source subject to the fee on emissions.

Federal Title V rules in 40 CFR Part 70 require that a state program "require that the owners or operators of a part 70 source pay annual fees, or the equivalent over some other period, that are sufficient to cover the permit program costs." 40 CFR Part 70 sources are defined as "any source subject to the permitting requirements of this part." For purposes of applicability of Title V, the commission is relying on the EPA's determination of applicability. Additionally, the commission did not provide notice to consider such an exemption from the fee for certain sources. The rule was not changed in response to this comment.

Calpine asked that the commission clarify that is does not intend to prospectively approve changes in the collection of the fee based on a future action by the federal government.

The commission is adopting this rule based on what is currently known; revenue is not sufficient to cover the existing Title V program obligations because of decreasing emissions of currently regulated pollutants, increasing CO fraction, and a flat CPI. The commission does not believe that it is sound policy to prospectively adopt fee changes based on proposed or potential future federal requirements. If regulations that are referenced by incorporation in current TCEQ rules are amended in the future, then the commission will determine at that time whether to initiate a rulemaking, as appropriate, to incorporate such amendments. The rule was not changed in response to this comment.

The TCC questioned whether the commission was considering retroactive adjustments of the emissions fee.

No retroactive adjustments will be made on past fees. The rule is effective beginning FY 2012. The rule was not changed in response to this comment.

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.102, concerning General Powers, §5.103, concerning Rules, and §5.105 concerning General Policy, which authorize the commission to adopt rules as necessary to carry out its power and duties under the TWC. The amendment is also adopted under THSC, Texas Clean Air Act (TCAA), §382.011, which authorizes the commission to administer the requirements of the TCAA; THSC, §382.017, which authorizes the commission to adopt rules consistent with the policy and purpose of the TCAA; and THSC, §382.0621, which authorizes the commission to adopt, charge, and collect an annual fee from regulated entities subject to the permitting requirements of the Federal Clean Air Act Title V.

The adopted amendment implements TWC, §§5.102. 5.103, and 5.105; and THSC, §§382.011, 382.017, and 382.0621.

§101.27. Emission Fees.

(a) Applicability. The owner or operator of an account that is required to obtain a federal operating permit as described in Chapter 122 of this title (relating to Federal Operating Permits Program) 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. Each account will be assessed a separate emissions fee. 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. 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 that a fee is being assessed, a full emissions fee is due. If the commission is notified in writing that the account is not and will not be in operation during that fiscal year, a fee will not be due.

(b) Self reported/billed information. Emissions/inspection fees information packets will be mailed to each account owner or operator prior to the fiscal year that a fee is due. The completed emissions/inspection fees basis form must be returned to the address specified on the emissions/inspection fees basis form within 60 calendar days of the date the agency sends the emissions fees information packet. The completed emissions/inspection fees basis form must include, at least, the company name, mailing address, site name, all commission identification numbers, applicable Standard Industrial Classification (SIC) category, the 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. If more than one SIC category can apply to an account, the category reported must be the one with the highest associated fee as listed in §101.24 of this title. Subsequent to a review of the information submitted, a billing statement of the fee assessment will be sent to the account owner or operator.

(c) Requesting fee information packet. If an account owner or operator has not received the fee information packet described in subsection (b) of this section by June 1 prior to the fiscal year that a fee is due, the owner or operator of the account shall notify the commission by July 1 prior to the fiscal year that a fee is due. For accounts that begin or resume operation after September 1, the owner or operator of the account shall request an information packet within 30 calendar days prior to commencing operation.

(d) Payment. Fees must be remitted by check, certified check, electronic funds transfer, or money order and sent to the address printed on the billing statement.

(e) Due date. Payment of the emissions fee is due within 30 calendar days of the date the agency sends a statement of the assessment to the account owner or operator.

(f) Basis for fees.

(1) The fee must be based on allowable levels or actual emissions at the account. For purposes of this section, allowable levels are those limits as specified in an enforceable document such as a permit, certified registration of emissions, or Commission Order that are in effect during the fiscal year that a fee is due and actual emissions are the emissions of all regulated pollutants emitted from the account during the last full calendar year preceding the beginning of the fiscal year that a fee is due. Under no circumstances may the fee basis be less than the actual emissions at the account. The fee applies to the regulated pollutant emissions at the account, including those emissions from point and fugitive sources. The fee basis must include emissions during all operational conditions, including all emissions from emissions events and maintenance, startup, and shutdown activities as described in Subchapter F of this chapter (relating to Emissions Events and Scheduled Maintenance, Startup, and Shutdown Activities). 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. The fee for each fiscal year is set at the following rates.

Figure: 30 TAC §101.27(f)(1)

(2) The emissions tonnage for the account for fee calculation purposes will be the sum of those allowable levels 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, certified registration of emissions, or a Commission Order establishing allowable levels for individual emission points or process units, the actual emissions from all individual emission points and process units at the account may be used to calculate the fee basis only if a complete and verifiable emission inventory for the account is submitted as described in §101.10 of this title (relating to Emissions Inventory Requirements). Where a complete and verifiable emissions inventory is not submitted, the executive director may direct that the fee be based on all of the allowable levels for the account.

(B) Where there is not an enforceable document such as a permit, certified registration of emissions, or a Commission Order establishing allowable levels for individual emissions points or process units; actual emissions from all individual emission points and process units must be used to calculate the fee basis. 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 emission factors used in such calculations.

(3) For purposes of this section, the term "regulated pollutant" includes any volatile organic compound, any pollutant subject to Federal Clean Air Act (FCAA), §111, any pollutant listed as a hazardous air pollutant under FCAA, §112, each pollutant that 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.

(g) Nonpayment of fees. Each emissions fee payment must be paid at the time and in the manner and amount provided by this subchapter. Failure to remit the full emissions fee by the due date must result in enforcement action under Texas Water Code, §7.178. The provisions of this section, as first adopted and amended thereafter, are and must remain in effect for purposes of any unpaid fee assessments, and the fees assessed in accordance with such provisions as adopted or as amended remain a continuing obligation.

(h) Late payments. The agency shall impose interest and penalties on owners or operators of accounts who fail to make payment of emissions fees when due in accordance with Chapter 12 of this title (relating to Payment of Fees).

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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CHAPTER 114. CONTROL OF AIR POLLUTION FROM MOTOR VEHICLES
SUBCHAPTER J. OPERATIONAL CONTROLS FOR MOTOR VEHICLES
DIVISION 2. LOCALLY ENFORCED MOTOR VEHICLE IDLING LIMITATIONS

30 TAC §114.512, §114.517

The Texas Commission on Environmental Quality (TCEQ or commission) adopts the amendments to §114.512 and §114.517 *without change* to the proposed text as published in the February 11, 2011, issue of the *Texas Register* (36 TexReg 707). The text will not be republished.

The amended sections will be submitted to the United States Environmental Protection Agency (EPA) as revisions to the state implementation plan (SIP).

Background and Summary of the Factual Basis for the Adopted Rules

Chapter 114, Subchapter J, Division 2, Locally Enforced Motor Vehicle Idling Limitations, was adopted on November 17, 2004, at the request of the local air quality planning organization in the Austin Early Action Compact (EAC) area (Bastrop, Caldwell, Hays, Travis, and Williamson Counties) for use as a control strategy in its EAC agreement to maintain attainment with the 1997 eight-hour ozone National Ambient Air Quality Standard (NAAQS), as published in the December 3, 2004, issue of the *Texas Register* (29 TexReg 11347). The adopted idling limitations rules provided all local governments the option of applying the rules when additional control measures are needed to achieve or maintain attainment of the federal 1997 eight-hour ozone standards.

The concept of an early, voluntary 1997 eight-hour air quality plan, also known as an EAC, was endorsed by the EPA Region 6 in June 2002. It was slightly modified and made available nationally in November 2002. A key point of an EAC was the flexibility afforded areas to select emission reduction measures, such as limiting vehicle idling. On August 1, 2005, members of the Austin EAC and the commission signed the locally enforced idling restrictions memorandum of agreement (MOA). This MOA allowed participating counties and cities to enforce the idling restriction rule in their jurisdictions. Members of the Austin EAC area signing the MOA included the counties of Bastrop, Caldwell, Hays, Travis, and Williamson, and the cities of Austin, Bastrop, Georgetown, Hutto, Lockhart, Luling, Round Rock, and San Marcos. Idling restrictions are also a commitment for the Austin-Round Rock 1997 Eight-Hour Ozone Flex Plan signed in September 2008.

An additional three counties, twenty cities, and two towns in the Dallas-Fort Worth (DFW) area have also signed agreements to enforce the idling restriction rule in their jurisdictions including the counties of Collin, Kaufman, and Tarrant; the cities of Arlington, Benbrook, Cedar Hill, Celina, Colleyville, Dallas, Euless, Hurst, Keene, Lake Worth, Lancaster, Mabank, McKinney, Mesquite, North Richland Hills, Pecan Hill, Richardson, Rowlett, University Park, and Venus; and the towns of Little Elm and Westlake. Idling restrictions are a commitment for the DFW 1997 Eight-Hour Ozone Attainment Demonstration SIP revision adopted May 23, 2007, as a Voluntary Mobile Emissions Reductions Program (VMEP).

This adopted rulemaking amends the rule on idling limits for gasoline and diesel-powered engines in motor vehicles within the jurisdiction of any local government in the state that has signed an MOA with the commission to delegate enforcement to that local government. Local enforcement is crucial to the effective implementation of rules to reduce the extended idling of gasoline and diesel-powered heavy-duty vehicles and will help to ensure the reduction of nitrogen oxides (NO_x) and volatile organic compounds (VOC), which is needed by local governments to achieve or maintain attainment of the NAAQS for ozone. These adopted idling restrictions will continue to lower NO_x emissions and other pollutants from fuel combustion. Because NO_x is a precursor to ground-level ozone formation, reduced emissions of NO_x will result in ground-level ozone reductions.

The adopted rulemaking amends the current enforcement period of April 1 through October 31 to allow local governments to enforce idling limits year-round. The enforcement dates were included when the rule was originally adopted at the request of the local air quality planning organization in the Austin EAC area for use as a control strategy in its EAC agreement to maintain attainment with the 1997 eight-hour ozone NAAQS. This rulemaking also provided local governments in other areas of the state the option of applying these rules in their areas when additional control measures are needed to achieve or maintain attainment of the NAAQS for ozone in the future. When the rule was adopted in 2004, there were no federal regulations governing idle time for heavy-duty motor vehicles. Therefore, the state had the authority to control motor vehicle idling. The requirements developed by the commission for this NO_x emissions reduction strategy resulted in restrictions on the time allowed for heavy-duty motor vehicle idling. The 79th Legislature, 2005, enacted House Bill (HB) 1540, establishing Texas Health and Safety Code (THSC), §382.0191, Idling of Motor Vehicle While Using Sleeper Berth, which prohibited the commission from restricting the idling of a motor vehicle while a driver is using the vehicle's sleeper berth for a government-mandated rest period. HB 1540 also restricted drivers using the vehicle's sleeper berth from idling in a school zone or within 1,000 feet of a public school during its hours of operation, and it defined the penalty for an offense as a fine not to exceed $500. HB 1540 did not specify an enforcement period, but it set a September 1, 2007, expiration date on the section. The commission adopted the revision on April 26, 2006, to the locally enforced motor vehicle idling rule as published in the May 12, 2006, issue of the *Texas Register* (31 TexReg 3900).

In the same rulemaking, the commission adopted revisions to the idling rule to conform to legislation passed in 2005. To be consistent with HB 1540, §114.512 and §114.517 were amended to include §114.512(b) and §114.517(12) with a September 1, 2007, expiration date. In May 2007, the 80th Legislature, 2007, enacted Senate Bill (SB) 12, which in part amended THSC, §382.0191 to extend the prohibition on the commission from adopting rules restricting certain idling activities from September 1, 2007, to September 1, 2009, as published in the February 15, 2008, issue of the *Texas Register* (33 TexReg 1345). Local governments can enforce idling restrictions on drivers who were previously exempt under §114.517(12), because the exemption expired on September 1, 2009. This adopted rulemaking removes the September 1, 2009, expiration date from the relevant portions of §114.517 to continue the exemption. As of September 1, 2009, the prohibition in §114.512(b) of certain vehicles from idling within 1,000 feet of a school or hospital expired. Therefore, this subsection is deleted in the adopted rulemaking.

During the rulemaking in 2007, to implement the requirements of SB 12, the commission adopted §114.517(2), the intent of which was to provide an exemption for all vehicles with gross vehicle weight rating of 14,000 pounds or less until September 1, 2009, and thereafter only to such vehicles that do not have a sleeper berth. This adopted rulemaking amends §114.517(2) to remove the duplicative exemption for a motor vehicle that has a gross vehicle weight rating of 14,000 pounds or less, after September 1, 2009.

The National Armored Car Association submitted a petition for rulemaking on May 22, 2008, requesting that armored vehicles be added to the current list of idling restriction exemptions under §114.517. Staff received approval from the commission on July 9, 2008, to move forward with initiating rulemaking regarding the armored vehicle petition; however, following a stakeholder meeting held on October 6, 2008, action on a rulemaking proposal to implement the petition was deferred in anticipation of potential legislative changes from the 81st Legislature, 2009. This adopted rulemaking addresses the armored vehicle petition by adding armored vehicles to the current list of idling restriction exemptions under §114.517 to be consistent with the EPA's Model State Idling Law guidance. According to the EPA's guidance, armored vehicles are exempt when a person remains inside the vehicle to guard the contents or while the vehicle is being loaded or unloaded.

On April 9, 2010, the EPA published its approval of revisions to the SIP regarding the idling rule that the TCEQ submitted on February 28, 2008 (75 FR 18061). In that approval, the EPA did not address the previous revisions to §114.512(b) prohibiting idling of a vehicle within a school zone or within 1,000 feet of a public school during operating hours and §114.517(12) exempting the idling of the primary propulsion engine of a vehicle to provide air conditioning and heating for the vehicle's sleeper berth for a government-mandated rest period, because these provisions of the rule had already expired.

Federal Clean Air Act, §110(l) Demonstration

Some increases in emissions may be expected due to the addition of an idling exemption for armored vehicles. However, the exemption will not interfere with attainment or reasonable further progress in the SIP, because the adopted year-round enforcement will offset these relatively small increases. Extending the enforcement period to year-round enforcement should provide more emissions reductions in the months that are currently not subject to enforcement. Thus, any potential increases resulting from an exemption for armored vehicles should be offset by these reductions. Additionally, by authorizing the enforcement to year-round, the state hopes to increase enforcement in the current ozone period by eliminating any drop off in enforcement that may occur due to the seasonal nature of the ozone enforcement period. An exemption for armored vehicles is necessary for the health and safety of the employees and the public.

Adding the armored car exemption and retaining the sleeper berth exemption will not interfere with attainment or reasonable further progress in the SIP, because the DFW area achieved an excess of NO_x and VOC emission reductions through the VMEP commitments. The excess emissions reductions achieved was greater than the 0.12 tons per day (tpd) NO_x and 0.004 tpd VOC emission reduction shortfall estimated in the North Central Texas Council of Governments (NCTCOG) VMEP accounting for the Locally Enforced Idling Restrictions. Furthermore, the 0.86 tpd NO_x and 3.66 tpd VOC excess emission reductions achieved for the overall VMEP, as estimated in the NCTCOG's VMEP

accounting, were greater than the emission reduction commitments for the Locally Enforced Idling Restrictions component of the VMEP.

Likewise, the amendments removing the expired prohibitions against drivers using sleeper berths idling near residential areas, school zones, and near hospitals will not result in backsliding. The prohibitions that have expired were never adopted into the SIP. Therefore, removal of these expired provisions cannot result in backsliding. Additionally, as mentioned previously, even if the provisions were part of the SIP, there are excess emissions achieved under the VMEP program that have exceeded the emission reduction commitments.

Section by Section Discussion

§114.512, Control Requirements for Motor Vehicle Idling

The adoption amends §114.512 to remove the enforcement period of April 1 through October 31 of each calendar year in subsection (a) to allow enforcement year-round. The adoption will also remove the prohibition for drivers using sleeper berths to idle in residential areas, school zones, and near hospitals and the expiration date in subsection (b) because it has expired. Additionally, the revisions remove the designation (a) for subsection (a) to conform to the *Texas Register* formatting requirements.

§114.517, Exemptions

The adoption amends §114.517 to remove the exemption in paragraph (2) for a motor vehicle that has a gross vehicle weight rating of 14,000 pounds or less, for consistency with other revisions in the section and to add a new exemption in paragraph (2) for armored vehicles to implement the petition approved by the commission on July 9, 2008. The adoption will also retain the exemption in paragraph (12), which expired on September 1, 2009, regarding idling for heating or air conditioning while a driver is using the vehicle's sleeper berth for a government-mandated rest period and not within two miles of a facility offering external heating or air conditioning.

Final Regulatory Impact Analysis Determination

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the adopted rulemaking does not meet the definition of a "major environmental rule." Texas Government Code, §2001.0225 states that a "major environmental rule" is, "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." Furthermore, while the adopted rulemaking does not constitute a major environmental rule, even if it did, a regulatory impact analysis is not required, because the adopted rulemaking does not meet any of the four applicability criteria for requiring a regulatory impact analysis for a major environmental rule. Texas Government Code, §2001.0225 applies only to a major environmental rule which, "(1) exceeds a standard set by federal law, unless the rule is specifically required by state law; (2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; (3) exceeds 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) adopts a rule solely under the general powers of the agency instead of under a specific state law."

The adopted rulemaking implements requirements of the Federal Clean Air Act (FCAA). Under 42 United States Code (USC), §7410, each state is required to adopt and implement a SIP containing adequate provisions to implement, attain, maintain, and enforce the NAAQS within the state. While 42 USC, §7410 generally does not require specific programs, methods, or reductions in order to meet the standard, SIPs must include "enforceable emission limitations and other control measures, means or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of this chapter," (meaning 42 USC, Chapter 85, Air Pollution Prevention and Control, otherwise known as the FCAA). The provisions of the FCAA recognize that states are in the best position to determine what programs and controls are necessary or appropriate in order to meet the NAAQS. This flexibility allows states, affected industry, and the public to collaborate on the best methods for attaining the NAAQS for the specific regions in the state. Even though the FCAA allows states to develop their own programs, this flexibility does not relieve a state from developing a program that meets the requirements of 42 USC, §7410. States are not free to ignore the requirements of 42 USC, §7410, and must develop programs and control measures to assure that their SIPs provide for implementation, attainment, maintenance, and enforcement of the NAAQS within the state. Participation in the idling program is voluntary, and currently only the local governments in the Central Texas Area and the North Central Texas Area have signed agreements to implement vehicle idling rules. The affected idling limitations rules provide all local governments the option of applying the rules when additional control measures are needed to achieve or maintain attainment of the federal ozone standards.

The specific intent of the adopted rulemaking is to make the idling enforcement period year-round; to remove the existing duplicative exemption for a motor vehicle that has a gross vehicle weight rating of 14,000 pounds or less; to exempt armored vehicles from motor vehicle idling requirements; and to retain the exemption of idling for heating or air conditioning while a driver is using the vehicle's sleeper berth for a government-mandated rest period and not within two miles of a facility offering external heating or air conditioning, which expired on September 1, 2009.

The adopted rulemaking does not constitute a major environmental rule under Texas Government Code, §2001.0225(g)(3) because the specific intent of the adopted rulemaking is to protect the environment or reduce risks to human health from environmental exposure, as discussed previously in the FISCAL NOTE, PUBLIC BENEFITS AND COSTS, SMALL BUSINESS REGULATORY FLEXIBILITY ANALYSIS, and the LOCAL EMPLOYMENT IMPACT STATEMENT sections of the proposal preamble as published in the February 11, 2011, issue of the *Texas Register* (36 TexReg 707). The adopted rulemaking will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs; nor will the adopted rulemaking adversely affect in a material way the environment or the public health and safety of the state or a sector of the state. The idling restrictions are applicable throughout the state, but are effective only in certain areas of the state where an MOA between the TCEQ and a local government is in effect and only in certain defined areas within those limited areas. The adopted rulemaking is not subject to a regulatory impact analysis under Texas Government Code, §2001.0225, because it is not a major environmental rule.

While the adopted rulemaking does not constitute a major environmental law, even if it did, it would not be subject to a regulatory impact analysis under Texas Government Code, §2001.0225. The requirement to provide a fiscal analysis of regulations in the Texas Government Code was amended by SB 633 during the 75th Legislature, 1997. The intent of SB 633 was to require agencies to conduct a regulatory impact analysis of extraordinary rules. These are identified in the statutory language as major environmental rules that will have a material adverse impact and will exceed a requirement of state law, federal law, or a delegated federal program; or are adopted solely under the general powers of the TCEQ. With the understanding that this requirement would seldom apply, the commission provided a cost estimate for SB 633 that concluded: "based on an assessment of rules adopted by the agency in the past, it is not anticipated that the bill will have significant fiscal implications for the agency due to its limited application." The commission also noted that the number of rules that would require assessment under the provisions of the bill was not large. This conclusion was based, in part, on the criteria set forth in the bill that exempted rules from the full analysis unless the rule was a major environmental rule that exceeds a federal law.

The FCAA does not always require specific programs, methods, or reductions in order to meet the NAAQS; thus, states must develop programs for each nonattainment area to help ensure that those areas will meet the attainment deadlines. Because of the ongoing need to address nonattainment issues and to meet the requirements of 42 USC, §7410, the commission routinely proposes and adopts revisions to the SIP and rules. The legislature is presumed to understand this federal scheme. If each rule adopted for inclusion in the SIP was considered to be a major environmental rule that exceeds federal law, then every revision to the SIP would require the full regulatory impact analysis contemplated by SB 633. This conclusion is inconsistent with the conclusions reached by the commission in its cost estimate and by the Legislative Budget Board (LBB) in its fiscal notes. Since the legislature is presumed to understand the fiscal impacts of the bills it passes and that presumption is based on information provided by state agencies and the LBB, the commission believes that the intent of SB 633 was only to require the full regulatory impact analysis for rules that are extraordinary in nature. While the rules have a broad impact, that impact is no greater than is necessary or appropriate to meet the requirements of the FCAA. For these reasons, rules adopted for inclusion in the SIP fall under the exception in Texas Government Code, §2001.0225(a), because they are required by federal law.

The commission has consistently applied this construction to its rules since this statute was enacted in 1997. Since that time, the legislature has revised the Texas Government Code but left this provision substantially unamended. It is presumed that, "when an agency interpretation is in effect at the time the legislature amends the laws without making substantial change in the statute, the legislature is deemed to have accepted the agency's interpretation." *Central Power & Light Co. v. Sharp,* 919 S.W.2d 485, 489 (Tex. App. Austin 1995), *writ denied with per curiam opinion respecting another issue,* 960 S.W.2d 617 (Tex. 1997); *Bullock v. Marathon Oil Co.,* 798 S.W.2d 353, 357 (Tex. App. Austin 1990, no writ); *Cf. Humble Oil & Refining Co. v. Calvert,* 414 S.W.2d 172 (Tex. 1967); *Dudney v. State Farm Mut. Auto Ins. Co.,* 9 S.W.3d 884, 893 (Tex. App. Austin 2000); *Southwestern Life Ins. Co. v. Montemayor,* 24 S.W.3d 581 (Tex. App. Austin 2000, *pet. denied);* and *Coastal Indust. Water Auth. v. Trinity Portland Cement Div.,* 563 S.W.2d 916 (Tex. 1978).

The commission's interpretation of the regulatory impact analysis requirements is also supported by a change made to the Texas Administrative Procedure Act (APA) by the legislature in 1999. In an attempt to limit the number of rule challenges based upon APA requirements, the legislature clarified that state agencies are required to meet these sections of the APA against the standard of "substantial compliance" as required in Texas Government Code, §2001.035. The legislature specifically identified Texas Government Code, §2001.0225 as falling under this standard. The commission has substantially complied with the requirements of Texas Government Code, §2001.0225.

Even if the adopted rulemaking constitutes a major environmental rule under Texas Government Code, §2001.0225(g)(3), a regulatory impact analysis is not required because this exemption is part of the commission's SIP for making progress toward the attainment and maintenance of the NAAQS. Therefore, the adopted rulemaking does not exceed a standard set by federal law or exceed an express requirement of state law, since they are part of an overall regulatory scheme designed to meet, not exceed the relevant standard set by federal law - the NAAQS. The commission is charged with protecting air quality within the state and to design and submit a plan to achieve attainment and maintenance of the federally mandated NAAQS. The Third District Court of Appeals upheld this interpretation in *Brazoria County v. Texas Comm'n on Envtl. Quality,* 128 S.W. 3d 728 (Tex. App. - Austin 2004, no writ). The specific intent of the adopted rulemaking is to make the current idling enforcement period year-round; to remove the existing duplicative exemption for a motor vehicle that has a gross vehicle weight rating of 14,000 pounds or less and does not have a sleeper berth; to exempt armored vehicles from motor vehicle idling requirements; and to retain the exemption of idling for heating or air conditioning while a driver is using the vehicle's sleeper berth for a government-mandated rest period and not within two miles of a facility offering external heating or air conditioning, which expired on September 1, 2009. This adoption, therefore, does not exceed an express requirement of federal law. The amendments are needed to implement state law but do not exceed those new requirements. The adopted rulemaking does involve a compact (in particular, the Austin EAC), which is an agreement between the state and federal government to implement a state and federal program; however, the adopted amendments do not exceed the requirements of that compact. Finally, this adopted rulemaking was not developed solely under the general powers of the agency, but is authorized by specific sections of THSC, Chapter 382, which are cited in the STATUTORY AUTHORITY section of this preamble, including THSC, §382.012 and §382.019. Because this adopted rulemaking does not meet any of the four applicability requirements, Texas Government Code, §2001.0225(b) does not apply, and a regulatory impact analysis is not required.

This adopted rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b), for the following reasons. The adopted rulemaking is not a major environmental law, because while the specific intent of the adopted rules are to protect the environment or reduce risks to human health from environmental exposure, the adopted rulemaking would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs, nor would it adversely affect in a material way the environment or the public health and safety of the state or a sector of the

state. Furthermore, even if the adopted rulemaking was a major environmental rule, it does not meet any of the four applicability criteria listed in Texas Government Code, §2001.0225, because: 1) the adopted rulemaking is part of the SIP, and as such is designed to meet, not exceed the relevant standard set by federal law; 2) parts of the adopted rulemaking are directly required by state law; 3) no contract or delegation agreement covers the topic that is the subject of this adopted rulemaking; or 4) the adopted rulemaking is authorized by specific sections of THSC, Chapter 382 (also known as the Texas Clean Air Act), and the Texas Water Code, which are cited in the STATUTORY AUTHORITY section of this preamble.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period, and no comments were received.

Takings Impact Assessment

The commission evaluated the adopted rulemaking and performed an analysis of whether the adopted rulemaking constitutes a taking under Texas Government Code, Chapter 2007. The commission's assessment shows Texas Government Code, Chapter 2007 does not apply.

Under Texas Government Code, §2007.002(5), taking means: "(A) a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Section 17 or 19, Article I, Texas Constitution; or (B) a governmental action that: (i) affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and (ii) is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect."

Promulgation and enforcement of the adopted rulemaking is neither a statutory nor a constitutional taking of private real property. These adopted rules are not burdensome, restrictive, or limiting of rights to private real property, because the adopted rulemaking regulates vehicle idling in certain limited areas. Furthermore, the adopted rulemaking benefits the public by providing all local governments the option of applying the idling rules when additional control measures are needed to achieve or maintain attainment of the federal ozone standards. The adopted rulemaking does not affect a landowner's rights in private real property, because this rulemaking does not burden, restrict, or limit the owner's right to property, nor does it reduce the value of any private real property by 25% or more beyond that which would otherwise exist in the absence of the regulations. Therefore, these adopted rules do not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted rulemaking and found that the adoption is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code §§33.201 *et seq.,* and therefore, must be consistent with all applicable CMP goals and policies. The commission reviewed this adopted rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council and determined that the adopted rulemaking does not affect any coastal natural resource areas. The CMP goals applicable to the adopted rulemaking is the goal to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas. No new sources of air contaminants are authorized in those affected counties. The CMP policy applicable to this adopted rulemaking action is the policy that commission rules comply with regulations in the Code of Federal Regulations (CFR) to protect and enhance air quality in the coastal area (40 CFR §501.32). This rulemaking adoption does not have a detrimental effect on SIP emissions reduction obligations relating to maintenance of the ozone NAAQS. This adopted rulemaking action complies with the CFR. Therefore, in compliance with 40 CFR §505.22(e), this adopted rulemaking action is consistent with CMP goals and policies. Promulgation and enforcement of these adopted rules does not violate or exceed any standards identified in the applicable CMP goals and policies, because the adopted rulemaking is consistent with these CMP goals and policies, and because these adopted rules do not create or have a direct or significant adverse effect on any coastal natural resource areas.

The commission invited public comment regarding the consistency with the CMP during the public comment period and no comments were received.

Public Comment

Public hearings on the proposal were held in Austin on March 1, 2011 and in Fort Worth on March 3, 2011. Oral comments regarding Chapter 114 were presented by the Capital Area Council of Governments (CAPCOG), FFE Transportation, the NCTCOG, and the Texas Motor Transportation Association (TMTA). The CAPCOG's oral comments were a summary of a written comments submitted by the Central Texas Clean Air Coalition (CAC); therefore, any reference to CAC in the comments and responses below also includes CAPCOG. The public comment period was from February 11, 2011, to March 11, 2011.

Written comments regarding Chapter 114 were provided by A Better Tripp Moving and Storage Co., Inc.; Acme Truck Line; Ahrens Bros. Trucking (HPI); Alamo Relocation & Storage, Inc.; All Ways Trucking; AllTrans Medical Solutions; ARB Transport; Averitt Express; B&D Owens Co.; B.I.B. Trucking; Baldwin Distribution Services, Ltd; Bamm Express Transport, LLC; BigFoots Hotshot Transport; Bobby Lehmann, Inc.; BPI; Brookshire's Food & Pharmacy; C. Lawless Trucking, LLC; Canal Cartage Company; CAC; Cargil Meat Logistics Solutions; Celanon; Charlie Slusser's Hauling Service; Creekside Nursery; Crete Carrier; CRST International; C-T Trucking; Cullen Trucking; City of Dallas; Dart Transit; Dist-Tech; Dorsey Trans; E.L. Farmer & Company; EPA; Excargo Services; Fikes Truck Line; Fremont Contract Carriers; Gandy & Son's, Inc.; Glenn Broussard Trucking; Guy M. Turner; H & H Logistical Services, Inc.; Hirschfield Transportation; Hot Shot Express; Housley Communication, Inc.; Hyden Highway Hauling L.L.C.; Johnsrud Transport, Inc.; Klaus Leinenbach Trucking; Ladybug Freight LLC; Landstar; Lanstar; Mayberry Express; McClatchy Bros., Inc.; MLC, LLC; Morse Trucking; Nabors Well Services Co.; NCTCOG; Oklahoma Tank Lines; OOIDA; Panel Truss; Pappas Restaurants; Parkway Transport, Inc.; Payan Express Transportation Services, Inc.; Phagan Express of Texas LLC; Phil Brewer Trucking; Plunkett Trucking; Pressinon, Inc.; Queen Moving & Storage Co.; Randy Bundy Trucking; RCL Trucking;

Reed's Sand & Gravel, LLC; Refrigerated Transport, Inc.; Rex Long Transport Company; Skinner Transportation, Inc.; Specialized Transport Service, Inc., aka STS Heavy Hauling; Star Fleet Trucking; Sterling's Vacuum Service; Stevens Worldwide Van Lines, Inc.; Swift Transportation; Texas Hot Oilers, Inc.; TMTA; Texas Moving Co., Inc.; Tom Taylor Trucking; Transwood, Inc.; Tri Dal, Ltd.; Turner Bros., LLC; Two Ts Trucking; USA Truck, Inc.; USFW; W. M. Dewey & Son, Inc.; Werner Enterprises, Inc.; and 31 individuals.

Response to Comments

General Comments

Comment

The following entities and 24 individuals supported the proposed motor vehicle idling rule revision: A Better Tripp Moving and Storage Co., Inc.; Acme Truck Line; HPI; Alamo Relocation & Storage, Inc.; AllTrans Medical Solutions; ARB Transport; B&D Owens Co.; B.I.B. Trucking; Baldwin Distribution Services, Ltd; Bamm Express Transport, LLC; BigFoots Hotshot Transport; Bobby Lehmann, Inc.; BPI; Brookshire's Food & Pharmacy; C. Lawless Trucking, LLC; Canal Cartage Company; Cargil Meat Logistics Solutions; Charlie Slusser's Hauling Service; Creekside Nursery; Crete Carrier; C-T Trucking; Cullen Trucking; City of Dallas; Dart Transit; Dist-Tech; Dorsey Trans; E.L. Farmer & Company; FFE Transportation Services; EPA; Excargo Services; Fremont Contract Carriers; Gandy & Son's Inc.; Glenn Broussard Trucking; Guy M. Turner; H & H Logistical Services, Inc.; Hirschfield Transportation; Hot Shot Express; Housley Communication, Inc.; Hyden Highway Hauling L.L.C.; Johnsrud Transport, Inc.; Klaus Leinenbach Trucking; Ladybug Freight LLC; Landstar; Lanstar; Mayberry Express; McClatchy Bros., Inc.; MLC, LLC; Morse Trucking; Nabors Well Services Co.; Oklahoma Tank Lines; OOIDA; Panel Truss; Pappas Restaurants; Parkway Transport, Inc.; Payan Express Transportation Services, Inc.; Phil Brewer Trucking; Plunkett Trucking; Pressinon, Inc.; Queen Moving & Storage Co.; Randy Bundy Trucking; RCL Trucking; Refrigerated Transport, Inc.; Skinner Transportation, Inc.; Specialized Transport Service, Inc., aka STS Heavy Hauling; Star Fleet Trucking; Sterling's Vacuum Service; Stevens Worldwide Van Lines, Inc.; Swift Transportation; Texas Hot Oilers, Inc.; TMTA; Texas Moving Co., Inc.; Tom Taylor Trucking; Transwood, Inc.; Tri Dal, Ltd.; Turner Bros., LLC; Two Ts Trucking; USFW; W. M. Dewey & Son, Inc.; and Werner Enterprises, Inc.

Response

The commission appreciates the support for the proposed revisions to the rules. No changes were made to the rules based on these comments.

Comment

All Ways Trucking, Averitt Express, Plunkett Trucking, and three individuals commented generally regarding idling regulation's effects on the health and safety of drivers and economic effects on drivers. All Ways Trucking commented that the argument against idling large trucks is understood, but the commission should consider how well someone could sleep with no electricity. Averitt Express commented against idling restrictions and that prohibiting idling will not accomplish anything. Plunkett Trucking commented that drivers must sleep in their vehicle when they reach their federally mandated rest period. CRST International commented generally against idling restrictions. An individual commented that drivers generally should not idle if not necessary; however, driver safety and economic hardships should be considered as well. Another individual commented that American truck drivers already have numerous rules and regulations placed on them. Another individual asked the commission to please consider the cause and effect of the commission's decision and long-term consequences.

Response

The commission acknowledges the comments and the concerns associated with health and safety of drivers. This rulemaking adds only a year-round idling enforcement period while eliminating certain idling prohibitions, retaining several exemptions, and adding a new exemption for armored cars. The commission has made no changes in response to these comments.

Comment

Celanon commented that the commission has removed safe parking but enforces the 14-hour rule.

Response

The commission acknowledges this comment. However, the commission does not enforce the hours-of-service regulations that put limits in place for when and how long commercial motor vehicle drivers may drive. The commission has made no changes in response to this comment.

Comment

Fikes Truck Line commented that most trucks and equipment have been updated, along with auxiliary power units for hotel loads, and the updated equipment is self-contained. This independence does not exist for other industries.

Response

The commission appreciates the comment. The commission has made no changes in response to the comment.

Comment

The CAC and the NCTCOG suggested that the commission take action to permit Texas Emissions Reduction Plan funding for idle reduction technology independent to whether idling occurs within a local jurisdiction that has adopted idling rules.

Response

The commission appreciates the comment. The suggested change is beyond the scope of this rulemaking. The commission has made no changes in response to these comments.

Comment

The CAC suggested the commission make the effective date of any rule change at the end of the current ozone season to avoid any disruption to implementation of the existing rules in this ozone season.

Response

The commission appreciates the comment. In order to ensure the health and safety of drivers, the implementation of the rules will need to occur immediately. The commission has made no changes in response to this comment.

§114.512, Control Requirements for Motor Vehicle Idling

Comment

The CAC, the EPA, and the NCTCOG supported extending the enforcement period to year-round to make enforcement consistent and provide additional protection from ozone pollutants. The

NCTCOG supported allowing an exemption for armored vehicles due to idling when necessary to provide comfort and safety to employees.

Response

The commission appreciates the support. The commission has made no changes in response to these comments.

Comment

The CAC, the EPA, and the NCTCOG suggested the commission should retain the prohibition for drivers using sleeper berths to idle in a school zone, within 1,000 feet of a hospital, or within 1,000 feet of a public school during its hours of operation to help reduce the amount of emissions from idling in these sensitive areas. If the sleeper berth exemption is reinstated, the health of persons in these areas must continue to be protected.

Response

While the commission acknowledges the potential health benefits of the prohibition of idling within 1,000 feet of a public school or hospital and appreciates the commenters' concerns, at this time the commission does not have sufficient technical analysis specific to idling near schools and hospitals to support such a regionally specific prohibition beyond the original legislative mandate. As discussed elsewhere in the RESPONSE TO COMMENTS section of this preamble, the commission is electing to retain the exemption in §114.517(12) regarding sleeper berths even though the statute has expired, because the commission considers this exemption to be appropriate and necessary for driver safety and considering federal requirements for mandatory rest periods. The commission has made no changes in response to these comments.

Comment

The CAC and the NCTCOG suggested specifying that enforcement can occur as a class C misdemeanor, as opposed to a class B misdemeanor, which is currently stipulated for counties, because no fine is associated with violating the rule.

Response

Texas Water Code, §7.177 sets a fine for criminal violations of the rule. The commission does not have authority to set criminal fines that differ from a statute. The change requested by the counties would require a legislative change. The commission has made no changes in response to these comments.

Comment

The NCTCOG suggested extending the idling restriction to include additional vehicle classes of commercial medium-duty vehicles in the 6,000- to 14,000-pound gross vehicle weight rating.

Response

The commission appreciates the comment. The commission did not propose the suggested restriction or consider the restriction in the initial rule proposal. Affected individuals, companies, and other interested parties would not be provided adequate opportunity to comment on the suggested idling control requirement. The commission has made no changes in response to this comment.

Comment

The NCTCOG commented that a local government in North Central Texas suggested that the commission consider prohibiting idling at railroad crossings as part of the idling limitations rule as an additional way to curb idling emissions.

Response

The commission appreciates the comment. The suggested change is beyond the scope of this rulemaking. The commission cannot include the additional idling restriction as suggested because it was not included in the initial rule proposal. Affected individuals, companies, and other interested parties would not be provided adequate opportunity to comment on this suggested idling restriction. The commission has made no changes in response to this comment.

§114.517, Exemptions

Comment

The EPA recommended that a technical analysis or modeling demonstration be provided to show that the proposed year-round enforcement of the idling rule would offset the emissions increase resulting from the new proposed exemption for armored vehicles.

Response

Some increases in emissions may be expected due to the addition of an idling exemption for armored vehicles. However, the exemption will not interfere with attainment or reasonable further progress in the SIP, because the proposed year-round enforcement will offset these relatively small increases. Extending the enforcement period to year-round enforcement should provide more emissions reductions in the months that are currently not subject to enforcement. Thus, any potential increases resulting from an exemption for armored vehicles should be offset by these reductions. Furthermore, the DFW area exceeded the NO_x and VOC emission reductions required through the VMEP commitments. The excess emissions reductions were greater than the 0.12 tpd NO_x and 0.004 tpd VOC emission reduction shortfall estimated in the NCTCOG's VMEP accounting for the Locally Enforced Idling Restrictions. In addition, the 0.86 tpd NO_x and 3.66 tpd VOC excess emission reductions accomplished for the overall VMEP, as estimated in the NCTCOG's VMEP accounting, were greater than the emission reduction commitments for the Locally Enforced Idling Restrictions component of the VMEP. Finally, the exemption for armored vehicles is consistent with EPA's Model State Idling Law guidance document. The commission has made no changes in response to this comment.

Comment

The CAC commented it does not support adoption of the sleeper berth exemption, because it will make the rule difficult to enforce, diminish incentives for installation of idle reduction measures, and discourage jurisdictions from participation in the MOAs. The CAC commented that retaining the exemption is not consistent with the legislative intent to allow the exemption to expire. The CAC recommended that the sleeper berth exemption should be limited if the commission adopts the exemption such as: prohibit sleeper berth idling in sensitive areas; or to restrict heavy-duty vehicles only; allow the exemption for no longer than a two-year period; modify the geographic applicability to no idling within 30 miles of a facility offering external heating or air conditioning. The CAC suggested the commission should focus on what modifications would make the rule more effective at reducing emissions from idling, rather than trying to discern the legislature's intent in expired statutes.

Response

The commission acknowledges this comment; however, the commission must balance the health and safety of drivers with the benefits of idling restrictions. The commission has made no changes in response to this comment.

Comment

The EPA commented that it would not be able to approve the proposed idling restriction sleeper berth exemption in the SIP unless the commission can provide substitute reductions or modeling to show that attainment can be met without the credits affected by the exemption.

Response

In response to the EPA's comments, the commission has added to the FCAA, §110(l) demonstration that retaining the sleeper berth exemption will not interfere with attainment or reasonable further progress in the SIP because the DFW area achieved an excess of NO_x and VOC emission reductions through the VMEP commitments. Additionally, the excess emissions reductions were greater than the 0.12 tpd NO_x and 0.004 tpd VOC emission reduction shortfall estimated in the NCTCOG's VMEP accounting for the Locally Enforced Idling Restrictions. Furthermore, the 0.86 tpd NO_x and 3.66 tpd VOC excess emission reductions accomplished for the overall VMEP, as estimated in the NCTCOG's VMEP accounting, were greater than the emission reduction commitments for the Locally Enforced Idling Restrictions component of the VMEP. Finally, on April 9, 2010, the EPA published its approval of revisions to the SIP regarding the idling rule that the TCEQ submitted on February 28, 2008 (75 FR 18061). In that approval, the EPA did not address the previous revisions to §114.517(12) exempting the idling of the primary propulsion engine of a vehicle to provide air conditioning and heating for the vehicle's sleeper berth for a government-mandated rest period, because these provisions of the rule had already expired.

Comment

The NCTCOG commented that it is not opposed to reinstating the sleeper berth exemption for idling during a government-mandated rest period so long as no idling is allowed in sensitive areas.

Response

The commission appreciates the support. The rule change was made to be consistent with the federal requirement mandating rest stops to protect the health and safety of drivers. The commission has made no changes in response to this comment.

Comment

Phagan Express of Texas LLC commented that the idling rule places an additional burden on drivers that is not needed. Reed's Sand & Gravel, LLC, commented that the trucking industry is being forced into extinction. With high fuel prices troubling truckers, the rulemaking is adding the burden of being unable to rest comfortably. Rex Long Transport Company commented this rulemaking would be harmful for drivers who cannot afford external power plants at a cost of approximately $10,000. Citing that temperatures in Texas range from lows in the teens and as high as 100 plus degrees Fahrenheit, no driver should be forced into that situation. USA Truck, Inc. commented on its concerns that the idling rule would prevent truckers from receiving quality sleep. An individual commented that drivers need to make their own decisions on the issue of idling and are aware of when they need to use air conditioning and heating for rest periods and sleep. Another individual commented that the idling rule must take into consideration the hardship it places on the driver who cannot make it to a truck stop that has facilities with external heating and air conditioning connections. The individual asked that the commission consider that a driver cannot get proper rest if the driver is too hot or too cold. The anti-idling regulations place undue hardship on the drivers. Another individual commented that truck drivers should be allowed to idle their engines in order to keep the temperature close to what they are used to so they can get rest while on breaks or waiting to pick up or deliver. The individual commented that the distance to external temperature control should not matter because it is not possible to wait in line for availability unless on shipper or receiver property. Another individual commented that it is these laws, which prevent truck drivers from running the air conditioner and getting enough sleep, make drivers dangerous for families on highways.

Response

The commission acknowledges the comments and the concerns associated with the health and safety of drivers. The anti-idling rules are an ozone reduction program that helps areas that are nonattainment and near nonattainment reduce pollution. In addition, this rulemaking adds only a year-round idling enforcement period while eliminating certain idling prohibitions, retaining several exemptions to allow truck drivers to use air conditioner or heating, and adding a new exemption for armored cars. The commission has made no changes in response to these comments.

Comment

The NCTCOG suggested including an exemption for vehicles powered by "Certified Clean Idle" engines, because these engines pollute less than many idle-reduction options currently allowed under the rule and would eliminate the demand on drivers to have duplicative technology to comply with various state's idling rules.

Response

The commission appreciates the comment. The commission did not propose the suggested exemption or consider the exemption in the FCAA, §110(l) demonstration for this rulemaking. The commission may consider the suggested exemption in a later rulemaking with additional analysis. The commission has made no changes in response to this comment.

Statutory Authority

These amendments are adopted under the authority of Texas Government Code, §2001.021, Petition for the Adoption of Rules, which authorizes an interested person to petition a state agency for the adoption of a rule. The amendments are adopted under Texas Water Code (TWC), §5.102, General Powers; TWC, §5.103, Rules; and TWC, §5.105, General Policy, which provide the commission with the general powers to carry out its duties and authorize the commission to adopt rulemaking necessary to carry out its powers and duties under the TWC; and TWC, §5.013, General Jurisdiction of Commission, which states the commission's authority over various statutory programs. The amendments are also adopted under Texas Health and Safety Code (THSC), §382.017, Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of THSC, Chapter 382 (the Texas Clean Air Act), and to adopt rules that differentiate among particular conditions, particular sources, and particular areas of the state. The amendments are also adopted under THSC, §382.002, Policy and Purpose,

which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; THSC, §382.019, Methods Used to Control and Reduce Emissions From Land Vehicles, which provides the commission the authority to adopt rules to control and reduce emissions from engines used to propel land vehicles; and THSC, §382.208, Attainment Program, which authorizes the commission to develop and implement transportation programs and other measures necessary to demonstrate attainment and protect the public from exposure to hazardous air contaminants from motor vehicles.

The adopted amendments implement THSC, §§382.011, 382.012, 382.019, and 382.208.

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 July 22, 2011.

TRD-201102785
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: August 11, 2011
Proposal publication date: February 11, 2011
For further information, please call: (512) 239-2548

TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 65. WILDLIFE

SUBCHAPTER H. PUBLIC LANDS PROCLAMATION

31 TAC §65.190, §65.191

The Texas Parks and Wildlife Commission, in a duly noticed meeting held on May 27, 2011, adopted amendments to §65.190 and §65.191, concerning the Public Lands Proclamation, without changes to the proposed text as published in the April 22, 2011, issue of the *Texas Register* (36 TexReg 2603).

The amendment to §65.190, concerning Application, adds "Blue Elbow Swamp-Tony Houseman WMA/SP" to the list of public hunting lands contained in the section. The wildlife management area (WMA)/state park (SP) was acquired in 1997 but inadvertently was not included in the inventory of public hunting lands listed in the section.

The amendment to §65.191, concerning Definitions, adds definitions of "airboat" and "motorboat." Advances in propulsion systems technology (belt drives, mud pumps, etc.) have increased the ability of shallow-draft vessels to operate in very shallow waters and wetlands, which poses threats to habitats on WMAs as a result of the physical disturbance of soils and vegetation. Current rules prohibit the use of airboats on WMAs except by executive order or written permission, and several WMAs impose site-specific restrictions on the operation of motorboats; however, the terms "airboat" and "motorboat" are not defined by rule. The amendment would supply a regulatory meaning for each of those terms for enforcement purposes. By clearly defining what is meant by those terms, the department's existing regulations regarding public access and use can be enforced without ambiguity.

The amendment to §65.190 will function by providing a complete list of public hunting lands that are governed by the subchapter.

The amendment to §65.191 will function by providing unambiguous meanings for words and terms used in the rules.

The department received no comments opposing adoption of the proposed amendments.

The department received one comment supporting adoption of the proposed amendments.

No groups or associations commented in favor of or opposition to adoption of the proposed amendments.

The amendments are adopted under the authority of Parks and Wildlife Code, Chapter 81, Subchapter E, which authorizes the Parks and Wildlife Commission to promulgate rules governing access to and use of public hunting lands and specific hunting, fishing, recreational, or other use of wildlife management areas and requires the commission to prescribe by rule any terms, conditions, and fees for the issuance and use of permits.

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 July 22, 2011.

TRD-201102784
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Effective date: August 11, 2011
Proposal publication date: April 22, 2011
For further information, please call: (512) 389-4775

REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Education Agency

Title 19, Part 2

The Texas Education Agency (TEA) proposes the review of 19 TAC Chapter 97, Planning and Accountability, pursuant to the Texas Government Code, §2001.039. The rules being reviewed by the TEA in 19 TAC Chapter 97 are organized under the following subchapters: Subchapter AA, Accountability and Performance Monitoring; Subchapter BB, Memoranda of Understanding; Subchapter DD, Investigative Reports, Sanctions, and Record Reviews; Subchapter EE, Accreditation Status, Standards, and Sanctions; and Subchapter FF, Commissioner's Rules Concerning the Job Corps Diploma Program.

As required by the Texas Government Code, §2001.039, the TEA will accept comments as to whether the reasons for adopting 19 TAC Chapter 97, Subchapters AA, BB, and DD-FF, continue to exist.

The public comment period on the review of 19 TAC Chapter 97, Subchapters AA, BB, and DD-FF, begins August 5, 2011, and ends September 6, 2011. Comments or questions regarding this rule review may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 475-1497. Comments may also be submitted electronically to rules@tea.state.tx.us or faxed to (512) 463-0028.

TRD-201102758
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: July 21, 2011

♦ ♦ ♦

Adopted Rule Reviews

Texas Education Agency

Title 19, Part 2

The State Board of Education (SBOE) adopts the review of 19 TAC Chapter 102, Educational Programs, Subchapter A, Grants, pursuant to the Texas Government Code, §2001.039. The SBOE proposed the review of 19 TAC Chapter 102, Subchapter A, in the April 29, 2011, issue of the *Texas Register* (36 TexReg 2739).

The SBOE finds that the reasons for adopting 19 TAC Chapter 102, Subchapter A, continue to exist and readopts the rule. The SBOE received no comments related to the review of Subchapter A. No changes are necessary as a result of the review.

TRD-201102816
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: July 26, 2011

♦ ♦ ♦

The Texas Education Agency (TEA) adopts the review of 19 TAC Chapter 102, Educational Programs, Subchapter AA, Commissioner's Rules Concerning Early Childhood Education Programs; Subchapter BB, Commissioner's Rules Concerning Master Teacher Grant Programs; Subchapter CC, Commissioner's Rules Concerning Coordinated Health Programs; Subchapter DD, Commissioner's Rules Concerning the Texas Accelerated Science Achievement Program Grant; Subchapter EE, Commissioner's Rules Concerning Pilot Programs; Subchapter FF, Commissioner's Rules Concerning Educator Award Programs; Subchapter GG, Commissioner's Rules Concerning Early College Education Program; and Subchapter HH, Commissioner's Rules Concerning the Texas Adolescent Literacy Academies, pursuant to the Texas Government Code, §2001.039. The TEA proposed the review of 19 TAC Chapter 102, Subchapters AA-HH, in the April 29, 2011, issue of the *Texas Register* (36 TexReg 2739).

Relating to the review of 19 TAC Chapter 102, Subchapter AA, the TEA finds that the reasons for adopting Subchapter AA continue to exist and readopts the rules. The TEA received no comments related to the review of Subchapter AA. Effective June 26, 2011, the TEA adopted an amendment to 19 TAC §102.1002, Prekindergarten Early Start Grant Program. No additional changes are necessary as a result of the review.

Relating to the review of 19 TAC Chapter 102, Subchapter BB, the TEA finds that the reasons for adopting Subchapter BB continue to exist and readopts the rules. The TEA received no comments related to the review of Subchapter BB. No changes are necessary as a result of the review.

Relating to the review of 19 TAC Chapter 102, Subchapter CC, the TEA finds that the reasons for adopting Subchapter CC continue to exist and readopts the rule. The TEA received no comments related to the review of Subchapter CC. No changes are necessary as a result of the review.

Relating to the review of 19 TAC Chapter 102, Subchapter DD, the TEA finds that the reasons do not exist for adopting 19 TAC §102.1041, Texas Accelerated Science Achievement Program Grant. Funding for the grant has not been available since February 2009, and TEA legal counsel has determined that the rule is no longer necessary. The TEA

received no comments related to the review of Subchapter DD. At a later date, the TEA plans to repeal §102.1041.

Relating to the review of 19 TAC Chapter 102, Subchapter EE, the TEA finds that the reasons for adopting Subchapter EE continue to exist and readopts the rules. The TEA received no comments related to the review of Subchapter EE. At a later date, however, the TEA plans to repeal 19 TAC §102.1058, Technology-Based Supplemental Instruction Pilot Program, due to the expiration of the section's authorizing statute, the Texas Education Code (TEC), §29.919, on September 1, 2011. In addition, the TEA plans to propose changes to 19 TAC §§102.1054-102.1056 to update references to statutes that have been renumbered.

Relating to the review of 19 TAC Chapter 102, Subchapter FF, the TEA finds that the reasons for adopting §102.1073, District Awards for Teacher Excellence, continue to exist and readopts the rule. The TEA finds that the reasons do not exist for adopting 19 TAC §102.1071, Governor's Educator Excellence Award Program--Texas Educator Excellence Grant. The statutory authority for §102.1071, the TEC, §21.652 and §21.658, was repealed by House Bill 3646, 81st Texas Legislature, 2009. The TEA received no comments related to the review of Subchapter FF. At a later date, the TEA plans to repeal §102.1071.

Relating to the review of 19 TAC Chapter 102, Subchapter GG, the TEA finds that the reasons for adopting Subchapter GG continue to exist and readopts the rules. The TEA received no comments related to the review of Subchapter GG. No changes are necessary as a result of the review.

Relating to the review of 19 TAC Chapter 102, Subchapter HH, the TEA finds that the reasons for adopting Subchapter HH continue to exist and readopts the rule. The TEA received no comments related to the review of Subchapter HH. At a later date, the TEA plans to propose changes related to attendance and completion requirements for Texas adolescent literacy academies.

This concludes the review of 19 TAC Chapter 102.

TRD-201102817
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: July 26, 2011

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are 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.

Figure: 1 TAC §55.116(a)

CAUSE NUMBER ____________

IN THE INTEREST OF	§	**IN THE ___TH JUDICIAL DISTRICT**
	§	**OF**
CHILDREN	§	**________ COUNTY, TEXAS**

NOTICE OF ADMINISTRATIVE WRIT OF WITHHOLDING

__________________, Obligor, is hereby given notice pursuant to Texas Family Code Chapter 158, Subchapter F, that his employer is immediately required to withhold the amounts specified below for payment of his current support and periodic medical support obligation, and for any overdue support arrearage, as follows:

OBLIGOR: **OBLIGEE:**

Obligor's Employer:

CHILDREN

Current Support Due:	**$ ____ monthly**
Periodic Medical Support Due:	**$ ____ monthly**
Total Arrearage, including $___accrued interest:	**$ ______**
As of:	

Amounts to be withheld from Obligor's wages upon service of writ:

On Current Support:	**$ ___monthly**
On Periodic Medical Support:	**$ ___ monthly**
On Arrearage Owed:	**$ ___monthly**

RIGHTS AND PROCEDURES

Attached to this notice is a copy of the Administrative Writ of Withholding issued in this matter.

______________ may contest withholding on the grounds that the identity of the Obligor or the existence or amount of arrearages is incorrect by requesting a review by the Title IV-D agency, by telephonic conference or in person, at the telephone number and address below:

After a review, the Title IV-D agency may continue the attached writ in effect or may issue a new administrative writ modifying the amount to be withheld or terminating withholding.

If a review fails to resolve any issue in dispute, the obligor may file a motion with the court to withdraw the administrative writ and request a hearing with the court not later than the 30th day after receiving notice of the agency's determination. Income withholding may not be interrupted pending a hearing by the court.

Should a Motion to Withdraw be filed, and a hearing conducted, the court will be requested to confirm all arrearage amounts then due.

If this is a reissuance of an existing withholding order on file with the court of continuing jurisdiction and the amount to be withheld for an arrearage is not being adjusted, pursuant to Texas Family Code § 158.502, the preceding rights and procedures regarding contests, reviews and judicial intervention into this administrative withholding process do not apply.

Child Support Officer
Child Support Division
Address
City, State, Zip
Telephone No. ______________
Fax No. ___________________

CERTIFICATE OF NOTICE

I certify a copy of this Notice of Administrative Writ of Withholding was mailed by first class mail to Obligor on _________ pursuant to Texas Family Code § 158.505.

____

Figure: 1 TAC §55.116(b)

INCOME WITHHOLDING FOR SUPPORT

- ☐ **ORIGINAL INCOME WITHHOLDING ORDER/NOTICE FOR SUPPORT (IWO)**
- ☐ **AMENDED IWO**
- ☐ **ONE-TIME ORDER/NOTICE FOR LUMP SUM PAYMENT**
- ☐ **TERMINATION of IWO**

Date: ____________

☐ Child Support Enforcement (CSE) Agency ☐ Court ☐ Attorney ☐ Private Individual/Entity (Check One)

NOTE: This IWO must be regular on its face. Under certain circumstances you must reject this IWO and return it to the sender (see IWO instructions http://www.acf.hhs.gov/programs/cse/newhire/employer/publication/publication.htm#forms).
If you receive this document from someone other than a State or Tribal CSE agency or a Court, a copy of the underlying order must be attached.

State/Tribe/Territory ____________
City/County/Dist./Tribe ____________
Private Individual/Entity ____________

Remittance Identifier (include w/payment) ____________
Order Identifier ____________
CSE Agency Case Identifier ____________

____
Employer/Income Withholder's Name

____
Employer/Income Withholder's Address

____

____

Employer/Income Withholder's FEIN ____________

RE: ____________
Employee/Obligor's Name (Last, First, Middle)

____
Employee/Obligor's Social Security Number

____
Custodial Party/Obligee's Name (Last, First, Middle)

Child(ren)'s Name(s) (Last, First, Middle)

____
____
____
____
____
____

Child(ren)'s Birth Date(s)

____
____
____
____
____
____

ORDER INFORMATION: This document is based on the support or withholding order from ____________ (State/Tribe). You are required by law to deduct these amounts from the employee/obligor's income until further notice.

$ ____________ Per ____________ current child support
$ ____________ Per ____________ past-due child support - **Arrears greater than 12 weeks?** ☐ Yes ☐ No
$ ____________ Per ____________ current cash medical support
$ ____________ Per ____________ past-due cash medical support
$ ____________ Per ____________ current spousal support
$ ____________ Per ____________ past-due spousal support
$ ____________ Per ____________ other (must specify) ____________ .
for a **Total Amount to Withhold** of **$** ____________ per ____________ .

AMOUNTS TO WITHHOLD: You do not have to vary your pay cycle to be in compliance with the *Order Information*. If your pay cycle does not match the ordered payment cycle, withhold one of the following amounts:

$ ____________ per weekly pay period
$ ____________ per semimonthly pay period (twice a month)
$ ____________ per biweekly pay period (every two weeks)
$ ____________ per monthly pay period
$ ____________ **Lump Sum Payment:** Do not stop any existing IWO unless you receive a termihation order.

REMITTANCE INFORMATION: If the employee/obligor's principal place of employment is ____________ (State/Tribe), you must begin withholding no later than the first pay period that occurs ____ days after the date of ____________ . Send payment within ____ working days of the pay date. If you cannot withhold the full amount of support for any or all orders for this employee/obligor, withhold up to ____ % of disposable income for all orders. If the employee/obligor's principal place of employment is not ____________ (State/Tribe), obtain withholding limitations, time requirements, and any allowable employer fees at *http://www.acf.hhs.gov/programs/cse/newhire/employer/contacts/contact_map.htm* for the employee/obligor's principal place of employment.

Document Tracking Identifier ____________

OMB 0970-0154

For electronic payment requirements and centralized payment collection and disbursement facility information (State Disbursement Unit [SDU]), see http://www.acf.hhs.gov/programs/cse/newhire/employer/contacts/contact_map.htm.

Include the ***Remittance Identifier* with the payment** and if necessary this FIPS code: ____________________

Remit payment to ______________________ ____________________________ (SDU/Tribal Order Payee)
at ____ (SDU/Tribal Payee Address)

Return to Sender [Completed by Employer/Income Withholder]. Payment must be directed to an SDU in accordance with 42 USC §666(b)(5) and (b)(6) or Tribal Payee (see Payments to SDU below). If payment is not directed to an SDU/ Tribal Payee or this IWO is not regular on its face, you *must* check this box and return the IWO to the sender.

Signature of Judge/Issuing Official (if required by State or Tribal law):
Print Name of Judge/Issuing Official: ______________________________
Title of Judge/Issuing Official: ______________________________
Date of Signature:

If the employee/obligor works in a State or for a Tribe that is different from the State or Tribe that issued this order, a copy of this IWO must be provided to the employee/obligor.
If checked, the employer/income withholder must provide a copy of this form to the employee/obligor.

ADDITIONAL INFORMATION FOR EMPLOYERS/INCOME WITHHOLDERS

State-specific contact and withholding information can be found on the Federal Employer Services website located at: http://www.acf.hhs.gov/programs/cse/newhire/employer/contacts/contact_map.htm

Priority: Withholding for support has priority over any other legal process under State law against the same income (USC 42 §666(b)(7)). If a Federal tax levy is in effect, please notify the sender.

Combining Payments: When remitting payments to an SDU or Tribal CSE agency, you may combine withheld amounts from more than one employee/obligor's income in a single payment. You must, however, separately identify each employee/obligor's portion of the payment.

Payments To SDU: You must send child support payments payable by income withholding to the appropriate SDU or to a Tribal CSE agency. If this IWO instructs you to send a payment to an entity other than an SDU (e.g., payable to the custodial party, court, or attorney), you must check the box above and return this notice to the sender. Exception: If this IWO was sent by a Court, Attorney, or Private Individual/Entity and the initial order was entered before January 1, 1994 or the order was issued by a Tribal CSE agency, you must follow the "Remit payment to" instructions on this form.

Reporting the Pay Date: You must report the pay date when sending the payment. The pay date is the date on which the amount was withheld from the employee/obligor's wages. You must comply with the law of the State (or Tribal law if applicable) of the employee/obligor's principal place of employment regarding time periods within which you must implement the withholding and forward the support payments.

Multiple IWOs: If there is more than one IWO against this employee/obligor and you are unable to fully honor all IWOs due to Federal, State, or Tribal withholding limits, you must honor all IWOs to the greatest extent possible, giving priority to current support before payment of any past-due support. Follow the State or Tribal law/procedure of the employee/ obligor's principal place of employment to determine the appropriate allocation method.

Lump Sum Payments: You may be required to notify a State or Tribal CSE agency of upcoming lump sum payments to this employee/obligor such as bonuses, commissions, or severance pay. Contact the sender to determine if you are required to report and/or withhold lump sum payments.

Liability: If you have any doubts about the validity of this IWO, contact the sender. If you fail to withhold income from the employee/obligor's income as the IWO directs, you are liable for both the accumulated amount you should have withheld and any penalties set by State or Tribal law/procedure.

Anti-discrimination: You are subject to a fine determined under State or Tribal law for discharging an employee/obligor from employment, refusing to employ, or taking disciplinary action against an employee/obligor because of this IWO.

OMB Expiration Date – 05/31/2014. The OMB Expiration Date has no bearing on the termination date of the IWO; it identifies the version of the form currently in use.

Employer's Name: ______________________ Employer FEIN: ______________________
Employee/Obligor's Name: ______________________
CSE Agency Case Identifier: ______________ Order Identifier: ______________________

Withholding Limits: You may not withhold more than the lesser of: 1) the amounts allowed by the Federal Consumer Credit Protection Act (CCPA) (15 U.S.C. 1673(b)); or 2) the amounts allowed by the State or Tribe of the employee/obligor's principal place of employment (see *REMITTANCE INFORMATION*). Disposable income is the net income left after making mandatory deductions such as: State, Federal, local taxes; Social Security taxes; statutory pension contributions; and Medicare taxes. The Federal limit is 50% of the disposable income if the obligor is supporting another family and 60% of the disposable income if the obligor is not supporting another family. However, those limits increase 5% - to 55% and 65% - if the arrears are greater than 12 weeks. If permitted by the State or Tribe, you may deduct a fee for administrative costs. The combined support amount and fee may not exceed the limit indicated in this section.

For Tribal orders, you may not withhold more than the amounts allowed under the law of the issuing Tribe. For Tribal employers/income withholders who receive a State IWO, you may not withhold more than the lesser of the limit set by the law of the jurisdiction in which the employer/income withholder is located or the maximum amount permitted under section 303(d) of the CCPA (15 U.S.C. 1673 (b)).

Depending upon applicable State or Tribal law, you may need to also consider the amounts paid for health care premiums in determining disposable income and applying appropriate withholding limits.

Arrears greater than 12 weeks? If the *Order Information* does not indicate that the arrears are greater than 12 weeks, then the Employer should calculate the CCPA limit using the lower percentage.

Additional Information:

____

NOTIFICATION OF EMPLOYMENT TERMINATION OR INCOME STATUS: If this employee/obligor never worked for you or you are no longer withholding income for this employee/obligor, an employer must promptly notify the CSE agency and/or the sender by returning this form to the address listed in the Contact Information below:

☐ This person has never worked for this employer nor received periodic income.

☐ This person no longer works for this employer nor receives periodic income.

Please provide the following information for the employee/obligor:

Termination date: ______________________ Last known phone number: ______________

Last known address: ____

____

Final payment date to SDU/ Tribal Payee: ______________ Final payment amount: ______________

New employer's name: ____

New employer's address: ____

____

CONTACT INFORMATION:

To Employer/Income Withholder: If you have any questions, contact ______________________ (Issuer name) by phone at ______________, by fax at ______________, by email or website at: ______________________

Send termination/income status notice and other correspondence to:

____ (Issuer address).

To Employee/Obligor: If the employee/obligor has questions, contact ______________________ (Issuer name) by phone at ______________, by fax at ______________, by email or website at ______________________

IMPORTANT: The person completing this form is advised that the information may be shared with the employee/obligor.

Figure: 1 TAC §55.118

INCOME WITHHOLDING FOR SUPPORT

☐ **ORIGINAL INCOME WITHHOLDING ORDER/NOTICE FOR SUPPORT (IWO)**
☐ **AMENDED IWO**
☐ **ONE-TIME ORDER/NOTICE FOR LUMP SUM PAYMENT**
☐ **TERMINATION of IWO** **Date:** ____________

☐ Child Support Enforcement (CSE) Agency ☐ Court ☐ Attorney ☐ Private Individual/Entity (Check One)

NOTE: This IWO must be regular on its face. Under certain circumstances you must reject this IWO and return it to the sender (see IWO instructions **http://www.acf.hhs.gov/programs/cse/newhire/employer/publication/publication.htm#forms**).
If you receive this document from someone other than a State or Tribal CSE agency or a Court, a copy of the underlying order must be attached.

State/Tribe/Territory ____________ Remittance Identifier (include w/payment) ____________
City/County/Dist./Tribe ____________ Order Identifier ____________
Private Individual/Entity ____________ CSE Agency Case Identifier ____________

____________ RE: ____________
Employer/Income Withholder's Name — Employee/Obligor's Name (Last, First, Middle)

____________ ____________
Employer/Income Withholder's Address — Employee/Obligor's Social Security Number

____________ ____________
Custodial Party/Obligee's Name (Last, First, Middle)

____

Employer/Income Withholder's FEIN ____________

Child(ren)'s Name(s) (Last, First, Middle) — Child(ren)'s Birth Date(s)

____________ ____________
____________ ____________
____________ ____________
____________ ____________
____________ ____________
____________ ____________

ORDER INFORMATION: This document is based on the support or withholding order from ____________ (State/Tribe). You are required by law to deduct these amounts from the employee/obligor's income until further notice.

$____________ Per____________ current child support
$____________ Per____________ past-due child support - **Arrears greater than 12 weeks?** ☐Yes☐No
$____________ Per____________ current cash medical support
$____________ Per____________ past-due cash medical support
$____________ Per____________ current spousal support
$____________ Per____________ past-due spousal support
$____________ Per____________ other (must specify) ____________
for a **Total Amount to Withhold** of **$** ____________ per ____________

AMOUNTS TO WITHHOLD: You do not have to vary your pay cycle to be in compliance with the *Order Information*. If your pay cycle does not match the ordered payment cycle, withhold one of the following amounts:

$ ____________per weekly pay period $____________per semimonthly pay period (twice a month)
$ ____________per biweekly pay period (every two weeks)$____________per monthly pay period
$ ____________**Lump Sum Payment:** Do not stop any existing IWO unless you receive a termination order.

REMITTANCE INFORMATION: If the employee/obligor's principal place of employment is ____________(State/Tribe), you must begin withholding no later than the first pay period that occurs ____days after the date of ________. Send payment within ____working days of the pay date. If you cannot withhold the full amount of support for any or all orders for this employee/obligor, withhold up to ____% of disposable income for all orders. If the employee/obligor's principal place of employment is not ____________ (State/Tribe), obtain withholding limitations, time requirements, and any allowable employer fees at ***http://www.acf.hhs.gov/programs/cse/newhire/employer/contacts/contact_map.htm*** for the employee/obligor's principal place of employment.

Document Tracking Identifier ____________ OMB 0970-0154

For electronic payment requirements and centralized payment collection and disbursement facility information (State Disbursement Unit [SDU]), see http://www.acf.hhs.gov/programs/cse/newhire/employer/contacts/contact_map.htm.

Include the ***Remittance Identifier* with the payment** and if necessary this FIPS code: ______________________

Remit payment to ____ (SDU/Tribal Order Payee)
at ____ (SDU/Tribal Payee Address)

Return to Sender [Completed by Employer/Income Withholder]. Payment must be directed to an SDU in accordance with 42 USC §666(b)(5) and (b)(6) or Tribal Payee (see Payments to SDU below). If payment is not directed to an SDU/ Tribal Payee or this IWO is not regular on its face, you *must* check this box and return the IWO to the sender.

Signature of Judge/Issuing Official (if required by State or Tribal law):
Print Name of Judge/Issuing Official: ____
Title of Judge/Issuing Official: ____
Date of Signature:

If the employee/obligor works in a State or for a Tribe that is different from the State or Tribe that issued this order, a copy of this IWO must be provided to the employee/obligor.
If checked, the employer/income withholder must provide a copy of this form to the employee/obligor.

ADDITIONAL INFORMATION FOR EMPLOYERS/INCOME WITHHOLDERS

State-specific contact and withholding information can be found on the Federal Employer Services website located at: http://www.acf.hhs.gov/programs/cse/newhire/employer/contacts/contact_map.htm

Priority: Withholding for support has priority over any other legal process under State law against the same income (USC 42 §666(b)(7)). If a Federal tax levy is in effect, please notify the sender.

Combining Payments: When remitting payments to an SDU or Tribal CSE agency, you may combine withheld amounts from more than one employee/obligor's income in a single payment. You must, however, separately identify each employee/obligor's portion of the payment.

Payments To SDU: You must send child support payments payable by income withholding to the appropriate SDU or to a Tribal CSE agency. If this IWO instructs you to send a payment to an entity other than an SDU (e.g., payable to the custodial party, court, or attorney), you must check the box above and return this notice to the sender. Exception: If this IWO was sent by a Court, Attorney, or Private Individual/Entity and the initial order was entered before January 1, 1994 or the order was issued by a Tribal CSE agency, you must follow the "Remit payment to" instructions on this form.

Reporting the Pay Date: You must report the pay date when sending the payment. The pay date is the date on which the amount was withheld from the employee/obligor's wages. You must comply with the law of the State (or Tribal law if applicable) of the employee/obligor's principal place of employment regarding time periods within which you must implement the withholding and forward the support payments.

Multiple IWOs: If there is more than one IWO against this employee/obligor and you are unable to fully honor all IWOs due to Federal, State, or Tribal withholding limits, you must honor all IWOs to the greatest extent possible, giving priority to current support before payment of any past-due support. Follow the State or Tribal law/procedure of the employee/ obligor's principal place of employment to determine the appropriate allocation method.

Lump Sum Payments: You may be required to notify a State or Tribal CSE agency of upcoming lump sum payments to this employee/obligor such as bonuses, commissions, or severance pay. Contact the sender to determine if you are required to report and/or withhold lump sum payments.

Liability: If you have any doubts about the validity of this IWO, contact the sender. If you fail to withhold income from the employee/obligor's income as the IWO directs, you are liable for both the accumulated amount you should have withheld and any penalties set by State or Tribal law/procedure.

Anti-discrimination: You are subject to a fine determined under State or Tribal law for discharging an employee/obligor from employment, refusing to employ, or taking disciplinary action against an employee/obligor because of this IWO.

OMB Expiration Date – 05/31/2014. The OMB Expiration Date has no bearing on the termination date of the IWO; it identifies the version of the form currently in use.

Employer's Name: ______________________ Employer FEIN: ______________________
Employee/Obligor's Name: ______________________
CSE Agency Case Identifier: ______________ Order Identifier: ______________________

Withholding Limits: You may not withhold more than the lesser of: 1) the amounts allowed by the Federal Consumer Credit Protection Act (CCPA) (15 U.S.C. 1673(b)); or 2) the amounts allowed by the State or Tribe of the employee/obligor's principal place of employment (see *REMITTANCE INFORMATION*). Disposable income is the net income left after making mandatory deductions such as: State, Federal, local taxes; Social Security taxes; statutory pension contributions; and Medicare taxes. The Federal limit is 50% of the disposable income if the obligor is supporting another family and 60% of the disposable income if the obligor is not supporting another family. However, those limits increase 5% - to 55% and 65% - if the arrears are greater than 12 weeks. If permitted by the State or Tribe, you may deduct a fee for administrative costs. The combined support amount and fee may not exceed the limit indicated in this section.

For Tribal orders, you may not withhold more than the amounts allowed under the law of the issuing Tribe. For Tribal employers/income withholders who receive a State IWO, you may not withhold more than the lesser of the limit set by the law of the jurisdiction in which the employer/income withholder is located or the maximum amount permitted under section 303(d) of the CCPA (15 U.S.C. 1673 (b)).

Depending upon applicable State or Tribal law, you may need to also consider the amounts paid for health care premiums in determining disposable income and applying appropriate withholding limits.

Arrears greater than 12 weeks? If the *Order Information* does not indicate that the arrears are greater than 12 weeks, then the Employer should calculate the CCPA limit using the lower percentage.

Additional Information:

____

NOTIFICATION OF EMPLOYMENT TERMINATION OR INCOME STATUS: If this employee/obligor never worked for you or you are no longer withholding income for this employee/obligor, an employer must promptly notify the CSE agency and/or the sender by returning this form to the address listed in the Contact Information below:

☐ This person has never worked for this employer nor received periodic income.

☐ This person no longer works for this employer nor receives periodic income.

Please provide the following information for the employee/obligor:

Termination date: ______________________ Last known phone number: ______________

Last known address: ____

____

Final payment date to SDU/ Tribal Payee: ______________ Final payment amount: ______________

New employer's name: ____

New employer's address: ____

____

CONTACT INFORMATION:

<u>To Employer/Income Withholder:</u> If you have any questions, contact ______________________ (Issuer name) by phone at ______________, by fax at ______________, by email or website at: ______________________

Send termination/income status notice and other correspondence to:
____ (Issuer address).

<u>To Employee/Obligor:</u> If the employee/obligor has questions, contact ______________________ (Issuer name) by phone at ______________, by fax at ______________, by email or website at ______________________ .

IMPORTANT: The person completing this form is advised that the information may be shared with the employee/obligor.

Figure: 1 TAC §55.119(a)

NOTICE OF LIEN

TO:
(Name/Address of recorder or asset holder)

Obligor:
(Name/Address/DOB/SSN)

FROM:
(IV-D Agency or name of obligee
and/or his or her private attorney or entity acting on behalf of the obligee,
address, phone, e-mail address, fax number)

Obligee:
(Name)

IV-D Case #:
(or non-IV-D docket #)

This lien results, by operation of law, from a child support order, entered on ___________
by ___________ in___________ tribunal number ___________.

As of _________, the obligor owes unpaid support in the amount of $ _______. This judgment may be subject to interest.

Prospective amounts of child support, not paid when due, are judgments that are added to the lien amount. This lien attaches to all non-exempt real and/or personal property of the above-named obligor which is located or existing within the State/county of filing, including any property specifically described below.

Specific description of property:

Page 1 of 3

All aspects of this lien, including its priority and enforcement, are governed by the law of the State where the property is located. An obligor must follow the laws and procedures of the State where the property is located or recorded. An obligor may also contact the entity sending the lien. This lien remains in effect until released or withdrawn by the issuing agency, the obligee, the entity acting on behalf of the obligee, or in accordance with the laws of the State where the property is located.

Note to Lien Recorder: Please provide the sender with a copy of the filed lien, containing the recording information, at the address provided above.

Check either "A" or "B" below. The option that does not apply may be omitted from the form. If "B" is checked, the form must be notarized.

A. [ ] Submitted by a IV-D agency/office on behalf of the named obligee

As an authorized agent of a State or Tribal, or subdivision of a State or Tribal, agency responsible for implementing the child support enforcement program set forth in Title IV, Part D, of the Federal Social Security Act (42 U.S.C. 651 et seq.), I have authority to file this child support lien in any State, or U.S. Territory. For additional information regarding this lien, including the pay-off amount, please contact the authorized agency and reference its case number, both listed above.

__________ ___________________________
Date Authorized Agent

____
Print name, e-mail address, phone and fax number

B. [ ] Submitted by an obligee or a private (non-IV-D) attorney or entity on behalf of an obligee

I am [ ] the obligee of the above referenced order [or]
[ ] an attorney or entity representing the above named obligee

I certify under penalty of perjury that the information contained in this notice is true and accurate and that this lien is submitted in accordance with the laws of the State of ________________.
For additional information regarding this lien, including the pay-off amount, please contact the obligee listed above.

____________ ______________________________
Date Signature

____
Print name, e-mail address, phone and fax number

Page 2 of 3

Notary State:_______________________

County:_____________________

I certify that _________________________ appeared before me and is known to me as the individual who signed the above.

Date: _________

____
Notary Public

My appointment expires _________________

Notice: Respondents are not required to respond to this information collection unless it displays a valid OMB control number. The average burden for responding to this information collection is estimated at 30 minutes. If you believe this estimate is inaccurate, or if you have ideas to reduce this burden, please provide comment to the issuing agency.

OMB Control #: 0970-0153 Expiration Date: 05/31/2014. (Please note, this expiration date is for the OMB form and not the lien itself.)

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Figure: 1 TAC §55.120(a)

NATIONAL MEDICAL SUPPORT NOTICE - PART A
NOTICE TO WITHHOLD FOR HEALTH CARE COVERAGE

This Notice is issued under section 466(a)(19) of the Social Security Act, section 609(a)(5)(C) of the Employee Retirement Income Security Act of 1974 (ERISA), and for State and local government and church plans, sections 401(e) and (f) of the Child Support Performance and Incentive Act of 1998. Receipt of this Notice from the Issuing Agency constitutes receipt of a Medical Child Support Order under applicable law. The information on the Custodial Parent and Child(ren) contained on this page is confidential and should not be shared or disclosed with the employee. NOTE: For purposes of this form, the Custodial Parent may also be the employee when the State opts to enforce against the Custodial Parent.

Issuing Agency: ______ Issuing Agency Address: ______ ______ Notice Date: ______ CSE Agency Case Identifier: ______ Telephone Number: ______ FAX Number: ______	Court or Administrative Authority: ______ Order Date: ______ Order Identifier: ______ Document Tracking Identifier: ______ Employer web site: ______ See NMSN Instructions: www.act.hhs.gov/programs/cse/forms/

RE:

Employer/Withholder's Federal EIN Number	Employee's Name (Last, First, MI)
Employer/Withholder's Name	Employee's Social Security Number
Employer / Withholder's Address	Employee's Mailing Address
Custodial Parent's Name (Last, First, MI)	Substituted Official/Agency Name
Custodial Parent's Mailing Address	Substituted Official/Agency Address (Required if Custodial Parent's mailing address is left blank)
Child(ren)'s Mailing Address (if different from Custodial Parent's)	
Name and Telephone of a Representative of the Child(ren)	Mailing Address of a Representative of the Child(ren)

Child(ren)'s Name(s	Gender	DOB	SSN	Child(ren)'s Name(s)	Gender	DOB	SSN

The order requires the child(ren) to be enrolled in ☐ all health coverages available; or only the following coverage(s):
☐ Medical; ☐Dental; ☐Vision; ☐Prescription drug; ☐ Mental health; ☐Other specify): ______

THE PAPERWORK REDUCTION ACT OF 1995 (P.L. 104-13) Public reporting burden for this collection of information is estimated to average 10 minutes per response, including the time reviewing instructions, gathering and maintaining the data needed, and reviewing the collection of information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. **OMB control number: 0970-0222 Expiration Date: 03/31/2014.**

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LIMITATIONS ON WITHHOLDING

The total amount withheld for both cash and medical support cannot exceed ___________% of the employee's aggregate disposable weekly earnings. The employer may not withhold more under this National Medical Support Notice than the lesser of:

1. The amounts allowed by the Federal Consumer Credit Protection Act (15 U.S.C., section 1673(b));

2. The amounts allowed by the State of the employee's principal place of employment; or

3. The amounts allowed for health insurance premiums by the child support order, as indicated here:________________________________.

The Federal limit applies to the aggregate disposable weekly earnings (ADWE). ADWE is the net income left after making mandatory deductions such as State, Federal, local taxes; Social Security taxes; and Medicare taxes. As required under section 2.b.2 of the Employer Responsibilities on page 4, complete item 5 of the Employer Response to notify the Issuing Agency that enrollment cannot be completed because of prioritization or limitations on withholding.

PRIORITY OF WITHHOLDING

If withholding is required for employee contributions to one or more plans under this notice and for a support obligation under a separate notice and available funds are insufficient for withholding for both cash and medical support contributions, the employer must withhold amounts for purposes of cash support and medical support contributions in accordance with the law, if any, of the State of the employee's principal place of employment requiring prioritization between cash and medical support, as described here: ____.
As required under section 2.b.2 of the Employer Responsibilities on page 4, complete item 5 of the Employer Response to notify the Issuing Agency that enrollment cannot be completed because of prioritization or limitations on withholdings.

EMPLOYER RESPONSE

If 1, 2, 3, 4 or 5 below applies, check the appropriate box and return this Part A to the Issuing Agency within 20 business days after the date of the Notice, or sooner if reasonable. NO OTHER ACTION IS NECESSARY. If 1 through 5 does not apply, complete item 7 and forward **Part B** to the appropriate Plan Administrator(s) within 20 business days after the date of the Notice, or sooner if reasonable. This includes any organization or labor union that provides group health care benefits to the employee. Check number 5 and return this **Part A** to the **Issuing Agency** if the Plan Administrator informs you that the child(ren) would be enrolled in or qualify(ies) for an option under the plan for which you have determined that the employee contribution exceeds the amount that may be withheld from the employee's income due to State or Federal withholding limitations and/or prioritization. You are required to respond to the Issuing Agency by returning this **Employer Response** regardless of whether you provide group health benefits or the employee named herein is no longer employed by your organization. Information for the Plan Administrator and the Employer Representative at the bottom of this section is required.

☐ 1. The employee named in this Notice has never been employed by this employer.

☐ 2. We, the employer, do notoffer our employees the option of purchasing dependent or family health care coverage as a benefit of their employment.

☐ 3. The employee is among a class of employees (for example, part-time or non-union) that are not eligible for family health coverage under any group health plan maintained by the employer or to which the employer contributes. Do not check this box if the employee is only temporarily ineligible for health care coverage.

☐ 4. Health care coverage is not available because employee is no longer employed by the employer:

Date of termination: ______________________________

Last known telephone number: _____________________

Last known address: ______________________________

New employer (if known): __________________________

New employer telephone number: ___________________

New employer address: ____________________________

☐ 5 State or Federal withholding limitations and/or prioritization prevent the withholding from the employee's income of the amount required to obtain coverage under the terms of the plan.

☐ 6 The participant is subject to a waiting period that expires _________ (more than 90 days from the date of receipt of this Notice), or has not completed a waiting period, which is determined by some measure other than the passage of time, such as the completion of a certain number of hours worked (describe here: ________________). At the completion of the waiting period, the Plan Administrator will process the enrollment.

☐ 7. Employer forwarded Part B to Plan Administrator on ______________.
MM/DD/YY

CONTACT FOR QUESTIONS

Plan Administrator Name: ______________________________
Contact Person: ______________________________________

FAX Number: ___________________
Telephone Number: ______________

Employer Name: _______________________________________
Employer Representative Name/Title: ___________________

Telephone Number: ______________
Federal EIN: ___________________
(if not provided on Page 1 of this Notice)

Employee Name: ______________________________________

Date: __________________________

Page 3 of 5

INSTRUCTIONS TO EMPLOYER

This document serves as legal notice that the employee identified on this National Medical Support Notice is obligated by a court or administrative child support order to provide health care coverage for the child(ren) identified on this Notice. This National Medical Support Notice replaces any Medical Support Notice that the Issuing Agency has previously served on you with respect to the employee and the children listed on this Notice.

The document consists of **Part A - Notice to Withhold for Health Care Coverage** for the employer to withhold any employee contributions required by the group health plan(s) in which the child(ren) is/are enrolled; and **Part B - Medical Support Notice to the Plan Administrator**, which **must** be forwarded to the Administrator of each group health plan identified by the employer to enroll the eligible child(ren), or completed by the employer, if the employer serves as the health Plan Administrator.

An employer receiving this legal Notice is required to complete and return **Part A.** If group health coverage is not available to the employee named herein, or the employee was never or is no longer employed, the employer is still required to complete **Part A – Employer Response** and return it to the Issuing Agency with the appropriate response checked. If you, the employer, provide the health care benefits to the employee, forward **Part B – Plan Administrator Response** to the health Plan Administrator of your organization. If the employee's health care benefits are administered through another organization, including a labor union, forward Part B of the Notice to the labor union or other organization acting as the Plan Administrator for completion. If the employee has already enrolled the child(ren) in health care coverage, the employer must forward Part B to the Plan Administrator for completion and submittal to the Issuing Agency.

Keep a copy of **Part A** as it may be used to notify the Issuing Agency if the employee separates from service for any reason including retirement or termination.

EMPLOYER RESPONSIBILITIES

1. If the individual named in this Notice is not your employee, or if the family health care coverage is not available, please complete item 1, 2, 3, 4 or 5 of the Employer Response as appropriate, and return it to the Issuing Agency. NO OTHER ACTION IS NECESSARY.

2. If family health care coverage is available for which the child(ren) identified above may be eligible, you are required to:

   a. Transfer, not later than 20 business days after the date of this Notice, a copy of **Part B - Medical Support Notice to the Plan Administrator** to the Administrator of each appropriate group health plan for which the child(ren) may be eligible, complete item 7, and

   b. Upon notification from the Plan Administrator(s) that the child(ren) is/are enrolled, either

      1) withhold from the employee's income any employee contributions required under each group health plan, in accordance with the applicable law of the employee's principal place of employment and transfer employee contributions to the appropriate plan(s), or

      2) complete item 5 of the Employer Response to notify the Issuing Agency that enrollment cannot be completed because of prioritization or limitations on withholding.

   c. If the Plan Administrator notifies you that the employee is subject to a waiting period that expires more than 90 days from the date of its receipt of **Part B** of this Notice, or whose duration is determined by a measure other than the passage of time (for example, the completion of a certain number of hours worked), complete item 6 of the Employer Response to notify the Issuing Agency of the enrollment timeframe and notify the Plan Administrator when the employee is eligible to enroll in the plan and that this Notice requires the enrollment of the child(ren) named in the Notice in the plan.

DURATION OF WITHHOLDING

The child(ren) shall be treated as dependents under the terms of the plan. Coverage of a child as a dependent will end when conditions for eligibility for coverage under terms of the plan no longer apply. However, the continuation coverage provisions of ERISA may entitle the child to continuation coverage under the plan. The employer must continue to withhold employee contributions and may not disenroll (or eliminate coverage for) the child(ren) unless:

1. The employer is provided satisfactory written evidence that:
   a. The court or administrative child support order referred to in this Notice is no longer in effect; or
   b. The child(ren) is or will be enrolled in comparable coverage which will take effect no later than the effective date of disenrollment from the plan; or

2. The employer eliminates family health coverage for all of its employees.

POSSIBLE SANCTIONS

An employer may be subject to sanctions or penalties imposed under State law and/or ERISA for discharging an employee from employment, refusing to employ, or taking disciplinary action against any employee because of medical child support withholding, or for failing to withhold income, or transmit such withheld amounts to the applicable plan(s) as the Notice directs. Sanctions or penalties may be imposed under State law against an employer for failure to respond and/or for non-compliance with this Notice.

NOTICE OF TERMINATION OF EMPLOYMENT

In any case in which the above employee's employment terminates, the employer must promptly notify the Issuing Agency listed above of such termination. This requirement may be satisfied by sending to the Issuing Agency a copy of Part A with response 4 checked or any notice the employer is required to provide under the continuation coverage provisions of ERISA or the Health Insurance Portability and Accountability Act.

EMPLOYEE LIABILITY FOR CONTRIBUTION TO PLAN

The employee is liable for any employee contributions that are required under the plan(s) for enrollment of the child(ren) and is subject to appropriate enforcement. The employee may contest the withholding under this Notice based on a mistake of fact (such as the identity of the obligor). Should an employee contest the withholding under this Notice, the employer must proceed to comply with the employer responsibilities in this Notice until notified by the Issuing Agency to discontinue withholding. To contest the withholding under this Notice, the employee should contact the Issuing Agency at the address and telephone number listed on the Notice. With respect to plans subject to ERISA, it is the view of the Department of Labor that Federal Courts have jurisdiction if the employee challenges a determination that the Notice constitutes a Qualified Medical Child Support Order.

CONTACT FOR QUESTIONS

If you have any questions regarding this Notice, you may contact the Issuing Agency at the address and telephone number listed on page 1 of this Notice.

NATIONAL MEDICAL SUPPORT NOTICE
PART B
MEDICAL SUPPORT NOTICE TO PLAN ADMINISTRATOR

This Notice is issued under section 466(a)(19) of the Social Security Act, section 609(a)(5)(C) of the Employee Retirement Income Security Act of 1974, and for State and local government and church plans, sections 401(e) and (f) of the Child Support Performance and Incentive Act of 1998. Receipt of this Notice from the Issuing Agency constitutes receipt of a Medical Child Support Order under applicable law. The rights of the parties and the duties of the plan administrator under this Notice are in addition to the existing rights and duties established under such law. The information on the Custodial Parent and Child(ren) contained on this page is confidential and should not be shared or disclosed with the Noncustodial Parent.

Issuing Agency: ____________________ Issuing Agency Address: ______________ ______________________________ Date of Notice: ________________ Case Number: _________________ Telephone Number: ______________ FAX Number: ______________ Employer Web Site:	Court or Administrative Authority: ____________________ Date of Support Order: ________________ Support Order Number: _______________

____
Employer/Withholder's Federal EIN Number

RE: ______________________________
Employee's Name (Last, First, MI)

____
Employer/Withholder's Name

____
Employee's Social Security Number

____
Employer/Withholder's Address

____
Employee's Address

____
Custodial Parent's Name (Last, First, MI)

____
Custodial Parent's Mailing Address

____
Substituted Official/Agency Name and Address
(Required if Custodial Parent's mailing address is left blank)

____
Child(ren)'s Mailing Address (if Different from Custodial Parent's)

____
____
____
Name(s), Mailing Address, and Telephone Number of a Representative of the Child(ren)

Child(ren)'s Name(s)	DOB	SSN	Child(ren)'s Name(s)	DOB	SSN
____________	____	____	____________	____	____
____________	____	____	____________	____	____
____________	____	____	____________	____	____

The order requires the child(ren) to be enrolled in [] any health coverages available; or [] only the following coverage(s): __medical; __dental; __vision; __prescription drug; __mental health; __other (specify):______________________________

THE PAPERWORK REDUCTION ACT OF 1995 (P.L. 104-13) public reporting burden for this collection of information is estimated to average 20 minutes per response, including the time reviewing instructions, gathering and maintaining the data needed, and reviewing the collection of information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

OMB control number: 1210-0113 Expiration Date: 10/31/2012.

PLAN ADMINISTRATOR RESPONSE

(To be completed and returned to the Issuing Agency within 40 business days after the date of the Notice, or sooner if reasonable)

Case #________________ (to be completed by the issuing agency)

This Notice was received by the plan administrator on ________.

1. This Notice was determined to be a "qualified medical child support order," on _______. Complete **Response 2 or 3, and 4**, if applicable.

2. The participant (employee) and alternate recipient(s) (child(ren)) are to be enrolled in the following family coverage.

    a. The child(ren) is/are currently enrolled in the plan as a dependent of the participant.
    b. There is only one type of coverage provided under the plan. The child(ren) is/are included as dependents of the participant under the plan.
    c. The participant is enrolled in an option that is providing dependent coverage and the child(ren) will be enrolled in the same option.
    d. The participant is enrolled in an option that permits dependent coverage that has not been elected; dependent coverage will be provided.

Coverage is effective as of __/__/____(includes waiting period of less than 90 days from date of receipt of this Notice). The child(ren) has/have been enrolled in the following option (if plan is insured, identify provider, policy and group numbers): ______________________. Any necessary withholding should commence if the employer determines that it is permitted under State and Federal withholding and/or prioritization limitations.

3. There is more than one option available under the plan and the participant is not enrolled. The Issuing Agency must select from the available options. Each child is to be included as a dependent under one of the available options that provide family coverage. If the Issuing Agency does not reply within 20 business days of the date this Response is returned, the child(ren), and the participant if necessary, will be enrolled in the plan's default option, if any: ____.

4. The participant is subject to a waiting period that expires __/__/____ (more than 90 days from the date of receipt of this Notice), or has not completed a waiting period which is determined by some measure other than the passage of time, such as the completion of a certain number of hours worked (describe here: ________________________). At the completion of the waiting period, the plan administrator will process the enrollment.

5. This Notice does not constitute a "qualified medical child support order" because:

The name of the child(ren) or participant is unavailable.

The mailing address of the child(ren) (or a substituted official) or participant is unavailable.

The following child(ren) is/are at or above the age at which dependents are no longer eligible for coverage under the plan ______________________________ (insert name(s) of child(ren)).

Plan Administrator or Representative:

Name: ___________________________________ Telephone Number: ____________

Title: ___________________________________ Date: _______________

Address:___________________________________

INSTRUCTIONS TO PLAN ADMINISTRATOR

This Notice has been forwarded from the employer identified above to you as the plan administrator of a group health plan maintained by the employer (or a group health plan to which the employer contributes) and in which the noncustodial parent/participant identified above is enrolled or is eligible for enrollment.

This Notice serves to inform you that the noncustodial parent/participant is obligated by an order issued by the court or agency identified above to provide health care coverage for the child(ren) under the group health plan(s) as described on **Part B.**

(A) If the participant and child(ren) and their mailing addresses (or that of a Substituted Official or Agency) are identified above, and if coverage for the child(ren) is or will become available, this Notice constitutes a "qualified medical child support order"(QMCSO) under ERISA or CSPIA, as applicable. (If any mailing address is not present, but it is reasonably accessible, this Notice will not fail to be a QMCSO on that basis.) You must, within 40 business days of the date of this Notice, or sooner if reasonable:

(1) Complete Part B - Plan Administrator Response - and send it to the Issuing Agency:

(a) if you checked Response 2:

(i) notify the noncustodial parent/participant named above, each named child, and the custodial parent that coverage of the child(ren) is or will become available (notification of the custodial parent will be deemed notification of the child(ren) if they reside at the same address);

(ii) furnish the custodial parent a description of the coverage available and the effective date of the coverage, including, if not already provided, a summary plan description and any forms, documents, or information necessary to effectuate such coverage, as well as information necessary to submit claims for benefits;

(b) if you checked Response 3:

(i) if you have not already done so, provide to the Issuing Agency copies of applicable summary plan descriptions or other documents that describe available coverage including the additional participant contribution necessary to obtain coverage for the child(ren) under each option and whether there is a limited service area for any option;

(ii) if the plan has a default option, you are to enroll the child(ren) in the default option if you have not received an election from the Issuing Agency within 20 business days of the date you returned the Response. If the plan does not have a default option, you are to enroll the child(ren) in the option selected by the Issuing Agency.

(c) if the participant is subject to a waiting period that expires more than 90 days from the date of receipt of this Notice, or has not completed a waiting period whose duration is determined by a measure other than the passage of time (for example, the completion of a certain number of hours worked), complete Response 4 on the Plan Administrator Response and return to the employer and the Issuing Agency, and notify the participant and the custodial parent; and upon satisfaction of the period or requirement, complete enrollment under Response 2 or 3, and

(d) upon completion of the enrollment, transfer the applicable information on Part B - Plan Administrator Response to the employer for a determination that the necessary employee contributions are available. Inform the employer that the enrollment is pursuant to a National Medical Support Notice.

(B) If within 40 business days of the date of this Notice, or sooner if reasonable, you determine that this Notice does not constitute a QMCSO, you must complete Response 5 of Part B - Plan Administrator Response and send it to the Issuing Agency, and inform the noncustodial parent/participant, custodial parent, and child(ren) of the specific reasons for your determination.

(C) Any required notification of the custodial parent, child(ren) and/or participant may be satisfied by sending the party a copy of the Plan Administrator Response, if appropriate. You may choose to furnish these notifications electronically in accordance with the requirements of the Department of Labor's electronic disclosure regulation codified at 29 C.F.R. 2520.104b-1(c).

UNLAWFUL REFUSAL TO ENROLL

Enrollment of a child may not be denied on the ground that: (1) the child was born out of wedlock; (2) the child is not claimed as a dependent on the participant's Federal income tax return; (3) the child does not reside with the participant or in the plan's service area; or (4) because the child is receiving benefits or is eligible to receive benefits under the State Medicaid plan. If the plan requires that the participant be enrolled in order for the child(ren) to be enrolled, and the participant is not currently enrolled, you must enroll both the participant and the child(ren) regardless of whether the participant has applied for enrollment in the plan. All enrollments are to be made without regard to open season restrictions.

PAYMENT OF CLAIMS

A child covered by a QMCSO, or the child's custodial parent, legal guardian, or the provider of services to the child, or a State agency to the extent assigned the child's rights, may file claims and the plan shall make payment for covered benefits or reimbursement directly to such party.

PERIOD OF COVERAGE

The alternate recipient(s) shall be treated as dependents under the terms of the plan. Coverage of an alternate recipient as a dependent will end when similarly situated dependents are no longer eligible for coverage under the terms of the plan. However, the continuation coverage provisions of ERISA or other applicable law may entitle the alternate recipient to continue coverage under the plan. Once a child is enrolled in the plan as directed above, the alternate recipient may not be disenrolled unless:

(1) The plan administrator is provided satisfactory written evidence that either:

(a) the court or administrative child support order referred to above is no longer in effect, or

(b) the alternate recipient is or will be enrolled in comparable coverage which will take effect no later than the effective date of disenrollment from the plan;

(2) The employer eliminates family health coverage for all of its employees; or

(3) Any available continuation coverage is not elected, or the period of such coverage expires.

CONTACT FOR QUESTIONS

If you have any questions regarding this Notice, you may contact the Issuing Agency at the address and telephone number listed above.

Paperwork Reduction Act Notice

The Issuing Agency asks for the information on this form to carry out the law as specified in the Employee Retirement Income Security Act or the Child Support Performance and Incentive Act, as applicable. You are required to give the Issuing Agency the information. You are not required to respond to this collection of information unless it displays a currently valid OMB control number. The Issuing Agency needs the information to determine whether health care coverage is provided in accordance with the underlying child support order. The average time needed to complete and file the form is estimated below. These times will vary depending on the individual circumstances.

	Learning about the law or the form	....	Preparing the form
First Notice	1 hr.__	....	1 hr., 45 min.
Subsequent Notices	-----	....	20 min.

Figure 1: 22 TAC Chapter 361--Preamble

Type of Fee	Current Fee	Proposed Fee	Increase in Fee
License (Initial and Annual Renewal)			
Responsible Master Plumber	$230	$246	$16
Master Plumber	$230	$246	$16
Journeyman Plumber	$40	$43	$3
Tradesman Plumber-Limited	$36	$39	$3
Registration (Initial and Annual Renewal)			
Plumber's Apprentice	$18	$19	$1

Figure 2: 22 TAC Chapter 361--Preamble

Type of License or Registration	Amount of Increase	Amount Over Five Years
Responsible Master Plumber	$16	$80
Master Plumber	$16	$80
Journeyman Plumber	$3	$15
Tradesman Plumber-Limited	$3	$15
Plumber's Apprentice	$1	$5

Figure: 25 TAC §289.229(e)(14)

$$C = \frac{s}{\overline{X}} = \frac{1}{\overline{X}}\left[\sum_{i=1}^{n}\frac{(X_i - \overline{X})^2}{n-1}\right]^{1/2}$$

Where: s = estimated standard deviation of the population
$\overline{X}$ = mean value of observations in sample
X_i = ith observation in sample
n = number of observations in sample.

Figure: 25 TAC §289.229(h)(2)(A)(i)

TABLE I.

System	Leakage Limit	Measurement Location
0-150 kVp (manufactured or installed prior to March 1, 1989)	1 R (10 mGy) in 1 hr	1 meter (m) from source
0-150 kVp (manufactured on or after March 1, 1989)	100 mR (1mGy) in 1 hr	1 m from source
151-499 kVp	1 R (10 mGy) in 1 hr	1 m from source

Figure: 25 TAC §289.229(h)(4)(B)(i)

TABLE IV.
HALF-VALUE LAYER FOR SELECTED kVp

Designed operating range	Measured operating potential	X-ray systems (except dental) manufactured before June 10, 2006	X-ray systems (except dental) manufactured on or after June 10, 2006
Below 51	30	0.3	0.3
	40	0.4	0.4
	50	0.5	0.5
51 to 70	51	1.2	1.3
	60	1.3	1.5
	70	1.5	1.8
Above 70	71	2.1	2.5
	80	2.3	2.9
	90	2.5	3.2
	100	2.7	3.6
	110	3.0	3.9
	120	3.2	4.3
	130	3.5	4.7
	140	3.8	5.0
	150	4.1	5.4

Figure: 25 TAC §289.229(l)

Name of Record	Rule Cross-Reference	Time Interval Required for Record Keeping
Accelerators used for research and development and Industrial Operations		
(A) Initial surveys	(f)(2)(C)(iii)	Until termination of registration
(B) Tests and repairs	(f)(3)(A)(x)	5 years
(C) Calibration, surveys	(f)(3)(F)	5 years
(D) Contamination smear for units operating greater than 10 MeV	(f)(3)(G)	Until termination of registration
(E) Receipt, transfers, and disposal	(f) (3)(H)	Until termination of registration
(F) Training for operators	(f)(4)(B)	Until 2 years after the individual terminates employment
Therapeutic radiation machines, simulators, and electronic brachytherapy devices		
(G) Credentials of operators	(h)(1)(C)	Until 2 years after the individuals leave the facility
Electronic brachytherapy device operators	(h)(i)(E)(iii)	Until 2 years after the individuals leave the facility
(H) Review of quality assurance program	(h)(1)(F)(vii)	5 years
(I) FDA Variances	(h)(1)(H)	Until transfer of machine or termination of registration
(J) Initial Surveys		
Therapy (below 1 MeV)	(h)(2)(D)(i)(II)	Until termination of registration
Therapy (1 MeV) and above	(h)(3)(C)(i)(III)	Until termination of registration

Electronic brachytherapy device	(k)(2)(A)(ii)	Until termination of registration
(K) Calibration		
Therapy (below 1 MeV)	(h)(2)(D)(i)(II)	5 years
Therapy (1 MeV and above)	(h)(3)(C)(ii)(VI)	5 years
Electronic brachytherapy device	(k)(2)(B)(vi)	5 years
(L) Contamination Smears for units operating greater than 10 MeV	(h)(1)(I)	Until termination of registration
(M) Spot checks and corrective actions		
Therapy (below 1 MeV)	(h)(2)(D)(iii)(VI)	5 years after the spot checks
Therapy (1 MeV and above)	(h)(3)(C)(iii)(VII)	5 years after the spot checks
Electronic brachytherapy device	(k)(2)(C)(v)	5 years after the spot checks
(N) Leakage measurements		
Therapy (1 MeV and above)	(h)(3)(A)(i)	5 years
(O) Protective devices for simulators	(h)(4)(A)(iii)(II)	3 years
(P) Film processing records for simulators	(h)(4)(A)((viii)(VI) and (ix)	3 years
(Q) Digital imaging acquisition systems	(h)(4)(A)(x)	3 years
(R) CT dose measurements	(h)(4)(D)(iii)(III)	5 years

(S) CT films resulting from quality control tests	(h)(4)(D)(iv)(II)	1 year or until a new phantom image is performed
(T) Record of device-specific training for electronic brachytherapy-devices	(h)(1)(E)(iii)	Until 2 years after the individual leaves the facility

Figure: 25 TAC §289.231(aa)(2)(A)(ii)

"INFORMATION FALLING WITHIN EXCEPTION OF THE TEXAS PUBLIC INFORMATION ACT, GOVERNMENT CODE, CHAPTER 552 ---- CONFIDENTIAL

This document contains information submitted to the Department of State Health Services, Radiation Control by

____
(Name of Company) (Name of Submitter)

which is claimed to fall within the following exception to the Texas Public Information Act, Government Code, Chapter 552, Subchapter C ______________________
(Appropriate Subsection)

WITHHOLD FROM PUBLIC DISCLOSURE

________________________________"
(Signature and Title) (Office) (Date)

Figure: 25 TAC §289.231(ll)(2)

Machine Type/Type of Use	Years Between Inspections
CT	2 years
Fluoroscopy	2 years
Accelerators, Simulators, and Other Therapeutic Radiation Machines	2 years
Radiographic Only	3 years
Podiatric Radiographic Only	4 years
Minimal Threat	5 years
Industrial Radiography	1 year
Other Industrial	5 years
Services	5 years
Laser (Human Use/Research/Academic)	As deemed necessary by the agency
Other Laser	As deemed necessary by the agency
Mammography	1 year

NOTE: The inspection intervals specified above were based upon the average number of health-related violations per inspection by category, as determined from compliance history data. These intervals will be reviewed at least every 2 years, and appropriate adjustments will be made.

Figure: 25 TAC §289.231(ll)(6)

Specific Subsection	**Name of Record**	**Time Interval Required for Record Keeping**
(r)(6)	Occupational dose assessments and administrative controls	Until termination of registration
(bb)(6)	Records at Additional Authorized Use/Storage Locations	While site is authorized on registration
(cc)(1)	Routine Surveys, Instrument Calibration	10 years
(cc)(2)	Surveys, Measurements, Calculations Used for Dose Determination	Until termination of registration
(dd)(1) - (3)	Individual Monitoring Results; RC Form 231-3	Update annually; Maintain until termination of registration
(dd)(4)	Embryo/Fetus Dose	Until termination of registration
(dd)(5)	Records Used to Prepare RC Form, 231-3	3 years
(ee)	Dose to Individual Members of the Public	Until termination of registration

Figure: 25 TAC §289.231(ll)(7)

RC Form 231-3

Texas Department of State Health Services/Radiation Control

OCCUPATIONAL EXPOSURE RECORD FOR A MONITORING PERIOD

1. NAME (LAST, FIRST, MIDDLE INITIAL)	2. IDENTIFICATION NUMBER	3. ID TYPE	4. SEX ☐ MALE ☐ FEMALE	5. DATE OF BIRTH

6. MONITORING PERIOD	7. LICENSEE OR REGISTRANT NAME	8. LICENSE OR REGISTRATION NUMBER(S)	9A. ☐ RECORD ☐ ESTIMATE	9B. ☐ ROUTINE ☐ PSE

INTAKES

10A. RADIONUCLIDE	10B. CLASS	10C. MODE	10D. INTAKE IN µCi

DOSES (in rem)

DEEP DOSE EQUIVALENT (DDE)	11.
EYE DOSE EQUIVALENT TO THE LENS OF THE EYE (LDE)	12.
SHALLOW DOSE EQUIVALENT, WHOLE BODY (SDE,WB)	13.
SHALLOW DOSE EQUIVALENT, MAX EXTREMITY (SDE,ME)	14.
COMMITTED EFFECTIVE DOSE EQUIVALENT (CEDE)	15.
COMMITTED DOSE EQUIVALENT, MAXIMALLY EXPOSED ORGAN (CDE)	16.
TOTAL EFFECTIVE DOSE EQUIVALENT ***(BLOCKS 11+15) (TEDE)***	17.
TOTAL ORGAN DOSE EQUIVALENT, MAX ORGAN ***(BLOCKS 11+16) (TODE)***	18.

19. COMMENTS

20. SIGNATURE -- LICENSEE OR REGISTRANT	21. DATE PREPARED

INSTRUCTIONS AND ADDITIONAL INFORMATION PERTINENT TO THE COMPLETION OF RC FORM 231-3 *(All doses should be stated in rems)*

1. Type or print the full name of the monitored individual in the order of last name (include "Jr," "Sr," "III," etc.), first name, middle initial (if applicable).

2. Enter the individual's identification number, including punctuation. This number should be the 9-digit social security number if at all possible. If the individual has no social security number, enter the number from another official identification such as a passport or work permit.

3. Enter the code for the type of identification used as shown below:

CODE	ID TYPE
SSN	U.S. Social Security Number
PPN	Passport Number
CSI	Canadian Social Insurance Number
WPN	Work Permit Number
IND	INDEX Identification Number
OTH	Other

4. Check the box that denotes the sex of the individual being monitored.

5. Enter the date of birth of the individual being monitored in the format MM/DD/YY.

6. Enter the monitoring period for which this report is filed. The format should be MM/DD/YY - MM/DD/YY.

7. Enter the name of the licensee or registrant.

8. Enter the Agency license or registration number or numbers.

9A. Place an "X" in Record or Estimate. Choose "Record" if the dose data listed represent a final determination of the dose received to the best of the licensee's or registrant's knowledge. Choose "Estimate" only if the listed dose data are preliminary and will be superseded by a final determination resulting in a subsequent report. An example of such an instance would be dose data based on self-reading dosimeter results and the licensee intends to assign the record dose on the basis of TLD results that are not yet available.

9B. Place an "X" in either Routine or PSE. Choose "Routine" if the data represent the results of monitoring for routine exposures. Choose "PSE" if the listed dose data represents the results of monitoring of planned special exposures received during the monitoring period. If more than one PSE was received in a single year, the licensee or registrant should sum them and report the total of all PSEs.

10A. Enter the symbol for each radionuclide that resulted in an internal exposure recorded for the individual, using the format "Xx-###x," for instance, Cs-137 or Tc-99m.

10B. Enter the lung clearance class as listed in Appendix B to Part D (D, W, Y, V, or O for other) for all intakes by inhalation.

10C. Enter the mode of intake. For inhalation, enter "H." For absorption through the skin, enter "B." For oral ingestion, enter "G." For injection, enter "J."

10D. Enter the intake of each radionuclide in µCi.

11. Enter the deep dose equivalent (DDE) to the whole body.

12. Enter the eye dose equivalent (LDE) recorded for the lens of the eye.

13. Enter the shallow dose equivalent recorded for the skin of the whole body (SDE,WB).

14. Enter the shallow dose equivalent recorded for the skin of the extremity receiving the maximum dose (SDE,ME).

15. Enter the committed effective dose equivalent (CEDE) or "NR" for "Not Required" or "NC" for "Not Calculated".

16. Enter the committed dose equivalent (CDE) recorded for the maximally exposed organ or "NR" for "Not Required" or "NC" for "Not Calculated".

17. Enter the total effective dose equivalent (TEDE). The TEDE is the sum of items 11 and 15.

18. Enter the total organ dose equivalent (TODE) for the maximally exposed organ. The TODE is the sum of items 11 and 16.

19. COMMENTS.
In the space provided, enter additional information that might be needed to determine compliance with limits. An example might be to enter the note that the SDE,ME was the result of exposure from a discrete hot particle. Another possibility would be to indicate that an overexposed report has been sent to the Agency in reference to the exposure report.

20. Signature of the person designated to represent the licensee or registrant.

21. Enter the date this form was prepared.

Figure: 30 TAC §101.27(f)(1)

Emissions Fee Schedule

Fiscal Year	Rate Per Ton	Minimum Fee
1992	$3	
1993	$5	$25
1994	$25	$25
1995 - 2002	$26	$26

For Fiscal Year 2003 through Fiscal Year 2011, the rate per ton must be calculated using the following formula. The minimum fee must be equal to the rate per ton.

Rate per ton = $25.00X(1 - *CO*)X(*CPI*/122.15)

For Fiscal Year 2012 and subsequent years, the rate per ton must be calculated using the following formula. The minimum fee must be equal to the rate per ton.

Rate per ton = $AdjBaseRateX(*CPI*/122.15)

Where:

AdjBaseRate = an adjustable base rate, equal to $25 for Fiscal Year 2012, and adjusted annually, as necessary, thereafter between $25 and $45;

CO = carbon monoxide fraction of the fee basis, for all emissions fee payers for the previous fiscal year;

CPI = average of the consumer price index for the 12 months preceding the fiscal year that a fee is being assessed (as published by the United States Bureau of Labor Statistics, CPI - All Urban Consumers, Not Seasonally Adjusted, base period 1982 - 84 = 100); and

122.15 = average consumer price index for Fiscal Year 1989 (as published by the United States Bureau of Labor Statistics, CPI - All Urban Consumers, Not Seasonally Adjusted, base period 1982 - 84 = 100).

Figure: 30 TAC §336.2(151)

Organ Dose Weighting Factors

Organ or Tissue	W_T
Gonads	0.25
Breast	0.15
Red bone marrow	0.12
Lung	0.12
Thyroid	0.03
Bone surfaces	0.03
Remainder	0.30[1]
Whole body	1.00[2]

1. The value 0.30 results from 0.06 for each of five remainder organs, excluding the skin and the lens of the eye, that receive the highest doses.

2. For the purpose of weighting the external whole body dose (for adding it to the internal dose) a single weighting factor, w_T =1.0, has been specified. The use of other weighting factors for external exposure will be approved on a case-by-case basis until such time as specific guidance is issued.

Figure: 30 TAC §336.210(e)

Radioactive Material*	Release Fraction	Quantity (curies)	Radioactive Material*	Release Fraction	Quantity (curies)	Radioactive Material*	Release Fraction	Quantity (curies)
Ac-228 (89)	0.001	4,000	In-114m (49)	0.01	1,000	V-48 (23)	0.01	7,000
Am-241 (95)	0.001	2	Ir-192 (77)	0.001	40,000	Xe-133 (54)	1.0	900,000
Am-242 (95)	0.001	2	Fe-55 (26)	0.01	40,000	Y-91 (39)	0.01	2,000
Am-243 (95)	0.001	2	Fe-59 (26)	0.01	7,000	Zn-65 (30)	0.01	5,000
Sb-124 (51)	0.01	4,000	Kr-85 (36)	1.0	6,000,000	Zr-93 (40)	0.01	400
Sb-126 (51)	0.01	6,000	Pb-210 (82)	0.01	8	Zr-95 (40)	0.01	5,000
Ba-133 (56)	0.01	10,000	Mn-56 (25)	0.01	60,000	Any other beta-gamma emitter	0.01	10,000
Ba-140 (56)	0.01	30,000	Hg-203 (80)	0.01	10,000			
Bi-207 (83)	0.01	5,000	Mo-99 (42)	0.01	30,000	Mixed fission products	0.01	1,000
Bi-210 (83)	0.01	600	Np-237 (93)	0.001	>2			
Cd-109 (48)	0.01	1,000	Ni-63 (28)	0.01	20,000	Mixed corrosion products	0.01	10,000
Cd-113 (48)	0.01	80	Nb-94 (41)	0.01	300			
Ca-45 (20)	0.01	20,000	P-32 (15)	0.5	100			
Cf-252 (98)	0.001	9(20mg)	P-33 (15)	0.5	1,000	Contaminated equipment, beta-gamma	0.001	10,000
C-14 (6)**	0.01	50,000	Po-210 (84)	0.01	10			
Ce-141 (58)	0.01	10,000	K-42 (19)	0.01	9,000			
Ce-144 (58)	0.01	300	Pm-145 (61)	0.01	4,000	Irradiated material, any form other than solid non-combustible	0.01	1,000
Cs-134 (55)	0.01	2,000	Pm-147 (61)	0.01	4,000			
Cs-137 (55)	0.01	2,000	Ra-226 (88)	0.001	100			
Cl-36 (17)	0.5	100	Ru-106 (44)	0.01	200			
Cr-51 (24)	0.01	300,000	Sm-151 (62)	0.01	4,000			
Co-60 (27)	0.001	5,000	Sc-46 (21)	0.01	3,000			
Cu-64 (29)	0.01	200,000	Se-75 (34)	0.01	10,000	Irradiated material, solid non-combustible	0.001	10,000
Cm-242 (96)	0.001	60	Ag110m (47)	0.01	1,000			
Cm-243 (96)	0.001	3	Na-22 (11)	0.01	9,000			

Cm-244 (96)	0.001	4	Na-24 (11)	0.01	10,000			
Cm-245 (96)	0.001	2	Sr-89 (38)	0.01	3,000	Mixed radioactive waste, beta-gamma	0.01	1,000
Eu-152 (63)	0.01	500	Sr-90 (38)	0.01	90			
Eu-154 (63)	0.01	400	Sr-35 (16)	0.5	900			
Eu-155 (63)	0.01	3,000	Tc-99 (43)	0.01	10,000	Packaged mixed waste, beta-gamma***	0.001	10,000
Ge-68 (32)	0.01	2,000	Tc-99m (43)	0.01	400,000			
Gd-153 (64)	0.01	5,000	Te-127m(52)	0.01	5,000			
Au-198 (79)	0.01	30,000	Te-129m(52)	0.01	5,000	Any other alpha emitter	0.001	2
Hf-172 (72)	0.01	400	Tb-160 (65)	0.01	4,000			
Hf-181 (72)	0.01	7,000	Tm-170 (69)	0.01	4,000	Contaminated equipment, alpha	0.0001	20
Ho-166 (67)	0.01	100	Sn-113 (50)	0.01	10,000			
H-3 (1)	0.5	20,000	Sn-123 (50)	0.01	3,000	Packaged waste, alpha***	0.0001	20
I-125 (53)	0.5	10	Sn-126 (50)	0.01	1,000			
I-131 (53)	0.5	10	Ti-144 (22)	0.01	100			

* For combinations of radioactive materials, consideration of the need for an emergency plan is required if the sum of the ratios of the quantity of each radioactive material authorized to the quantity listed for that material in this paragraph exceeds one.

**Non-carbon dioxide forms only.

***Waste packaged in Type B containers does not require an emergency plan.

Figure: 30 TAC §336.351(b)

Nationally Tracked Sources Threshold

Radioactive Material	Category 1 (TBq)	Category 1 (Ci)	Category 2 (TBq)	Category 2 (Ci)
Actinium-227	20	540	0.2	5.4
Americium-241	60	1,600	0.6	16.0
Americium-241/Be	60	1,600	0.6	16.0
Californium-252	20	540	0.2	5.4
Cobalt-60	30	810	0.3	8.1
Curium-244	50	1,400	0.5	14.0
Cesium-137	100	2,700	1.0	27.0
Gadolinium-153	1,000	27,000	10.0	270.0
Iridium-192	80	2,200	0.8	22.0
Plutonium-238	60	1,600	0.6	16.0
Plutonium-239/Be	60	1,600	0.6	16.0
Polonium-210	60	1,600	0.6	16.0
Promethium-147	40,000	1,100,000	400.0	11,000.0
Radium-226	40	1,100	0.4	11.0
Selenium-75	200	5,400	2.0	54.0
Strontium-90	1,000	27,000	10.0	270.0
Thorium-228	20	540	0.2	5.4
Thorium-229	20	540	0.2	5.4
Thulium-170	20,000	540,000	200.0	5,400.0
Ytterbium-169	300	8,100	3.0	81.0

TBq - Terabecquerel
Ci - Curie

Figure: 30 TAC §336.357(11)(D)

Radionuclides of Concern

Radionuclide	Quantity of Concern[1] (TBq)	Quantity of Concern[2] (Ci)
Am-241	0.6	16
Am-241/Be	0.6	16
Cf-252	0.2	5.4
Cm-244	0.5	14
Co-60	0.3	8.1
Cs-137	1	27
Gd-153	10	270
Ir-192	0.8	22
Pm-147	400	11,000
Pu-238	0.6	16
Pu-239/Be	0.6	16
Ra-226	0.4	11
Se-75	2	54
Sr-90 (Y-90)	10	270
Tm-170	200	5,400
Yb-169	3	81
Combinations of radioactive materials listed above[3]	See footnote below[4]	

[1]The aggregate activity of multiple, collocated sources of the same radionuclide should be included when the total activity equals or exceeds the quantity of concern.

[2]The primary values used for compliance with this Order are terabecquerel (TBq). The curie (Ci) values are rounded to two significant figures for informational purposes only.

[3]Radioactive materials are to be considered aggregated or collocated if breaching a common physical security barrier (e.g., a locked door at the entrance to a storage room) would allow access to the radioactive material or devices containing the radioactive material. When transporting or storing sources on vehicles and/or trailers, the sources are automatically considered collocated.

[4]If several radionuclides are aggregated, the sum of the ratios of the activity of each source, i of radionuclide, n, A(i,n), to the quantity of concern for radionuclide n, Q(n), listed for that radionuclide equals or exceeds one. ((aggregated source activity for radionuclide A) /(quantity of concern for radionuclide A)) + ((aggregated source activity for radionuclide B) /(quantity of conoern for radionuclide B)) + etc...>1

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas State Affordable Housing Corporation

Notice of Request for Proposals

Notice is hereby given of a Request for Proposals (RFP) by Texas State Affordable Housing Corporation (TSAHC) to Certified Public Accounting firms that can provide financial audit, tax and consulting services for the Corporation. Firms interested in providing services must submit all of the materials listed in the RFP which can be found on the Corporation's website at www.tsahc.org.

The deadline for submitting a response to this RFP is Friday, August 19, 2011. No proposal will be accepted after 3:00 p.m. on that date. Faxed responses will not be accepted. For questions or comments, please contact Melinda Smith at (512) 423-2412 or by email at msmith@tsahc.org.

TRD-201102832
David Long
President
Texas State Affordable Housing Corporation
Filed: July 27, 2011

Texas Department of Agriculture

Request for Proposals: Texans Feeding Texans; Surplus Agricultural Products Grant Program

Statement of Purpose.

Pursuant to the Texas Agriculture Code Chapter 21, the Texas Department of Agriculture (TDA) hereby requests proposals for projects, for the period October 1, 2011 through September 30, 2013, that collect and distribute surplus Texas agricultural products to food banks and other charitable organizations that serve needy or low-income individuals. For purposes of this request for proposals, the term "Texas agricultural product" means an agricultural, apicultural, horticultural, or vegetable food product, either in its natural or processed state, that has been produced, processed, or otherwise had value added to the product in this state, including: (1) fish or other aquatic species; (2) livestock, a livestock product, or a livestock by-product; (3) poultry, a poultry product, or a poultry by-product; and (4) wildlife processed for food or by-products. In addition to agricultural products grown in excess of a producer's needs, the term "surplus" includes any products not meeting that definition that are made available by a producer for distribution to food banks and other charitable organizations that serve the needy or low-income individuals.

Eligibility.

Grant proposals will be accepted from non-profit organizations that have a 501(c)(3) IRS designation. These organizations must be established and operate under religious, charitable or educational purposes and not financial gain. Additionally, these organizations must not distribute any of their income to their members, directors or officers. Organizations must have at least five (5) years of experience coordinating a statewide network of food banks and charitable organizations that serve each of the 254 counties in this state.

Funding Parameters.

Awards are subject to the availability of funds. If no funds are appropriated or collected for this purpose, applicants will be informed accordingly.

TDA reserves the right to fund projects partially or fully. Where more than one proposal is acceptable for funding, TDA may request cooperation between grantees or revision/adjustment to a proposal in order to avoid duplication and to realize the maximum benefit to the state.

Budget Information.

Awarded projects are paid on a cost reimbursement basis.

Proposals are limited to $1,620,000 per year for the two-year period. Funding is limited to the operation of a program that coordinates the collection and transportation of surplus Texas agricultural products to a statewide network of food banks that provide food to the needy or low-income individuals.

1. Eligible Expenses. Generally, expenses that are necessary and reasonable for proper and efficient performance and administration of a project are eligible. Expenses must be properly documented with sufficient backup detail, including copies of invoices. Examples of eligible expenditures are:

a. Personnel costs - both salary and benefits;

b. Travel - domestic;

c. Travel - foreign. Foreign travel may be paid on a case-by-case basis. To be eligible for reimbursement, foreign travel must be approved in writing and in advance by TDA;

d. Materials and direct operating expenses - costs incurred for materials, supplies, and general operating expenses necessary to carry out an award are allowable;

e. Equipment - nonexpendable, tangible personal property having a useful life of more than one (1) year;

f. Other expenses - any expenses that do not fall into the above categories;

g. Contracts - agreements made with universities or private parties to perform a portion of the award; and

h. Indirect costs - TDA limits reimbursable indirect expenses to 10% of the grant award. In order to receive indirect costs, applicants must submit a copy of the indirect cost plan prior to receiving reimbursement.

2. Ineligible Expenses. Expenses that are prohibited by state or federal law are ineligible. Examples of these expenditures are:

a. Alcoholic beverages;

b. Entertainment;

c. Contributions, charitable or political;

d. Expenses falling outside of the contract period;

e. Expenses for expenditures not specifically listed in the project budget;

f. Expenses that are not adequately documented; and

g. Capital Expenditures for general-purpose equipment.

Submission Requirements.

Each proposal narrative may not exceed six (6) pages (not including supporting documents). The acceptable font size is 12 point, and all margins must be 1 inch.

Proposals must submitted on Form ER-160 and include all of the following information:

1. **Cover sheet (Form ER-160)** with project title, name, title, address, telephone and fax numbers, and email address of the individual designated as the point of contact.

2. **Identification of the key personnel** to be involved in the project, including information on their experience.

3. **Project Title:**Title must be brief, descriptive and capture the primary focus of the project.

4. **Project Summary:** Include a project summary of 200 words or less. The project summary must contain a brief description of the proposed project suitable for sharing with the public.

5. **Potential Impact:** Who are the beneficiaries of the project? How many beneficiaries will be impacted? How will the beneficiaries be impacted by the project?

6. **Expected Measurable Outcomes:** Describe what is to be accomplished, the expected results, and indicate how you will measure the impact and/or success of project activities, either quantitatively or qualitatively. You may provide more than one goal. Provide specific information about the measurement of project's impact (evaluation). Describe how the project will be evaluated, including methods to determine the success of the project.

Goal:

Benchmark (Baseline):

Target:

Performance Measure:

7. **Work plan:** A description of how the collection and distribution of surplus agriculture products will be performed to accomplish the objectives of the project. Be specific about what will be done. Make sure a correlation between each activity and its purpose in meeting the goal(s) of the project is clear.

8. **Project budget:** Provide a detailed budget clearly showing expenditures and include justification for proposed line item expenditures.

Evaluation of Information.

Information submitted to TDA will be evaluated based on the following criteria:

1. **Relevance and Effectiveness:** Do the objectives and goals match the needs or problems that are being addressed? How will success of the project be measured?

2. **Feasibility and Efficiency:** Is the proposed approach practical; has it been tried elsewhere? Are the objectives clear? Are the budget and timeframe realistic?

3. **Impact: What will happen as a result of the project?** How will it make a difference in the industry?

Reporting Requirements.

Upon award, the following reports will be required: *Quarterly Performance Reports* must be completed by the grantee and submitted to TDA by deadlines stated in the grant agreement. These reports shall be in a narrative format from one (1) to three (3) pages in length and detail the accomplishments of the project objectives.

The Quarterly Performance report should include:

Activities performed;

Problems and delays; and

Future project plans.

The *Final Performance Report* is due sixty (60) days after the expiration or termination of the Grant Agreement, whichever occurs first.

The Final Report should include:

Project summary: Provide a background for the initial purpose of the project;

Project approach;

Goals and outcomes achieved;

Beneficiaries: Provide a description of the groups and other operations that benefited from the completion of this project's accomplishments; and

Lessons learned.

General Compliance Information.

1. All grant awards are subject to the availability of appropriations and authorizations by the Texas Legislature.

2. Any delegation by the Grantee to a subcontractor regarding any duties and responsibilities imposed by the grant award shall be approved in advance by TDA and shall not relieve the Grantee of its responsibilities to TDA for their performance.

3. Any information or documentation submitted to TDA is subject to disclosure under the Texas Public Information Act.

4. Awarded grant projects must remain in full compliance or be subject to termination at the discretion of TDA.

5. Grant recipients must keep a separate bookkeeping account with a complete record of all expenditures relating to the research project. Records shall be maintained for three years after the completion of the project or as otherwise agreed upon with TDA. TDA and the Texas State Auditor's Office reserve the right to examine all books, documents, records, and accounts relating to the project at any time throughout the duration of the agreement and for three years immediately following completion of the project. If there has been any litigation, claim, negotiation, audit or other action started prior to the expiration of the three-year period involving the records, then the records must be retained until the completion of the action and resolution of all issues which arise from it, or until the end of the regular three-year period, whichever is later. TDA and the Texas State Auditor's Office reserve the right to inspect the research locations and to obtain from the research team full information regarding all project activities.

6. If the Grantee has a financial audit performed in any year during which Grantee receives funds from TDA, and if TDA requests information about the audit, the Grantee shall provide such information to TDA or provide information as to where the audit report can be publicly viewed, including the audit transmittal letter, management letter, and any schedules in which the Grantee's funds are included.

7. Grant awards to Texas institutions shall comply in all respects with the Uniform Grant Management Standards (UGMS). A copy may be downloaded from the following website: www.governor.state.tx.us/divisions/stategrants/guidelines/files/U GMS012001.doc

Deadline for Submission of Responses.

Applications must be postmarked (if mailed) by **Friday, August 19, 2011.** If applications are submitted via other methods outlined below, they must be received by TDA **no later than 5:00 p.m.** on August 19, 2011.

Submission: Proposals may be mailed, faxed or scanned and emailed. TDA will send an acknowledgement receipt by email indicating the response was received.

Mailing Address: Texas Department of Agriculture, External Relations Division, P.O. Box 12847, Austin, Texas 78711.

Physical Address for overnight delivery: Texas Department of Agriculture, External Relations Division, 1700 North Congress Ave, 11th floor, Austin, Texas 78701.

Fax: (888) 223-9048

Email: Grants@TexasAgriculture.gov.

Assistance and Questions.

For questions regarding submission of the proposal and TDA documentation requirements, please contact Ms. Mindy Fryer, Grants Specialist, at (512) 463-6908 or by email at Grants@TexasAgriculture.gov.

Texas Public Information Act.

Once submitted, all proposals shall be deemed to be the property of the TDA and are subject to the Texas Public Information Act, Texas Government Code, Chapter 552.

TRD-201102830
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Filed: July 27, 2011

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Camino Real Regional Mobility Authority

Notice of Availability of Request for Qualifications for Auditing Services

The Camino Real Regional Mobility Authority ("CRRMA"), a political subdivision, is soliciting responses from interested and qualified certified professional accounting firms to a Request for Qualifications for Professional Auditing Services (RFQ). The selected firm(s), if any, shall be responsible for completing the annual audit requirements of the CRRMA, a regional mobility authority operating in El Paso, Texas. Each proposing entity will be evaluated based on the criteria and process set forth in the RFQ.

The RFQ is available now and copies may be obtained from the CRRMA website at www.crrma.org, or by contacting the CRRMA offices at (915) 541-4986. Periodic updates, addenda, and/or clarifications will be posted on the CRRMA website and interested parties are responsible for monitoring the website accordingly.

Questions concerning this RFQ may be submitted via e-mail to Raymond L. Telles, Executive Director at tellesrl@crrma.org. All questions must be received by 3:00 p.m. M.S.T. on August 11, 2011. Final responses to the RFQ must be received in the offices of the CRRMA by or before 3:00 p.m. M.S.T. on September 1, 2011, to be eligible for consideration.

TRD-201102831
Raymond L. Telles
Executive Director
Camino Real Regional Mobility Authority
Filed: July 27, 2011

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Comptroller of Public Accounts

Certification of the Average Taxable Price of Gas and Oil - June 2011

The Comptroller of Public Accounts, administering agency for the collection of the Crude Oil Production Tax, has determined that the average taxable price of crude oil for reporting period June 2011, as required by Tax Code, §202.058, is $81.96 per barrel for the three-month period beginning on March 1, 2011, and ending May 31, 2011. Therefore, pursuant to Tax Code, §202.058, crude oil produced during the month of June 2011, from a qualified Low-Producing Oil Lease, is not eligible for exemption from the crude oil production tax imposed by Tax Code, Chapter 202.

The Comptroller of Public Accounts, administering agency for the collection of the Natural Gas Production Tax, has determined that the average taxable price of gas for reporting period June 2011, as required by Tax Code, §201.059, is $3.23 per mcf for the three-month period beginning on March 1, 2011, and ending May 31, 2011. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of June 2011, from a qualified Low-Producing Well, is eligible for 25% credit on the natural gas production tax imposed by Tax Code, Chapter 201.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of West Texas Intermediate crude oil for the month of June 2011, is $96.29 per barrel. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall not exclude total revenue received from oil produced during the month of June 2011, from a qualified low-producing oil well.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of gas for the month of June 2011, is $4.52 per MMBtu. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall exclude total revenue received from gas produced during the month of June 2011, from a qualified low-producing gas well.

Inquiries should be directed to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

TRD-201102797
Ashley Harden
General Counsel
Comptroller of Public Accounts
Filed: July 25, 2011

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Notice of Availability of Grant Funds and Request for Applications

The Comptroller of Public Accounts (Comptroller) and the State Energy Conservation Office (SECO) establishes the Cool Schools grant program to provide grants to eligible independent school districts in the state to fund heating, ventilation and air conditioning (HVAC) projects. Eligible projects include: New Direct Expansion (DX) Air Conditioning Systems; New Chilled Water Systems; New Evaporative Coolers; New Heating Hot Water Systems for Air Pre-heating; and Energy Efficiency Improvements to new or existing HVAC systems. The new pro-

gram is a component of the Texas State Energy Plan (SEP) administered by SECO and is funded through the American Recovery and Reinvestment Act of 2009 (ARRA). By this Notice of Grant Funds Availability (Notice) and Request for Applications (RFA) No. CS-AG1-2011, SECO invites eligible independent school districts to submit applications for grants of between $100,000 up to $2,000,000 to be used to fund eligible projects.

Authority: This Notice and RFA is issued pursuant to the American Recovery and Reinvestment Act of 2009, Public Law, PL-111-5 (ARRA or Act); 42 United States Code §§6321, et seq, 10 Code of Federal Regulations (CFR) Parts 420 and 600; Chapters 403, 447 and 2305, Texas Government Code; and related legal authority and regulations. The Comptroller reserves the right to restrict one grant per eligible applicant under the terms of this notice and RFA.

Eligibility: Applicants eligible to receive a grant under this Notice will be eligible independent school districts in Texas. The project must be one of the eligible projects listed above and only labor and materials directly related to the proper installation of eligible projects may be funded. Funds may not be used for new construction or for supplanting new facility construction costs or projects.

Evaluation Process: Prior to the receipt of applications, the Comptroller shall establish an Evaluation Committee. The Evaluation Committee shall include employees of the Comptroller and may include other impartial individuals who are non-Comptroller employees. All eligible applications will be reviewed for responsiveness, compliance and thoroughness. Copies of those applications found to be responsive and to be in compliance will be provided to the members of the Evaluation Committee for their independent review and evaluation according to the criteria identified in this Notice. At the discretion of the Committee and prior to the submission of the recommendation to the Comptroller, the Committee may independently verify the project or may require an applicant to make a formal presentation to the Committee. The Comptroller has the discretion to make the final selection or award, if any, or to withdraw this RFA. The Comptroller is not obligated to make any award of any grant funding under this RFA or this notice. Additionally, the Comptroller shall have no liability whatsoever for costs or expenses incurred by any entity in responding to this RFA or this notice.

Selection Criteria: Only those applications that meet minimum qualifications and all eligibility requirements shall be evaluated and scored. The applications will be evaluated according to the following criteria and designated weights:

Criterion 1: Age of Existing Equipment - 15 possible points;

Criterion 2: Estimated energy savings compared to baseline energy consumption resulting from new energy efficient equipment installation - 15 possible points;

Criterion 3: Estimated additional energy savings compared to baseline energy consumption resulting from energy efficiency improvements - 10 possible points;

Criterion 4: Speed of Implementation and Project Readiness - 15 possible points;

Criterion 5: Estimated payback for the overall project - 15 possible points

Criterion 6: Average Daily Attendance (ADA) - 10 possible points;

Criterion 7: County Population - 10 possible points; and

Criterion 8: ISD Property Wealth per Average Daily Attendance (ADA) for 2010 - 10 possible points.

Total points for all criteria equal 100 possible points.

Issuing Office and Contact Information: Parties interested in submitting an application or with questions should contact William Clay Harris, Assistant General Counsel, Comptroller of Public Accounts, at: 111 E. 17th St., Room 201, Austin, Texas 78774, (512) 305-8673. The foregoing is the Issuing Office and address for purposes of this Notice. A copy of the application, instructions, and a sample grant agreement will be made available at http://www.seco.cpa.state.tx.us/arra or through the Comptroller's stimulus website at http://www.secostimulus.org on or about August 5, 2011, after 10:00 a.m. Central Standard Time (CT). Comptroller may also make this notice available on the Electronic State Business Daily (ESBD) at the following website address: http://esbd.cpa.state.tx.us

Non-Mandatory Letters of Intent and Questions Deadline: All Non-Mandatory Letters of Intent to submit an application and questions or inquiries pertaining to this RFA must be submitted in writing to the attention of Mr. Harris in the Issuing Office on or before 2:00 p.m. CT on Wednesday, August 17, 2011, in order to be considered. On or about Monday, August 22, 2011, or as soon thereafter as practical, Comptroller will publish the official responses to questions received by the deadline on the ESBD website at: http://esbd.cpa.state.tx.us and on the Comptroller's stimulus website at http://www.secostimulus.org. Late questions and letters of intent will not be considered under any circumstances. Applicants shall be solely responsible for verifying the timely receipt of questions and letters in the Issuing Office.

Application Closing Date: All applications must be delivered in the Issuing Office to the attention of Mr. Harris no later than 2:00 p.m. CT, on Thursday, September 1, 2011. Late applications will not be considered under any circumstances. Applicants shall be solely responsible for verifying the timely receipt of Applications in the Issuing Office. The Comptroller will not accept applications submitted via e-mail or facsimile transmission. The Comptroller anticipates that grant awards, if any, may be made on or about September 30, 2011, or as soon thereafter as practical.

Summary Schedule of Events: Issuance of Request for Applications - August 5, 2011, 2:00 p.m. CT; Deadline for Non-Mandatory Letters of Intent and Questions - August 17, 2011, 2:00 p.m. CT; Official Questions and Answers Posted - August 22, 2011, or as soon thereafter as practical; Deadline for Submission of Applications - September 1, 2011, 2:00 p.m. CT; Execution of Grant Agreements - October 31, 2011, or as soon thereafter as practical; Commencement of Project Activities - as soon thereafter as practical.

TRD-201102824
William Clay Harris
General Counsel, Contracts
Comptroller of Public Accounts
Filed: July 27, 2011

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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, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 08/01/11 - 08/07/11 is 18% for Consumer[1]/Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 08/01/11 - 08/07/11 is 18% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

TRD-201102822
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: July 26, 2011

Texas Education Agency

Request for Applications Concerning College or University Open-Enrollment Charter Guidelines and Application

Eligible Applicants. The Texas Education Agency (TEA) on behalf of the State Board of Education (SBOE) is requesting applications under Request for Applications (RFA) #701-11-109 from eligible entities to operate open-enrollment charter schools. Eligible entities are limited to Texas public colleges or universities and Texas public junior colleges.

Description. The purpose of an open-enrollment charter is to provide an alternative avenue for restructuring schools. An open-enrollment charter school offers flexibility and choice for educators, parents, and students. A college, university, or junior college open-enrollment charter school may operate on a campus of the college, university, or junior college or in the same county in which the college, university, or junior college is located.

An open-enrollment charter school will provide instruction to students at one or more elementary or secondary grade levels as provided by the charter. A charter school must be non-sectarian in its programs, admissions, policies, employment practices, and all other operations and may not be affiliated with a sectarian school or religious institution. It is governed under the specifications of the charter and retains authority to operate for the term of the charter contingent on satisfactory student performance as defined by the state accountability system. An open-enrollment charter school does not have the authority to impose taxes.

An open-enrollment charter school is subject to federal laws and certain state laws governing public schools, including laws and rules relating to a criminal offense, requirements relating to the Public Education Information Management System, criminal history records, high school graduation, special education programs, bilingual education, prekindergarten programs, extracurricular activities, health and safety provisions, and public school accountability. As stated in the Texas Education Code (TEC), §12.156, in matters related to operation of an open-enrollment charter school, an open-enrollment charter school is immune from liability to the same extent as a school district, and its employees and volunteers are immune from liability to the same extent as school district employees and volunteers. A member of the governing body of an open-enrollment charter school or of a charter holder is immune from liability to the same extent as a school district trustee. An employee of an open-enrollment charter school who qualifies for membership in the Teacher Retirement System of Texas shall be covered under the system to the same extent a qualified employee of a school district is covered.

Dates of Project. Completed applications can be received by the TEA Document Control Center at 1701 North Congress Avenue, Austin, Texas 78701-1494, Room 6-108, at any time.

Project Amount. The TEC, §12.106, as amended by Senate Bill 1, 82nd Texas Legislature, First Called Session, 2011, to be effective September 1, 2011, states that: (a) A charter holder is entitled to receive for the open-enrollment charter school funding under the TEC, Chapter 42, equal to the greater of (1) the percentage specified by the TEC, §42.2516(i), multiplied by the amount of funding per student in weighted average daily attendance, excluding enrichment funding under the TEC, §42.302(a-1)(2) and (3), as they existed on January 1, 2009, that would have been received for the school during the 2009-2010 school year under the TEC, Chapter 42, as it existed on January 1, 2009, and an additional amount of the percentage specified by the TEC, §42.2516(i), multiplied by $120 for each student in weighted average daily attendance; or (2) the amount of funding per student in weighted average daily attendance, excluding enrichment funding under the TEC, §42.302(a), to which the charter holder would be entitled for the school under the TEC, Chapter 42, if the school were a school district without a tier one local share for purposes of the TEC, §42.253, and without any local revenue for purposes of the TEC, §42.2516. (a-1) In determining funding for an open-enrollment charter school under subsection (a), adjustments under the TEC, §§42.102, 42.103, 42.104, and 42.105, are based on the average adjustment for the state. (a-2) In addition to the funding provided by subsection (a), a charter holder is entitled to receive for the open-enrollment charter school enrichment funding under the TEC, §42.302, based on the state average tax effort. (a-3) In determining funding for an open-enrollment charter school under subsection (a), the commissioner shall apply the regular program adjustment factor provided under the TEC, §42.101, to calculate the regular program allotment to which a charter school is entitled. (a-4) Subsection (a-3) and this subsection expire September 1, 2015.

The TEC, §12.106, as amended by Senate Bill 1, 82nd Texas Legislature, First Called Session, 2011, to be effective September 1, 2017, states that: (a) A charter holder is entitled to receive for the open-enrollment charter school funding under the TEC, Chapter 42, equal to the amount of funding per student in weighted average daily attendance, excluding enrichment funding under the TEC, §42.302(a), to which the charter holder would be entitled for the school under the TEC, Chapter 42, if the school were a school district without a tier one local share for purposes of the TEC, §42.253.

The TEC, §12.106(b), states that an open-enrollment charter school is entitled to funds that are available to school districts from the TEA or the commissioner of education in the form of grants or other discretionary funding unless the statute authorizing the funding explicitly provides that open-enrollment charter schools are not entitled to the funding An open-enrollment charter school may not charge tuition and must admit students based on a lottery if more students apply for admission than can be accommodated. An open-enrollment charter school must prohibit discrimination in admission policy on the basis of sex; national origin; ethnicity; religion; disability; academic, artistic, or athletic ability; or the district the child would otherwise attend. However, a charter school that specializes in the performing arts may require a student to demonstrate artistic ability and may require an applicant to audition. The charter may provide for the exclusion of a student who has a documented history of a criminal offense, a juvenile court adjudication, or a discipline problem under the TEC, Chapter 37, Subchapter A.

Selection Criteria. A complete description of selection criteria is included in the RFA.

The SBOE may approve open-enrollment charter schools as provided in the TEC, §12.101 and §12.152. There is a cap of 215 charters approved under the TEC, §12.101, and no cap on the number of charters approved under the TEC, §12.152.

The SBOE will consider Statements of Impact from any school district whose enrollment is likely to be affected by the open-enrollment charter school.

Requesting the Application. An application must be submitted under SBOE guidelines to be considered. A complete copy of the publication *College or University Open-Enrollment Charter*

Guidelines and Application (RFA #701-11-109), which includes an application and procedures, may be obtained on the TEA website at http://www.tea.state.tx.us/index2.aspx?id=3476.

Further Information. For clarifying information about the college or university open-enrollment charter school application, contact Mary Perry, Division of Charter School Administration, Texas Education Agency, at (512) 463-9575 or mary.perry@tea.state.tx.us.

TRD-201102826
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: July 27, 2011

Request for Applications Concerning Open-Enrollment Charter Guidelines and Application

Eligible Applicants. The Texas Education Agency (TEA) on behalf of the State Board of Education (SBOE) is requesting applications under Request for Applications (RFA) #701-11-108 from eligible entities to operate open-enrollment charter schools. Eligible entities include public institutions of higher education, private or independent institutions of higher education, organizations exempt from taxation under the Internal Revenue Code of 1986 (26 United States Code, §501(c)(3)), or governmental entities. At least one member of the governing board of the group requesting the charter must attend one required applicant conference. Conferences are scheduled for Thursday, October 6, 2011, and Thursday, December 8, 2011, in Room 1-111, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701-1494. Failure to attend one of the conferences will disqualify an applicant from submitting an application for an open-enrollment charter.

Description. The purpose of an open-enrollment charter is to provide an alternative avenue for restructuring schools. An open-enrollment charter school offers flexibility and choice for educators, parents, and students. An approved open-enrollment charter school may be located in a facility of a commercial or nonprofit entity or in a school district facility. If the open-enrollment charter school is to be located in a school district facility, it must be operated under the terms established by the board of trustees or governing body of the school district in an agreement governing the relationship between the charter school and the district.

An open-enrollment charter school will provide instruction to students at one or more elementary or secondary grade levels as provided by the charter. An open-enrollment charter school must be non-sectarian in its programs, admissions, policies, employment practices, and all other operations, and may not be affiliated with a sectarian school or religious institution. It is governed under the specifications of the charter and retains authority to operate for the term of the charter contingent on satisfactory student performance as defined by the state accountability system. An open-enrollment charter school does not have the authority to impose taxes.

An open-enrollment charter school is subject to federal laws and certain state laws governing public schools, including laws and rules relating to a criminal offense, requirements relating to the Public Education Information Management System, criminal history records, high school graduation, special education programs, bilingual education, prekindergarten programs, extracurricular activities, health and safety provisions, and public school accountability. As stated in the Texas Education Code (TEC) §12.156, in matters related to operation of an open-enrollment charter school, an open-enrollment charter school is immune from liability to the same extent as a school district, and its employees and volunteers are immune from liability to the same extent as school district employees and volunteers. A member of the governing body of an open-enrollment charter school or of a charter holder is immune from liability to the same extent as a school district trustee. An employee of an open-enrollment charter school who qualifies for membership in the Teacher Retirement System of Texas shall be covered under the system to the same extent a qualified employee of a school district is covered.

Dates of Project. The completed application must be received by the TEA Document Control Center, Room 6-108, 1701 North Congress Avenue, Austin, Texas 78701-1494, on or before 5:00 p.m. (Central Time), Thursday, February 23, 2012, to be eligible for review.

Project Amount. The TEC §12.106, as amended by Senate Bill 1, 82nd Texas Legislature, First Called Session, 2011, to be effective September 1, 2011, states that: (a) A charter holder is entitled to receive for the open-enrollment charter school funding under the TEC Chapter 42, equal to the greater of (1) the percentage specified by the TEC §42.2516(i) multiplied by the amount of funding per student in weighted average daily attendance, excluding enrichment funding under the TEC §42.302(a-1)(2) and (3), as they existed on January 1, 2009, that would have been received for the school during the 2009-2010 school year under the TEC Chapter 42, as it existed on January 1, 2009, and an additional amount of the percentage specified by the TEC §42.2516(i), multiplied by $120 for each student in weighted average daily attendance; or (2) the amount of funding per student in weighted average daily attendance, excluding enrichment funding under the TEC §42.302(a), to which the charter holder would be entitled for the school under the TEC Chapter 42, if the school were a school district without a tier one local share for purposes of the TEC §42.253, and without any local revenue for purposes of the TEC §42.2516. (a-1) In determining funding for an open-enrollment charter school under subsection (a), adjustments under the TEC §§42.102, 42.103, 42.104, and 42.105, are based on the average adjustment for the state. (a-2) In addition to the funding provided by subsection (a), a charter holder is entitled to receive for the open-enrollment charter school enrichment funding under the TEC §42.302, based on the state average tax effort. (a-3) In determining funding for an open-enrollment charter school under subsection (a), the commissioner shall apply the regular program adjustment factor provided under the TEC §42.101, to calculate the regular program allotment to which a charter school is entitled. (a-4) Subsection (a-3) and this subsection expire September 1, 2015.

The TEC §12.106(a), as amended by Senate Bill 1, 82nd Texas Legislature, First Called Session, 2011, to be effective September 1, 2017, states that: (a) A charter holder is entitled to receive for the open-enrollment charter school funding under Chapter 42 equal to the amount of funding per student in weighted average daily attendance, excluding enrichment funding under the TEC §42.302(a), to which the charter holder would be entitled for the school under the TEC Chapter 42, if the school were a school district without a tier one local share for purposes of the TEC §42.253.

The TEC §12.106(b), states that an open-enrollment charter school is entitled to funds that are available to school districts from the TEA or the commissioner of education in the form of grants or other discretionary funding unless the statute authorizing the funding explicitly provides that open-enrollment charter schools are not entitled to the funding. An open-enrollment charter school may not charge tuition and must admit students based on a lottery if more students apply for admission than can be accommodated. An open-enrollment charter school must prohibit discrimination in admission policy on the basis of sex; national origin; ethnicity; religion; disability; academic, artistic, or athletic ability; or the district the child would otherwise attend. However, a charter school that specializes in the performing arts may require a student to demonstrate artistic ability and may require an ap-

plicant to audition. The charter may provide for the exclusion of a student who has a documented history of a criminal offense, juvenile court adjudication, or a discipline problem under the TEC Chapter 37, Subchapter A.

Selection Criteria. A complete description of selection criteria is included in the RFA.

The SBOE may approve open-enrollment charter schools as provided in the TEC §12.101 and §12.152. There are currently 203 charters approved under the TEC §12.101, and 3 charters approved under the TEC §12.152. There is a cap of 215 charters approved under the TEC §12.101, and no cap on the number of charters approved under the TEC §12.152. The SBOE is scheduled to consider awards under RFA #701-11-108 in September 2012.

The SBOE may approve applicants to ensure representation of urban, suburban, and rural communities; various instructional settings; innovative programs; diverse student populations and geographic regions; and various eligible entities. The SBOE will consider Statements of Impact from any school district whose enrollment is likely to be affected by the open-enrollment charter school. The SBOE may also consider the history of the sponsoring entity and the credentials and background of its board members.

Requesting the Application. An application must be submitted under SBOE guidelines to be considered. A complete copy of the publication *Open-Enrollment Charter Guidelines and Application* (RFA #701-11-108), which includes an application and procedures, may be obtained on the TEA website at http://www.tea.state.tx.us/charterapp.aspx.

Further Information. For clarifying information about the open-enrollment charter school application, contact Mary Perry, Division of Charter School Administration, Texas Education Agency, at (512) 463-9575 or mary.perry@tea.state.tx.us.

TRD-201102825
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: July 27, 2011

Education Service Center, Region 14

Request for Applications for the Texas Healthy Habitats Grant Program

Eligible Applicants. Service Learning Texas, a statewide initiative of Region 14 Education Service Center (ESC) in collaboration with the Texas Education Agency, is requesting applications from public schools, private nonprofit schools, and open enrollment charter schools that serve youth in grades 5-12; 501(c)(3) nonprofit organizations that work with students in grades 5-12; and state or local agencies that work with youth in grades 5-12. Applicants must involve youth in grades 5-12 and must collaborate with community partners who can assist students and teachers by providing expertise and resources to meet identified needs and objectives. Applicants are required to work with staff of the Texas Parks and Wildlife Department in the grant design and with other agencies and organizations that are already working to address the issues identified in the application.

Description. The Texas Healthy Habitats grant program is a collaborative effort of Encana Oil and Gas (USA), the Texas Parks and Wildlife Department, and Service Learning Texas. The grant is designed to involve youth in grades 5-12 in efforts to improve and/or restore the natural habitat of Texas by addressing one or more of the goals of the Texas Conservation Action Plan, which supports the state's conservation priorities to (1) work in cooperation with private landowners and the general public to restore biodiversity of plants, fish and wildlife; (2) prevent species from becoming threatened or endangered; (3) develop and implement strategies to prevent the introduction and spread of invasive species; (4) educate citizens on the importance of riparian zones, habitat connectivity, wildlife corridors and other sensitive habitats; (5) promote watershed and range management practices that improve ground and surface water quality and quantity; (6) educate private landowners on the economic benefits of conservation; and (7) promote citizen participation in hands-on conservation. Proposed activities should also contribute to improving and/or restoring the larger scale habitat of the applicant's area or region.

Funding Guidelines. Activities funded through this grant must help young people in fifth grade, middle school, or high school research needs, develop and implement a plan, and take action to improve and/or restore the natural environment. Research shows that effective service-learning programs require sufficient duration and intensity to have an impact on participants. Therefore, this grant will support ongoing activities that are concentrated in blocks of time across a period of several weeks or months and which could be sustained in the future without grant funds. Funds may be used for substitutes, teacher stipends, supplies and materials, equipment, transportation, attendance at state conferences related to service-learning or to improving or restoring the natural environment, promotion and publicity, and other costs directly related to the grant activities.

Student actions may and often do evolve over time in response to varying needs of community partners, feasibility of the ideas proposed, and student interests. Such changes are allowable, along with corresponding changes in proposed expenditures, as long as the awardee continues to use service-learning to engage students in improving and restoring the natural environment and continues to adhere to the funding guidelines.

Dates of Project. All services and activities related to this proposal will be conducted within specified dates. The starting date will be no earlier than October 10, 2011, with an ending date of June 30, 2012. Applicants may also request additional time to complete project activities, if necessary, through December 2012.

Project Amount. Grants will be awarded in amounts up to $10,000 for project activities. Grant expenditures will be reimbursed by Region 14 ESC following submission of quarterly expenditure reports.

Selection Criteria. Subgrantees will be selected on the basis of total points awarded through a competitive grant review process in which applications receiving 70% or higher of the total points will be considered for funding. Additional factors will be considered in recommending applicants for funding to ensure that projects meet the intent and purposes of the grant, are cost effective, and demonstrate greatest need. Previous recipients of Texas Healthy Habitats grants are eligible to apply for the 2011-2012 grant provided that they met their obligations under the 2010-2011 grant and will be able to expand on prior success with additional funding.

Region 14 ESC is not obligated to execute a resulting grant award, provide funds, or endorse any proposal submitted in response to this Request for Applications (RFA). This RFA does not commit Region 14 ESC to pay any costs incurred before a NOGA is executed. The issuance of this RFA does not obligate Region 14 ESC to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. A complete copy of the RFA may be obtained by downloading the application from the Service Learning Texas website at www.servicelearningtexas.org; by writing Service Learning Texas, 2499 S. Capital of Texas Hwy., Suite A-107, Austin, Texas 78746-7703; or by calling (512) 420-0214.

Technical Assistance. In designing a project, applicants are required to seek input from community partners with expertise in environmental issues specific to their ecoregion and/or riparian zone as discussed in the Texas Conservation Action Plan. This may include staff of Texas Parks and Wildlife Department (TPWD) or other individuals with expertise on local and regional environmental issues. Instructions on contacting TPWD staff is included in the application. For additional clarifying information about the RFA, contact Service Learning Texas at (512) 420-0214 or visit www.servicelearningtexas.org.

Deadline for Receipt of Applications. Applications must be received by Monday, September 26, 2011.

TRD-201102839
Ronnie Kincaid
Executive Director
Education Service Center, Region 14
Filed: July 27, 2011

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC) §7.075. TWC §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is September 5, 2011. TWC §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on September 5, 2011. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC §7.075 provides that comments on the AOs shall be submitted to the commission in **writing.**

(1) COMPANY: AMERICAN PIONEER INVESTMENTS, INCORPORATED; DOCKET NUMBER: 2011-0763-PWS-E; IDENTIFIER: RN101273993; LOCATION: Houston, Harris County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(c)(3)(A)(ii) and §290.122(c)(2)(B), by failing to collect a set of repeat distribution coliform samples within 24 hours of being notified of a total coliform-positive sample result for routine distribution coliform samples collected in July 2010 and by failing to provide public notice of the failure to collect repeat distribution samples in July 2010; 30 TAC §290.109(c)(2)(F) and §290.122(c)(2)(B), by failing to collect a minimum of five distribution coliform samples the month following a total coliform positive sample result during the months of August 2010 and February 2011 and by failing to provide public notice of the failure to conduct increased monitoring during the months of August 2010; 30 TAC §290.109(f)(3) and §209.122(b)(2)(A) and Texas Health and Safety Code (THSC) §341.031(a), by failing to comply with the Maximum Contaminant Level (MCL) for total coliform during the months of January and February 2011 and by failing to provide public notice for exceeding the MCL for total coliform for the month of January 2011; PENALTY: $2,124; ENFORCEMENT COORDINATOR: Amanda Henry, (713) 767-3672; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: Anjani C-Store Incorporated dba Minute Market; DOCKET NUMBER: 2011-0546-PST-E; IDENTIFIER: RN101888246; LOCATION: Freeport, Brazoria County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC §26.3475(c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); 30 TAC §334.42(i), by failing to inspect all sumps, manways, overspill containers or catchment basins associated with a UST system at least once every 60 days to assure that their sides, bottoms, and any penetration points are maintained liquid-tight, and free of liquid and debris; 30 TAC §334.10(b)(2) and §334.51(c)(2), by failing to maintain UST records and by failing to make them immediately available for inspection upon request by agency personnel; 30 TAC §334.45(c)(3)(A), by failing to install an emergency shutoff valve (also known as shear or impact valve) on each pressurized delivery or product line and to ensure that it is securely anchored at the base of the dispenser; 30 TAC §334.45(c)(1) and §115.242(2)(A) and (E) and THSC §382.085(b), by failing to meet the technical standards for the underground piping in a UST system; PENALTY: $6,680; ENFORCEMENT COORDINATOR: Cara Windle, (512) 239-2581; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: Brush Country Development Corporation; DOCKET NUMBER: 2011-0796-PWS-E; IDENTIFIER: RN106103765; LOCATION: Duval County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.42(b)(1), by failing to provide disinfection facilities for microbiological control and distribution protection; 30 TAC §290.39(e)(1), (3) and (h)(1) and THSC §341.035(c), by failing to submit engineering plans and specifications and receive written approval prior to beginning construction of a new public water supply system; 30 TAC §290.43(c)(3), by failing to provide an overflow on the facility's ground storage tank that is designed in strict accordance with American Water Works Association standards; 30 TAC §290.41(c)(3)(A), by failing to submit well completion data for review and approval prior to placing a public drinking water well into service; PENALTY: $488; ENFORCEMENT COORDINATOR: Katy Schumann, (512) 239-2602; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(4) COMPANY: Chevron Phillips Chemical Company LP; DOCKET NUMBER: 2011-0506-AIR-E; IDENTIFIER: RN100825249; LOCATION: Old Ocean, Brazoria County; TYPE OF FACILITY: petrochemical processing; RULE VIOLATED: 30 TAC §101.20(3) and §116.715(a), THSC §382.085(b), and Flexible Permit Numbers 22690 and PSDTX751M1, Special Conditions Number 1, by failing to comply with permitted emissions limits during an emissions event; 30 TAC §101.201(a)(1)(B) and THSC §382.085(b), by failing to submit an initial notification not later than 24 hours after the discovery of an emissions event that occurred on December 10, 2010; PENALTY:

$10,468; ENFORCEMENT COORDINATOR: Allison Fischer, (512) 239-2574; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(5) COMPANY: City of Gilmer; DOCKET NUMBER: 2011-0551-MWD-E; IDENTIFIER: RN101918761; LOCATION: Upshur County; TYPE OF FACILITY: wastewater treatment facility; RULE VIOLATED: TWC §26.121(a), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010457001, Effluent Limitations and Monitoring Requirements Numbers 1 and 6, by failing to comply with permitted effluent limits as documented during a record review conducted on March 15, 2011; PENALTY: $14,400; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(6) COMPANY: City of Killeen; DOCKET NUMBER: 2011-0634-WQ-E; IDENTIFIER: RN103174306; LOCATION: Killeen, Bell County; TYPE OF FACILITY: wastewater collection system; RULE VIOLATED: TWC §26.121(a)(1), by failing to prevent the unauthorized discharge of wastewater from a collection system into water in the state; PENALTY: $10,000; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(7) COMPANY: City of Murchison; DOCKET NUMBER: 2011-0908-MWD-E; IDENTIFIER: RN101720530; LOCATION: Murchison, Henderson County; TYPE OF FACILITY: wastewater treatment facility; RULE VIOLATED: TWC §26.121(a), 30 TAC §305.125(1), and TPDES Permit Number WQ0013972001, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, by failing to comply with the permitted effluent limits; 30 TAC §305.125(17) and §319.7(d) and TPDES Permit Number WQ0013972001, Monitoring and Reporting Requirements Number 1, by failing to timely submit discharge monitoring reports for the monitoring periods ending July 31, 2010 - October 31, 2010; 30 TAC §305.125(17) and TPDES Permit Number WQ0013972001, Sludge Provisions, by failing to submit the annual sludge report for the monitoring period ending July 31, 2010; PENALTY: $5,406; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(8) COMPANY: City of Stanton; DOCKET NUMBER: 2011-0752-PWS-E; IDENTIFIER: RN101392082; LOCATION: Stanton, Martin County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(4) and THSC §341.0315(c) and TCEQ AO Docket Number 2009-0259-PWS-E, Ordering Provision Numbers 2.a and 2.b, by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes based on the running annual average concentrations from the second quarter of 2009 through the fourth quarter of 2010; PENALTY: $895; ENFORCEMENT COORDINATOR: Katy Schumann, (512) 239-2602; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (432) 570-1359.

(9) COMPANY: CLARA HILLS CIVIC ASSOCIATION; DOCKET NUMBER: 2011-0696-PWS-E; IDENTIFIER: RN101208882; LOCATION: Burleson County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(4) and THSC §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes based on the running annual average; PENALTY: $422; ENFORCEMENT COORDINATOR: Amanda Henry, (713) 767-3672; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(10) COMPANY: COMPASS USA ENTERPRISES, INCORPORATED dba Sunrise Super Stop; DOCKET NUMBER: 2011-0675-PST-E; IDENTIFIER: RN102468303; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC §26.3475(c)(1), by failing to monitor underground storage tanks for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring); PENALTY: $2,425; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(11) COMPANY: Copperas Cove MHC, L.L.C.; DOCKET NUMBER: 2011-0694-PWS-E; IDENTIFIER: RN101186724; LOCATION: Coryell County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(f)(3) and §290.122(b)(2)(A) and THSC §341.031(a), by failing to comply with the maximum contaminant level for total coliform for the months of July - September and November 2010 and by failing to provide public notice of the exceedence for the month of November 2010; PENALTY: $1,732; Supplemental Environmental Project offset amount of $866 applied to Travis Audubon Society, Baker Sanctuary Fence Project Phase III; ENFORCEMENT COORDINATOR: Stephen Thompson, (512) 239-2558; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(12) COMPANY: CSE Spring Branch LLC; DOCKET NUMBER: 2011-0507-UTL-E; IDENTIFIER: RN102692332; LOCATION: Houston, Harris County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.39(o) and §291.162(a) and (j) and TWC §13.1395(b)(2), by failing to submit to the executive director for approval by the required deadline, an adoptable emergency preparedness plan that demonstrates the facility's ability to provide emergency operations; PENALTY: $333; ENFORCEMENT COORDINATOR: Michaelle Sherlock, (210) 403-4076; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(13) COMPANY: CSE The Village LLC; DOCKET NUMBER: 2011-0508-UTL-E; IDENTIFIER: RN101207439; LOCATION: Houston, Harris County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.39(o) and §291.162(a) and (j) and TWC §13.1395(b)(2), by failing to submit to the executive director for approval by the required deadline, an adoptable emergency preparedness plan that demonstrates the facility's ability to provide emergency operations; PENALTY: $321; ENFORCEMENT COORDINATOR: Michaelle Sherlock, (210) 403-4076; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(14) COMPANY: Donald Mayo Sr. dba Donald Mayo Texaco; DOCKET NUMBER: 2011-0553-PST-E; IDENTIFIER: RN101732576; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.241 and THSC §382.085(b), by failing to install an approved Stage II vapor recovery system on the stationary storage containers from which gasoline was being transferred into motor vehicle fuel tanks; PENALTY: $2,500; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(15) COMPANY: Firestone Polymers, LLC; DOCKET NUMBER: 2011-0655-AIR-E; IDENTIFIER: RN100224468; LOCATION: Orange, Orange County; TYPE OF FACILITY: rubber manufacturing; RULE VIOLATED: 30 TAC §116.715(a) and (c)(7), and §122.143(4), Flexible Permit Number 292 Special Conditions Number 1, Federal Operating Permit Number O-1271 Special Terms and Conditions Number 11, and THSC §382.085(b), by failing to prevent unautho-

rized emissions during an emissions event; PENALTY: $20,000; Supplemental Environmental Project offset amount of $10,000 applied to City of Orange Municipal Building Energy Efficiency Project; ENFORCEMENT COORDINATOR: James Nolan, (512) 239-6634; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(16) COMPANY: GULF COPPER AND MANUFACTURING CORPORATION; DOCKET NUMBER: 2011-0284-IWD-E; IDENTIFIER: RN100214840; LOCATION: Pelican Island, Galveston County; TYPE OF FACILITY: fabrication and repair for inland and offshore vessels; RULE VIOLATED: TPDES Permit Number WQ0000779000, Monitoring and Reporting Requirements Number 1 and 30 TAC §305.125(1) and §319.7(d), by failing to timely submit the monthly discharge monitoring reports by the 20th day of the following month; TPDES Permit Number WQ0000779000, Monitoring and Reporting Requirements Number 1 and 30 TAC §305.125(1) and §319.4, by failing to submit complete monitoring results at the intervals specified in the permit; TPDES Permit Number WQ0000779000, Effluent Limitations and Monitoring Requirements Numbers 1 and 4 for Outfalls 004 and 005; 30 TAC §305.125(1), and TWC §26.121(a), by failing to comply with permitted effluent limits; TPDES Permit Number WQ0000779000, Effluent Limitations and Monitoring Requirements Number 4 for Outfall 004, 30 TAC §305.125(1), and TWC §26.121(a), by failing to comply with permitted effluent limits; PENALTY: $12,276; ENFORCEMENT COORDINATOR: Jorge Ibarra, P.E., (817) 588-5890; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(17) COMPANY: H.K.R.G., Incorporated dba Cedar Park Quick Mart; DOCKET NUMBER: 2011-0734-PST-E; IDENTIFIER: RN102782612; LOCATION: Cedar Park, Williamson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $3,750; ENFORCEMENT COORDINATOR: Andrea Linson, (512) 239-1482; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(18) COMPANY: Hunt Oil Company; DOCKET NUMBER: 2011-0808-AIR-E; IDENTIFIER: RN106093883; LOCATION: Poth, Wilson County; TYPE OF FACILITY: oil and gas production; RULE VIOLATED: 30 TAC §116.110(a) and THSC §382.0518(a) and §382.085(b), by failing to obtain the necessary authorization required for continued operations; 30 TAC §111.111(a)(4)(A) and THSC §382.085(b), by failing to prevent visible emissions for more than five consecutive minutes during a two-hour period; PENALTY: $6,250; ENFORCEMENT COORDINATOR: John Muennink, (713) 422-8970; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(19) COMPANY: KAML INCORPORATED dba Mini Mart 110; DOCKET NUMBER: 2011-0827-PST-E; IDENTIFIER: RN102965001; LOCATION: Dickinson, Galveston County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and THSC §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months or upon major system replacement or modification, whichever occurs first; PENALTY: $2,247; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(20) COMPANY: KHOU-TV, Incorporated fka KHOU-TV, L.P.; DOCKET NUMBER: 2011-0729-PST-E; IDENTIFIER: RN101824548; LOCATION: Houston, Harris County; TYPE OF FACILITY: television studio with a backup diesel generator; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; 30 TAC §334.8(c)(5)(A)(i) and TWC §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the UST; PENALTY: $10,693; ENFORCEMENT COORDINATOR: Philip Aldridge, (512) 239-0855; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(21) COMPANY: MARTY MECHANICAL, INCORPORATED dba One Stop 70; DOCKET NUMBER: 2011-0545-PST-E; IDENTIFIER: RN102225455; LOCATION: Denton County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and THSC §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months or upon major system replacement or modification, whichever occurs first; PENALTY: $4,273; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(22) COMPANY: MURPHY OIL USA, INCORPORATED; DOCKET NUMBER: 2011-0462-EAQ-E; IDENTIFIER: RN105981765; LOCATION: Round Rock, Williamson County; TYPE OF FACILITY: convenience store with retail fuel sales; RULE VIOLATED: 30 TAC §213.4(a)(1) and (j)(5), by failing to obtain approval for a modification of a previously approved underground storage tank facility plan prior to beginning a regulated activity over the Edwards Aquifer Transition Zone; PENALTY: $2,760; ENFORCEMENT COORDINATOR: JR Cao, (512) 239-2543; REGIONAL OFFICE: 2800 South IH 35, Suite 10, Austin, Texas 78704-5712, (512) 339-2929.

(23) COMPANY: MURPHY OIL USA, INCORPORATED and Hereford Renewable Energy, LLC; DOCKET NUMBER: 2011-0664-IWD-E; IDENTIFIER: RN104607833; LOCATION: Hereford, Deaf Smith County; TYPE OF FACILITY: ethanol fuel manufacturing facility; RULE VIOLATED: 30 TAC §305.125(1) and TCEQ Permit Number WQ0004822000 Special Provisions D, by failing to provide a minimum total effluent evaporation pond capacity of 82.0 acre-feet; PENALTY: $1,000; ENFORCEMENT COORDINATOR: JR Cao, (512) 239-2543; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(24) COMPANY: NuStar Logistics, L.P.; DOCKET NUMBER: 2011-0569-AIR-E; IDENTIFIER: RN104248141; LOCATION: Texas City, Galveston County; TYPE OF FACILITY: oil and gas production; RULE VIOLATED: 30 TAC §116.115(c), THSC §382.085(b), and New Source Review Permit Number 54985, Special Conditions Number 1, by failing to prevent unauthorized emissions; PENALTY: $6,100; ENFORCEMENT COORDINATOR: Todd Huddleson, (512) 239-2541; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(25) COMPANY: Pegasus Polymers Benelux Incorporated; DOCKET NUMBER: 2011-0775-IWD-E; IDENTIFIER: RN100692144; LOCATION: Houston, Harris County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: TWC §26.121(a), 30 TAC §305.125(1), and TPDES Permit Number WQ0002294000, Effluent Limitations and Monitoring Requirements Number 1 for Outfalls 001, 002, and 003, by failing to comply with permitted effluent limitations; TWC §26.121(a), 30 TAC §305.125(1), and TPDES Permit Number WQ0002294000, Effluent Limitations and Monitoring Requirements

Number 1 for Outfall 001, by failing to comply with permitted effluent limitations; 30 TAC §305.125(17) and §319.1 and TPDES Permit Number WQ0002294000, Monitoring and Reporting Requirements Number 1, by failing to submit complete effluent monitoring results at the intervals specified in the permit; PENALTY: $14,175; ENFORCEMENT COORDINATOR: Thomas Jecha, P.G., (512) 239-2576; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(26) COMPANY: Sand Hill Panola SWD #5 LLC; DOCKET NUMBER: 2011-0306-AIR-E; IDENTIFIER: RN105906119; LOCATION: Carthage, Panola County; TYPE OF FACILITY: Salt Water Disposal Facility; RULE VIOLATED: 30 TAC §116.110(a) and THSC §382.085(b) and §382.0518(a), by failing to obtain permit authorization for a source of air emissions or satisfy the conditions of a Permit By Rule prior to the commencement of operations of a facility which emits air contaminants; PENALTY: $4,806; ENFORCEMENT COORDINATOR: James Nolan, (512) 239-6634; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(27) COMPANY: SUREN SIMON OF CLEBURNE, INCORPORATED dba Simons Grocery and Deli; DOCKET NUMBER: 2011-0473-PST-E; IDENTIFIER: RN101562536; LOCATION: Cleburne, Johnson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring); PENALTY: $2,250; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(28) COMPANY: Texas Christian University; DOCKET NUMBER: 2011-0642-PST-E; IDENTIFIER: RN102793700; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: petroleum storage tank; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC §26.3475(a), by failing to provide proper release detection for the piping associated with the underground storage tank; PENALTY: $2,250; ENFORCEMENT COORDINATOR: Jorge Ibarra, P.E., (817) 588-5890; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(29) COMPANY: Trishakti Enterprises, Incorporated dba Circle Q 1; DOCKET NUMBER: 2011-0625-PST-E; IDENTIFIER: RN102427986; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $2,300; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(30) COMPANY: TX Energy Services, LLC; DOCKET NUMBER: 2011-0801-MSW-E; IDENTIFIER: RN106080344; LOCATION: Alice, Jim Wells County; TYPE OF FACILITY: sludge transporting facility; RULE VIOLATED: 30 TAC §330.15(c), by failing to dispose of a regulated substance at an authorized disposal facility; PENALTY: $11,908; ENFORCEMENT COORDINATOR: Jorge Ibarra, P.E., (817) 588-5890; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

TRD-201102815
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: July 26, 2011

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Notice of Availability of Response to Comments Concerning TXR050000 Stormwater Multi-Sector General Permit

The executive director of the Texas Commission on Environmental Quality (the commission or TCEQ) files this Response to Public Comment (Response) on the multi-sector industrial storm water general permit (MSGP), Texas Pollutant Discharge Elimination System (TPDES) permit number TXR050000 to authorize the discharge of stormwater. As required by Texas Water Code (TWC), §26.040(d) and 30 TAC §205.3(c), before a general permit is issued, the executive director must prepare a response to all timely, relevant and material, or significant comments. The response must be made available to the public and filed with the Office of the Chief Clerk at least ten days before the commission considers the approval of the general permit. This response addresses all timely received public comments, whether or not withdrawn. Timely public comments were received from the following entities:

AECOM in Houston (AECOM), American Electric Power (AEP), Babcock & Wilcox Technical Services Pantex, LLC (B&W Pantex), Calpine Corporation (Calpine), Harris County, Harris County Flood Control District (HCFCD), Lloyd Gosselink Rochelle & Townsend, P.C. (Lloyd Gosselink), Logos Environmental (Logos), NRG Texas Power LLC (NRG), Linda Pechacek, Port of Corpus Christi Authority (PCCA), Safety-Kleen Systems, Inc. (SKS), STP Nuclear Operating Company (STPNOC), Texas Aggregates and Concrete Association (TACA), Texas Campaign for the Environment (TCE), Texas Landfill Management, LLC (TLM), United Parcel Service (UPS), Victoria WLE, LP (submitted by Consolidated Asset Management Services, LLC), and Westward Environmental, Inc. (Westward).

The public comment period ended on April 12, 2011 at the conclusion of the public meeting on the draft permit. Late public comments were received by the Office of the Chief Clerk from Back to Nature, Inc., Living Earth, PSEG, South Plains Compost, Inc., and the City of Dallas. The public notice for the public meeting specifically stated that comments had to be received by TCEQ's Office of the Chief Clerk by the end of the public meeting on April 12, 2011. Therefore, those public comments were not considered in this response.

If you need more information about this permit or the wastewater permitting process, please call the TCEQ Office of Public Assistance at (800) 687-4040. The complete Commissioner's Response to Public Comment may be found at the following Web site: *http://www.tceq.texas.gov/permitting/stormwater/WQ_stormwater_industrial_guidance.html.* Additionally, general information about the TCEQ can be found at our Web site at *www.tceq.texas.gov.*

TRD-201102796
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: July 25, 2011

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Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the opportunity to comment must be pub-

lished 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 **September 5, 2011.** TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on September 5, 2011.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, TWC, §7.075 provides that comments on an AO shall be submitted to the commission in **writing.**

(1) COMPANY: Advantage Asphalt Products, Ltd.; DOCKET NUMBER: 2009-1305-WQ-E; TCEQ ID NUMBER: RN104416722; LOCATION: 4241 County Road 22, Claude, Armstrong County; TYPE OF FACILITY: sand and gravel mining operation; RULES VIOLATED: TCEQ AO Docket Number 2007-0548-WQ-E, Ordering Provision Number 2.a., and TWC, §26.121(c) and (e), by failing to demonstrate acceptable corrective action to develop a site map that indicated the location of each outfall covered by the permit, location of each sampling point, and physical features that influence the storm water runoff; TCEQ AO Docket Number 2007-0548-WQ-E, Ordering Provision Numbers 2.b. and 2.d. and TWC, §26.121(c) and (e), by failing to develop and implement erosion control measures and best management practices that would effectively divert storm water away from Indian Creek; TCEQ AO Docket Number 2007-0548-WQ-E, Ordering Provision Number 2.c., and TWC, §26.121(c) and (e), by failing to design and describe adequate structural controls and include a maintenance program for storm water structural controls in the Storm Water Pollution Prevention Plan; TWC, §26.121(a) and (d), by failing to prevent the unauthorized discharge of sediment into or adjacent to water in the state; PENALTY: $16,032; STAFF ATTORNEY: Jennifer Cook, Litigation Division, MC 175, (512) 239-1873; REGIONAL OFFICE: Amarillo Regional Office, 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(2) COMPANY: Darin Borders dba Loma Linda Subdivision and Matt Boren dba Loma Linda Subdivision; DOCKET NUMBER: 2010-1954-PWS-E; TCEQ ID NUMBER: RN105878870; LOCATION: 446 to 566 County Road (CR), Center, Shelby County; TYPE OF FACILITY: public water system; RULES VIOLATED: Texas Health and Safety Code (THSC), §341.033(d) and 30 TAC §290.109(c)(2)(A)(ii) and §290.122(c)(2)(A), by failing to collect routine distribution water samples for coliform analysis for the months of March - September 2010 and failing to provide public notifications to persons served by the facility regarding the failure to collect samples for the months of March - May 2010; PENALTY: $2,628; STAFF ATTORNEY: Peipey Tang, Litigation Division, MC 175, (512) 239-0654; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(3) COMPANY: Dave's Roofing, Siding and Metal Buildings, LLC; DOCKET NUMBER: 2011-0435-PWS-E; TCEQ ID NUMBER: RN101190007; LOCATION: 707 Highway 62, Wolfforth, Lubbock County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.109(c)(3)(A)(ii) and §290.122(c)(2)(B), by failing to collect a set of repeat distribution coliform samples within 24 hours of being notified of a total coliform-positive sample result for routine distribution coliform samples collected in August 2008, May 2009, June 2009, February 2010, and November 2010, and failing to provide public notice of the failure to collect repeat distribution samples in August 2008, May 2009, June 2009, February 2010, and November 2010; 30 TAC §290.109(c)(2)(F) and §290.122(c)(2)(B), by failing to collect a minimum of five distribution coliform samples the month following a total coliform positive sample result during the months of September 2008, June 2009, July 2009, March 2010, and December 2010, and failing to provide public notice of the failure to conduct increased monitoring during the months of September 2008, June 2009, July 2009, and March 2010; 30 TAC §290.109(f)(1)(B) and §290.122(a)(2), by failing to comply with the Acute Maximum Contaminant Level (AMCL) and by failing to provide public notice for exceeding the AMCL during the month of September 2010; PENALTY: $5,379; STAFF ATTORNEY: Stephanie Frazee, Litigation Division, MC 175, (512) 239-3693; REGIONAL OFFICE: Lubbock Regional Office, 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7613.

(4) COMPANY: DeBerry Forestry & Wildlife Management, L.L.C. dba DeBerry Mine; DOCKET NUMBER: 2011-0243-WQ-E; TCEQ ID NUMBER: RN105807697; LOCATION: 3.5 miles west on Farm-to-Market Road (FM) 1649 from Ore City and one mile west on Periwinkle Road past Stanley Road on the south side, Upshur County; TYPE OF FACILITY: crushed and broken limestone and iron ore mine; RULES VIOLATED: TWC, §26.121, by failing to prevent the unauthorized discharge of sediment adjacent to water in the state that resulted in a documented serious impact to the environment; PENALTY: $15,000; STAFF ATTORNEY: Stephanie Frazee, Litigation Division, MC 175, (512) 239-3693; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(5) COMPANY: DIXIE MART, INC. dba Dixie Mart; DOCKET NUMBER: 2011-0072-PST-E; TCEQ ID NUMBER: RN102957156; LOCATION: 10101 Jacksboro Highway, Fort Worth, Tarrant County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs in a manner which will detect a release at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $15,082; STAFF ATTORNEY: Phillip Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: John Sartor; DOCKET NUMBER: 2010-1907-LII-E; TCEQ ID NUMBER: RN103526190; LOCATION: 203 Pasadena Drive, Victoria, Victoria County; TYPE OF FACILITY: landscaping business from his personal residence; RULES VIOLATED: 30 TAC §334.70(b), by failing to include in all forms of written and electronic advertisements for irrigation services the irrigator's license number in the form of "LI___"; 30 TAC §334.35(d)(2), by failing to obtain all permits and inspections required to install an irrigation system; 30 TAC §334.35(d)(4), by failing to install a backflow prevention device; 30 TAC §344.35(d)(7), by failing to provide an irrigation plan to a homeowner; 30 TAC §344.71(b), by failing to include in all written estimates, proposals, bids, and invoices relating to the installation or repair of an irrigation system the statement: "Irrigation in Texas is regulated by the Texas Commission on Environmental Quality (TCEQ)

(MC-178), P.O. Box 13087, Austin, Texas 78711-3087. TCEQ's Web site is: www.tceq.texas.gov"; PENALTY: $1,840; STAFF ATTORNEY: Mike Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: Corpus Christi Regional Office, NRC Building, Suite 1200, 6300 Ocean Drive, Unit 5839, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(7) COMPANY: OSKI LLC dba Oski's; DOCKET NUMBER: 2011-0045-PST-E; TCEQ ID NUMBER: RN101488849; LOCATION: 20602 FM 1431, Lago Vista, Travis County; TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide proper corrosion protection for the UST system at the facility; PENALTY: $5,000; STAFF ATTORNEY: Mike Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: Austin Regional Office, 2800 South Interstate Highway 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(8) COMPANY: Peter H. Schouten dba P&L Dairy and Nova D. Schouten dba P&L Dairy; DOCKET NUMBER: 2010-0585-AGR-E; TCEQ ID NUMBER: RN102915873; LOCATION: southwest corner of the intersection of CR 229 and CR 231, approximately 1.8 miles south of the intersection of CR 229 and FM 913, Erath County; TYPE OF FACILITY: confined animal feeding operation (CAFO); RULES VIOLATED: Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0003675000, Part VII, Pollution Prevention Plan Requirements, Section A.8.(f)(2), 30 TAC §321.31(a), and TWC, §26.121, by failing to prevent the discharge of wastewater from a CAFO; PENALTY: $2,600; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: Quang Dang Pham dba Sunmart 302; DOCKET NUMBER: 2010-1948-PST-E; TCEQ ID NUMBER: RN102054434; LOCATION: 2002 Dowling Street, Houston, Harris County; TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A)(i)(III) and (2), by failing to provide release detection for the pressurized piping associated with the UST; PENALTY: $2,871; STAFF ATTORNEY: Phillip Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(10) COMPANY: Thomas Petroleum, LLC; DOCKET NUMBER: 2010-0751-PST-E; TCEQ ID NUMBER: RN101617165 and RN104005186; LOCATION: 107 North Twin City Highway, Nederland, Jefferson County (RN101617165) and 13701 Interstate 35, Pflugerville, Travis County (RN104005186); TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.7(d)(3), by failing to notify the agency of any change or additional information regarding the UST system within 30 days of the change or addition; 30 TAC §334.72, by failing to report a suspected release to the TCEQ within 24 hours after an inconclusive statistical inventory reconciliation analysis report; 30 TAC §334.7, by failing to immediately investigate a suspected release of regulated substances within 30 days after the receipt of an inconclusive statistical inventory reconciliation (SIR) analysis report; 30 TAC §334.42(i), by failing to inspect all sumps, manways, overspill containers or catchment basins associated with the UST system at least once every 60 days to assure their sides, bottoms, and any penetration points are maintained liquid-tight and free of debris and liquid; 30 TAC §115.248 and THSC, §382.085, by failing to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable California Air Resources Board (CARB) Executive Order, and free of defects that would impair the effectiveness of the system; 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months; 30 TAC §115.248(1) and THSC, §382.085(b), by failing to ensure that at least one station representative received training in the operation and maintenance of the Stage II vapor recovery system, and each current employee receives in-house Stage II vapor recovery system training regarding the purpose and correct operation of the Stage II equipment; 30 TAC §334.72, by failing to report a suspected release to the TCEQ within 24 hours after an inconclusive SIR analysis report; 30 TAC §334.74, by failing to immediately investigate a suspected release of regulated substances within 30 days after the receipt of an inconclusive SIR analysis report; and 30 TAC §115.222(3) and (6) and THSC, §382.085(b), by failing to ensure that no gasoline leaks exist anywhere in the liquid transfer or vapor balance system, and by failing to ensure that each vapor balance system vent line is equipped with a pressure-vacuum relief valve set to open at a pressure of no more than eight ounces per square inch; PENALTY: $84,004, Supplemental Environmental Project offset amount of $42,002 applied to Jefferson County, Cheek Community First Time Sewer Service for Low-Income Home Owners; STAFF ATTORNEY: Kari Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838 (RN101617165) and Austin Regional Office, 2800 South Interstate Highway 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929 (RN101617165).

(11) COMPANY: Vacation Home Builders, Inc.; DOCKET NUMBER: 2010-0706-MLM-E; TCEQ ID NUMBER: RN102685393; LOCATION: Cedar Point Subdivision off Highway 190 adjacent to Lake Livingston near Livingston, Polk County; TYPE OF FACILITY: construction site; RULES VIOLATED: 30 TAC §330.15 and TWC, §26.121, by failing to prevent the unauthorized disposal of municipal solid waste (MSW), resulting in an unauthorized discharge; 30 TAC §111.201 and THSC, §382.085(b), by failing to prohibit the burning of MSW for the purpose of disposal; and 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge storm water associated with construction activities; PENALTY: $4,637; STAFF ATTORNEY: Xavier Guerra, Litigation Division, R-13, (210) 403-4016; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

TRD-201102828
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: July 27, 2011

Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water

Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is 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 **September 5, 2011.** The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on September 5, 2011.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing.**

(1) COMPANY: David M. Mobley; DOCKET NUMBER: 2011-0454-MSW-E; TCEQ ID NUMBER: RN106065980; LOCATION: 557 County Road (CR) 451, El Campo, Wharton County; TYPE OF FACILITY: property; RULES VIOLATED: 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of municipal solid waste (MSW); PENALTY: $1,000; STAFF ATTORNEY: Tammy Mitchell, Litigation Division, MC 175, (512) 239-0736; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: Diamond T Ranch Development, Inc.; DOCKET NUMBER: 2009-0105-EAQ-E; TCEQ ID NUMBER: RN105371462; LOCATION: Stone Oak Parkway adjacent to and east of Stone Oak Park, San Antonio, Bexar County; TYPE OF FACILITY: 5.08 acre commercial construction site; RULES VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain approval of a Water Pollution Abatement Plan prior to beginning a regulated activity over the Edwards Aquifer Recharge Zone; PENALTY: $2,600; STAFF ATTORNEY: Jennifer Cook, Litigation Division, MC 175, (512) 239-1873; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(3) COMPANY: Donna M. Tounley; DOCKET NUMBER: 2011-0325-PST-E; TCEQ ID NUMBER: RN105970347; LOCATION: 44 Rocky Point Avenue, Flower Mound, Denton County; TYPE OF FACILITY: inactive underground storage tank (UST) system; RULES VIOLATED: 30 TAC §334.7(a)(1), by failing to register with the TCEQ a UST in existence on or after September 1, 1987; and 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, an existing UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; PENALTY: $6,300; STAFF ATTORNEY: Phillip Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: Gary Blue; DOCKET NUMBER: 2010-1673-MLM-E; TCEQ ID NUMBER: RN106003452; LOCATION: east side of Winkler County Road 305/Northeast Avenue, approximately 0.6 miles north of East Midland Avenue, Kermit, Winkler County; TYPE OF FACILITY: unpermitted waste disposal facility; RULES VIOLATED: 30 TAC §330.15, by failing to prevent the unauthorized disposal of MSW; and Texas Health and Safety Code (THSC), §382.085(b) and 30 TAC §111.201, by failing to comply with the general prohibition on outdoor burning; PENALTY: $2,505; STAFF ATTORNEY: Tammy Mitchell, Litigation Division, MC 175, (512) 239-0736; REGIONAL OFFICE: Midland Regional Office, 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5406, (432) 570-1359.

(5) COMPANY: Jackson County Water Control and Improvement District Number 2; DOCKET NUMBER: 2010-0259-MWD-E; TCEQ ID NUMBER: RN102185071; LOCATION: approximately 1,500 feet east of Farm-to-Market (FM) Road 234 and approximately 1,600 feet north of FM Road 616, Vanderbilt, Jackson County; TYPE OF FACILITY: domestic wastewater treatment facility; RULES VIOLATED: TWC, §26.121(a) and 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010196001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits; and 30 TAC §305.125(17) and TPDES Permit Number WQ0010196001, Sludge Provisions, by failing to submit the annual sludge report for the monitoring period ending July 31, 2008; PENALTY: $11,280; STAFF ATTORNEY: Sharesa Y. Alexander, Litigation Division, MC 175, (512) 239-3503; REGIONAL OFFICE: Corpus Christi Regional Office, NRC Building, Suite 1200, 6300 Ocean Drive, Unit 5839, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(6) COMPANY: Juan Sanchez; DOCKET NUMBER: 2011-0619-LII-E; TCEQ ID NUMBER: RN105897557; LOCATION: 12231 Westlock Drive, Tomball, Harris County; TYPE OF FACILITY: landscaping business; RULES VIOLATED: 30 TAC §30.5, TWC, §37.003, and Texas Occupations Code §1903.251, by failing to hold an irrigator license prior to selling, designing, consulting, installing, altering, repairing, or servicing an irrigation system; and 30 TAC §30.5(b) and TWC, §37.003, by failing to refrain from advertising or representing himself to the public as a holder of a license or registration without holding a valid license or registration; PENALTY: $1,210; STAFF ATTORNEY: Mike Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(7) COMPANY: Larry Womack aka Petro Trail, Inc.; DOCKET NUMBER: 2011-0262-PST-E; TCEQ ID NUMBER: RN102226487; LOCATION: 3620 Jenson Drive, Houston, Harris County; TYPE OF FACILITY: UST system and a former convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.47(a)(2) and §334.54(b), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements, and by failing to maintain all piping, pumps, manways, tank access points, and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons; PENALTY: $2,875; STAFF ATTORNEY: Marshall Coover, Litigation Division, MC 175, (512) 239-0620; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(8) COMPANY: Robbie Mosley; DOCKET NUMBER: 2010-1168-PST-E; TCEQ ID NUMBER: RN101830685; LOCATION: northwest corner of the intersection of United States Highways 70 and 385, Springlake, Lamb County; TYPE OF FACILITY: UST system and a former convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.47(a)(2) and §334.54(a)(2), by failing to permanently remove from service, no later than 60 days after the

prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements, and by failing to maintain all piping, pumps, manways, and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons; and 30 TAC §334.7(d)(3), by failing to notify the agency of any change or additional information regarding the USTs within 30 days of the date of the occurrence of the change or addition; PENALTY: $3,675; STAFF ATTORNEY: Marshall Coover, Litigation Division, MC 175, (512) 239-0620; REGIONAL OFFICE: Lubbock Regional Office, 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7613.

(9) COMPANY: Robert Langguth; DOCKET NUMBER: 2011-0104-WQ-E; TCEQ ID NUMBER: RN105080147; LOCATION: Andre Loop, Salado, Bell County; TYPE OF FACILITY: mobile home park; RULES VIOLATED: TWC, §26.121(a)(1) and 30 TAC §305.42(a), by failing to obtain authorization to discharge wastewater; PENALTY: $2,200; STAFF ATTORNEY: Marshall Coover, Litigation Division, MC 175, (512) 239-0620; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(10) COMPANY: Terry Bickett; DOCKET NUMBER: 2011-0233-PST-E; TCEQ ID NUMBER: RN101853828; LOCATION: southeast corner of Highway 563 and FM Road 2041 near Anahuac, Chambers County; TYPE OF FACILITY: UST system and an out-of-service gasoline dispensing facility; RULES VIOLATED: 30 TAC §334.47(a)(2) and §334.54(b)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements, and by failing to maintain all piping, pumps, manways, and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons; and 30 TAC §334.7(d)(3), by failing to provide an amended registration for any change or additional information regarding the USTs within 30 days from the date of the occurrence of the change or addition; PENALTY: $3,850; STAFF ATTORNEY: Mike Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-201102829
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: July 27, 2011

Notice of Opportunity to Comment on Shut Down/Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (commission) staff is providing an opportunity for written public comment on the listed Shutdown/Default Orders (S/DOs). Texas Water Code (TWC), §26.3475 authorizes the commission to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The commission proposes a Shutdown Order after the owner or operator of a UST facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection violations documented at the facility. The commission proposes a Default Order when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. In accordance with TWC, §7.075, this notice of the proposed order and the opportunity to comment is 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 **September 5, 2011**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a S/DO if a comment discloses facts or considerations that indicate that consent to the proposed S/DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed S/DO is not required to be published if those changes are made in response to written comments.

Copies of each of the proposed S/DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the S/DO shall be sent to the attorney designated for the S/DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on September 5, 2011**. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission attorneys are available to discuss the S/DOs and/or the comment procedure at the listed phone numbers; however, comments on the S/DOs shall be submitted to the commission in **writing**.

(1) COMPANY: Abass Sayegh and Ray Sanjib dba David's Exxon; DOCKET NUMBER: 2010-1302-PST-E; TCEQ ID NUMBER: RN101489730; LOCATION: 1801 West 2nd Street, Taylor, Williamson county; TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a non-removable point in the immediate area of the fill tube for each regulated UST according to the UST registration and self-certification form; 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for the USTs involved in the retail sale of petroleum substances used as motor fuel; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the USTs; 30 TAC §334.50(b)(2)(A)(i)(III) and TWC, §26.3475(a), by failing to test the line leak detectors at least once per year for performance and operational reliability; 30 TAC §334.50(d)(1)(B)(ii) and TWC, §26.3475(c)(1), by failing to conduct reconciliation of detailed inventory control records at least once each month, in a manner sufficiently accurate to detect a release which equals or exceeds the sum of 1.0% of the total substance flow-through for the month plus 130 gallons; and 30 TAC §334.50(d)(1)(B)(iii)(I) and TWC, §26.3475(c)(1), by failing to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tanks each operating day; PENALTY: $7,129; STAFF ATTORNEY: Kari Gilbreth, Litigation Division,

MC 175, (512) 239-1320; REGIONAL OFFICE: Austin Regional Office, 2800 South Interstate Highway 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(2) COMPANY: HASHIR INVESTMENTS, INC. dba Del Valle Food Mart; DOCKET NUMBER: 2011-0180-PST-E; TCEQ ID NUMBER: RN104158613; LOCATION: 4535 Highway 71 East, Del Valle, Travis County; TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to test the line leak detectors at least once per year for performance and operational reliability; PENALTY: $2,629; STAFF ATTORNEY: Phillip Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Austin Regional Office, 2800 South Interstate Highway 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

TRD-201102827
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: July 27, 2011

Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 336

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony regarding proposed revisions to 30 TAC Chapter 336, Radioactive Substance Rules, §§336.1, 336.2, 336.103, 336.105, 336.210, 336.305, 336.309, 336.331, 336.359, and 336.405. The commission also proposes new §336.351 and §336.357.

The proposed rulemaking would revise the commission's radiation control rules to ensure compatibility with regulations promulgated by the United States Nuclear Regulatory Commission. The state must adopt compatible rules to maintain the status of Texas as an Agreement State authorized to administer a portion of the radiation control program under the Atomic Energy Act. The proposed rulemaking would also amend the fees charged for facilities regulated under Subchapter L of Chapter 336 (Licensing of Source Material Recovery and By-Product Material Disposal Facilities). The proposed fee shall recover for the state the actual expenses arising from the regulatory activities associated with the license. The proposed rulemaking would also clarify the requirements for license fees to fund the Radiation and Perpetual Care Account.

The commission will hold a public hearing on this proposal in Austin on August 30, 2011 at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services, at (512) 239-1802. Requests should be made as far in advance as possible.

Written comments may be submitted to Michael Parrish, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www5.tceq.texas.gov/rules/ecomments/*. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2011-011-336-PR. The comment period closes September 6, 2011. Copies of the proposed rulemaking can be obtained from the commission's website at *http://www.tceq.texas.gov/nav/rules/propose_adopt.html*. For further information, please contact Devane Clarke, Radioactive Materials Division, (512) 239-5604.

TRD-201102791
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: July 22, 2011

Notice of Water Quality Applications

The following notices were issued on July 15, 2011 through July 22, 2011.

The following require the applicants to publish notice in a newspaper. Public comments, 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 THE NOTICE.

INFORMATION SECTION

CITY OF GLADEWATER has applied for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0010433001, which authorizes the discharge of treated filter backwash effluent from a water treatment plant at a daily average flow not to exceed 490,000 gallons per day. The facility is located at 1509 East Lake Drive, 3/4 mile north of the City of Gladewater in Upshur County, Texas 75647.

EVADALE WATER CONTROL AND IMPROVEMENT DISTRICT NO. 1 has applied for a renewal of TPDES Permit No. WQ0014183001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 160,000 gallons per day. The facility is located approximately 1,000 feet west of the intersection of State Highway 105 and Farm-to-Market Road 1131 in Jasper County, Texas 77615.

EL PASO ELECTRIC COMPANY which operates the Newman Power Plant, a steam electric power generating station, has applied for a renewal of Texas Land Application Permit No. WQ0000836000, which authorizes the disposal of industrial wastewater resulting from cooling tower blowdown, metal cleaning wastes, low volume wastes such as boiler blowdown, laboratory drains, sampling streams, floor drainage, reverse osmosis and demineralizer regeneration unit wastewaters, and facility storm water by evaporation and irrigation. The application rate shall not exceed 2.4 acre-feet per acre irrigated per year (acre-feet/acre/year) on an irrigation tract consisting of 793 acres. This permit will not authorize a discharge of pollutants into water in the State. The facility and disposal sites are located at 4900 Stan Roberts Sr. Avenue, 0.2 of a mile east of the intersection of Farm-to-Market Road 3255 and Farm-to-Market Road 2529, 20 miles north of the downtown City of El Paso, El Paso County, Texas 79934.

HILLMAN SHRIMP AND OYSTER CO. which operates the Hillman Shrimp and Oyster - Galveston Plant, a fresh and frozen seafood processing and wholesale facility, has applied for a renewal of TPDES Permit No. WQ0003749000, which authorizes the discharge of seafood washwater (generated from oyster processing and floor washing only), domestic wastewater, and effluent from Hillman's Seafood Café, Inc.

at a daily average flow not to exceed 70,000 gallons per day via Outfall 001. The facility is located at 10700 Hillman Drive, approximately 0.7 miles south-southeast of the intersection of State Highway 146 and Farm-to-Market Road 517, in the City of Texas City, Galveston County, Texas.

GEORGIA-PACIFIC CHEMICALS LLC which operates a plastic materials, synthetic resins, gum and wood chemicals, and industrial organic chemicals manufacturing plant, has applied for a renewal of TPDES Permit No. WQ0001737000, which authorizes the discharge storm water associated with industrial activity on an intermittent and flow variable basis and the occasional emergency discharge of once-through non-contact cooling water (from the municipal water supply) during power outages. The facility is located at 1429 East Lufkin Ave., Angelina County, Texas 75901.

ARKEMA INC. which operates a mercaptans and sulfide manufacturing plant, has applied for a renewal of TPDES Permit No. WQ0001872000, which authorizes the discharge of untreated storm water runoff, storm water from the process area (Sulfox) and previously monitored effluents (utility wastewater generated by the reverse osmosis (RO) system, non-contact cooling tower blowdown, raw water, filtered water and storm water runoff from internal Outfall 201) via Outfall 001on an intermittent and flow variable basis. The facility is located approximately 2.5 miles east of the intersection of U.S. Highway 90 and State Highway 380, between the Mobil Oil Refinery and P D Glycol, near the City of Beaumont, Jefferson County, Texas 77701.

HUDSON LIVESTOCK SUPPLEMENTS INC. which operates Hudson Livestock Supplements, a livestock feed supplement manufacturing plant, has applied for a renewal of TCEQ Permit No. WQ0004801000, which authorizes the disposal of boiler blowdown, barrel wastewater, water softener regenerating backwash, and molasses cooker wash process water. This permit will not authorize a discharge of pollutants into water in the State. The facility and evaporation pond are located on the northeast corner of the intersection of North U.S. Highway 67 and North Thompson Road, Tom Green County, Texas 76861.

JOHN BLUDWORTH SHIPYARD LLC which operates John Bludworth Shipyard, has applied for a major amendment to TPDES Permit No. WQ0004889000 to remove the daily average and daily maximum flow limits from Outfall 001 and change the effluent flow chacterization to intermittent and flow variable. The current permit authorizes the discharge of dry dock ballast water and vessel wash water via Outfall 001 at a daily average flow not to exceed 0.033 million gallons per day (MGD) and a daily maximum flow not to exceed 1.0 MGD; and vessel ballast water, void tank water, and ballast and void tank wash water on an intermittent and flow variable basis via Outfall 002. The facility is located approximately 1.98 miles northeast of the intersection of Up River Road and Navigation Boulevard, Nueces County, Texas 78402.

CITY OF TOM BEAN has applied for a renewal of TPDES Permit No. WQ0010057001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 150,000 gallons per day. The facility is located approximately 0.5 mile southeast of the intersection of State Highway 11 and Farm-to-Market Road 2729 in Grayson County, Texas 75489.

CITY OF BOWIE has applied for a renewal of TPDES Permit No. WQ0010071003, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,250,000 gallons per day. The facility is located at 992 Farm-to-Market Road 1125, approximately 0.75 mile southwest of the intersection of State Highway 287 and Farm-to-Market Road 1125, and approximately 1.8 miles south of the City of Bowie in Montague County, Texas 76230.

CITY OF WEATHERFORD has applied to for a renewal of TPDES Permit No. WQ0010380002, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 4,500,000 gallons per day. The application includes a request for a temporary variance to the existing water quality standard for dissolved oxygen in accordance with 30 Texas Administrative Code §307.2(d)(5). The receiving waters, Town Creek and the South Fork Trinity River, have both been determined to be perennial streams supporting an intermediate aquatic life use with a 4.0 mg/l dissolved oxygen criterion; however, without a variance, the final effluent limits must meet at least a high aquatic life use (5.0 mg/l DO) in both streams in accordance with 30 TAC §307.4(h)(1). The temporary variance would allow time for consideration of a site specific standard which would be adopted in 30 TAC §307.10 Appendix D. The applicant has also applied to the TCEQ for approval of a substantial modification to its pretreatment program under the TPDES program. The facility is located at 1327 Eureka Street, approximately 4,000 feet north-northwest of the intersection of Interstate Highway 20 and Farm-to-Market Road 2552 in Parker County, Texas 76086.

THE CITY OF EAGLE PASS WATER WORKS SYSTEM has applied for a renewal of TPDES Permit No. WQ0010406002, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 6,000,000 gallons per day. The existing permit also authorizes the land application of Class B sewage sludge, using a spray irrigation system, on 146 acres adjacent to the wastewater treatment facility. The facility is located on Farm-to-Market Road 1021 approximately five miles southeast of the intersection of Farm-to-Market Road 375 and Farm-to-Market Road 1021 in Maverick County, Texas 78853.

CITY OF CADDO MILLS has applied for a major amendment to TPDES Permit No. WQ0010425002 to authorize the addition and use of an offsite upstream equalization basin located within the property boundaries of the City of Caddo Mills Wastewater Treatment Facility No. 1 and the discharge of treated domestic wastewater at a daily average flow not to exceed 375,000 gallons per day. The facility is located approximately 2,100 feet west of the intersection of Farm-to-Market Road 36 and Farm-to-Market Road 1903 in Hunt County, Texas 75135 and the offsite upstream equalization basin is located approximately 0.7 mile south of the intersection of State Highway 66 and Farm-to-Market Road 36 in Hunt County, Texas 75135.

CITY OF HUBBARD has applied for a renewal of TPDES Permit No. WQ0010534001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 250,000 gallons per day. The facility is located 0.94 mile south of the intersection of State Highway 31 and State Highway 171 in Hill County, Texas 76648.

CITY OF ALEDO has applied for a renewal of TPDES Permit No. WQ0010847001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 600,000 gallons per day. The facility is located at 600 Barnwell Road, approximately 0.5 mile west of the intersection of Farm-to-Market Road 5 and Farm-to-Market Road 1187 in the City of Aledo in Parker County, Texas 76008.

CITY OF HEMPSTEAD has applied for a major amendment to TPDES Permit No. WQ0010948001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 600,000 gallons per day to a daily average flow not to exceed 980,000 gallons per day. The request for authorization also includes construction of a new wastewater treatment facility approximately 0.2 mile north of the existing treatment facility, and a new Outfall 002 approximately 1,200 feet northeast of the existing Outfall 001. The domestic wastewater treatment facility is located on the 23rd Street, approximately 1000 feet northeast of the intersection of 25th and Colorado Street, City of Hempstead, Waller County, Texas. The proposed

facility will be located approximately 0.2 mile north of the existing facility.

JARVIS CHRISTIAN COLLEGE has applied for a renewal of TPDES Permit No. WQ0011609001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. The facility is located approximately 300 feet south of U.S. Highway 80 and one and three-fourths (1 3/4) miles east of the intersection of U.S. Highway 80 and Farm-to-Market Road 14 in the City of Hawkins in Wood County, Texas 75765.

TOWN OF MILLERS COVE has applied for a renewal of TPDES Permit No. WQ0011750001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 38,000 gallons per day. The facility is located approximately 0.75 mile southwest of the intersection of State Spur No. 158 and Interstate Highway 30, just south of Winfield in Titus County, Texas 75493.

CITY OF YANTIS has applied for a renewal of TPDES Permit No. WQ0012187001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 42,000 gallons per day. The facility is located approximately one mile south of the intersection of Farm-to-Market Road 17 and State Highway 154 in Wood County, Texas 75497.

HARRIS COUNTY has applied for a major amendment to TPDES Permit No. WQ0013921001 to remove Other Requirements Item No. 5 of the current permit which is based on a settlement agreement. The draft permit removes Other Requirements Item Nos. 5a and 5c of the current permit and retains Item No. 5b. The current permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 20,000 gallons per day. The facility is located at 9114 Katy-Hockley Road, approximately 4,500 feet west-southwest of the intersection of Katy-Hockley Road and Katy-Hockley Cutoff, 4,600 feet northwest of the intersection of Katy-Hockley Cutoff and Longenbaugh Road or approximately 4.4 miles north of the City of Katy in Harris County, Texas 77493.

LABARGE COATING LLC has applied for a renewal of TPDES Permit No. WQ0014700001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 6,000 gallons per day. The facility is located at 400 South Sheldon Road, approximately 3100 feet south of Interstate Highway 10, near the southwest side of Cactus property in Harris County, Texas 77530.

The following do not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, at the address provided in the information section above, WITHIN 30 DAYS OF THE ISSUED DATE OF THE NOTICE.

THE CITY OF GALVESTON has applied to the Texas Commission on Environmental Quality (TCEQ) for a minor amendment of TPDES Permit No. WQ0010688001, to add an interim phase which will authorize the discharge of treated domestic wastewater at an annual average flow not to exceed 6,500,000 gallons per day. The existing permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 10,000,000 gallons per day in the interim I and interim II phases and at an annual average flow not to exceed 13,000,000 gallons per day in the final phase. The facility is located at 5200 Industrial Boulevard, in the City of Galveston, in Galveston County, Texas 77554.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.TCEQ.state.tx.us. Si desea información en español, puede llamar al 1-800-687-4040.

TRD-201102835
Melissa Chao
Acting Chief Clerk
Texas Commission on Environmental Quality
Filed: July 27, 2011

Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on July 26, 2011, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Big D Hazmat, Inc., Duncan Services, Inc., and Robert L. Duncan; SOAH Docket No. 582-10-5396; TCEQ Docket No. 2009-1905-IWD-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Big D Hazmat, Inc., Duncan Services, Inc., and Robert L. Duncan on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas.

This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Melissa Chao, Office of the Chief Clerk, (512) 239-3300.

TRD-201102837
Melissa Chao
Acting Chief Clerk
Texas Commission on Environmental Quality
Filed: July 27, 2011

Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on July 20, 2011, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Lake Corpus Christi RV Park & Marina, L.L.C.; SOAH Docket No. 582-11-1616; TCEQ Docket No. 2010-0737-PWS-E. The Commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Lake Corpus Christi RV Park & Marina, L.L.C. on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas.

This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Melissa Chao, Office of the Chief Clerk, (512) 239-3300.

TRD-201102836
Melissa Chao
Acting Chief Clerk
Texas Commission on Environmental Quality
Filed: July 27, 2011

Texas Health and Human Services Commission

Public Notice

The Texas Health and Human Services Commission (HHSC) announces its intent to submit Amendment 28 to the Texas State Plan for the Children's Health Insurance Program (CHIP), under Title XXI of the Social Security Act. The proposed effective date of this amendment is March 1, 2012.

The Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA) was signed into federal law on February 4, 2009. CHIPRA requires states to provide a dental benefit package that prevents disease, promotes oral health, restores oral structures to health and function, and treats emergency conditions. Prior to CHIPRA's enactment, it was optional for states to cover dental benefits in CHIP.

On October 7, 2009, the Centers for Medicare and Medicaid Services (CMS) provided federal guidance that interpreted CHIPRA to require CHIP coverage of benefits in each of the following categories of dental care: diagnostic, preventive, restorative, endodontic, periodontal, prosthodontic, oral and maxillofacial surgery, orthodontics (limited to pre- and post-surgical orthodontic services to treat craniofacial anomalies requiring surgical intervention), and emergency dental services. HHSC proposes to amend the CHIP State Plan to assure that Texas CHIP dental coverage includes dental benefits from each of the required categories of care.

In addition, HHSC proposes to eliminate the current dental tiers, remove the coverage limits that are based on preventive dental services and therapeutic dental services, and provide all CHIP members coverage up to $564 per 12-month enrollment period. CHIP members can obtain preventive services in the American Academy of Pediatric Dentistry periodicity schedule not be subject to the $564 annual limit. In addition, medically necessary services that allow a CHIP member to return to normal, pain- and infection-free oral functioning will not be subject to the $564 annual limit if the member's dental plan has approved the services through a prior authorization process.

To offset the costs of covering additional dental benefits, HHSC proposes to increase certain CHIP cost-sharing amounts. Specifically, HHSC proposes to:

increase CHIP co-payments for members at or below 100 percent of the federal poverty level (FPL) from $10 to $15 for inpatient hospital visits;

increase CHIP co-payments for members above 100 percent FPL up to and including 150 percent FPL from $25 to $35 for inpatient hospital visits;

increase CHIP co-payments for members above 150 percent FPL up to and including 185 percent FPL from $12 to $20 for office visits, $50 to $75 for non-emergency visits to the emergency room, $8 to $10 for generic prescription drugs, $25 to $35 for brand name prescription drugs, and $50 to $75 for inpatient hospital visits;

increase CHIP co-payments for members above 185 percent FPL up to and including 200 percent FPL from $16 to $25 for office visits, $50 to $75 for non-emergency visits to the emergency room, $8 to $10 for generic prescription drugs, $25 to $35 for brand name prescription drugs, and $100 to $125 for inpatient hospital visits;

require CHIP members to pay the office visit co-payment for non-preventive dental visits; and

increase the aggregate annual cost-sharing cap for CHIP members at all income levels to 5 percent of a family's annual income.

The proposed amendment is estimated to result in a savings of $405,393 for the second half of state fiscal year (SFY) 2012 (March 1, 2012 through August 31, 2012), consisting of $287,383 in federal funds and $118,010 in state general revenue. For SFY 2013, the estimated annual savings is $833,715 consisting of $585,435 in federal funds and $248,280 in state general revenue.

To obtain copies of the proposed amendments, interested parties may contact Monica Thyssen, Senior Policy Analyst, Medicaid and CHIP Division, by mail at P.O. Box 85200, MC: H-310, Austin, Texas 78708; by telephone at (512) 491-1404; by facsimile at (512) 491-1953; or by e-mail at monica.thyssen@hhsc.state.tx.us.

TRD-201102813
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: July 26, 2011

♦ ♦ ♦

Texas Department of Housing and Community Affairs

2011 USDA §502 Direct Loan Application Assistance Notice of Funding Availability

I. Source of Housing Trust Funds.

The Housing Trust Fund was established by the 72nd Legislature, Senate Bill 546, §2306.201 of the Texas Government Code, to create affordable housing for low and very low income individuals and families. Funding sources consist of appropriations or transfers made to the fund, unencumbered fund balances, and public or private gifts, grants, or donations.

II. Notice of Funding Availability (NOFA).

(a) The Texas Department of Housing and Community Affairs ("the Department") announces the availability of up to $413,000 in funding from the 2010-2011 Housing Trust Fund (HTF) appropriation for the HTF Rural Housing Expansion - USDA §502 Direct Loan Application Assistance Program ("Program"). The purpose of USDA §502 Direct Loan Application Assistance is to support rural housing organizations that package and submit §502 Direct Loan ("502 Direct Loan") applications to the U.S. Department of Agriculture for low income households in rural Texas. Funds awarded under this activity are intended to secure USDA §502 funding for Texas that may otherwise not be accessed.

(b) The Program serves eligible Households with incomes of 80% or less of the Area Median Family Income (AMFI), as defined by the Department.

III. Participant Eligibility.

Eligible participants are rural municipalities and rural counties, nonprofit organizations that serve rural communities, or consortia of several such entities. Approved Participants must package and submit 502 Direct Loans in areas eligible for funding by USDA.

IV. Funding Reservation Process.

To access funds, eligible Applicants must apply for approval to participate in the Funding Reservation Process in which approved Administrators may reserve funds on a first-come, first-served basis. Reservation System Access Agreements will be required for participation as described in the Notice of Funding Availability.

V. Application Deadline and Availability.

The HTF USDA §502 Direct Loan Application Assistance NOFA is posted on the Department's website: http://www.tdhca.state.tx.us/htf/index.htm and organizations on the Department's list serve will receive an email notification that the NOFA is available on the Department's website.

VI. Deadline for Receipt.

The Department will begin accepting reservations to access the funding Reservation System on an ongoing basis during regular business days until 5:00 p.m. Central Standard Time (CST) on Friday, July 27, 2012 or until funds are no longer available, whichever is earlier.

Mailing Address:

Ms. Glynis Laing, Housing Trust Fund Program Coordinator

Housing Trust Fund Division

Texas Department of Housing and Community Affairs

P.O. Box 13941

Austin, Texas 78711-3941

(All U.S. Postal Service including Express)

Courier Delivery:

221 East 11th Street, 1st Floor

Austin, Texas 78701

(FedEx, UPS, Overnight, etc.)

Hand Delivery and Further Questions:

If you are hand delivering the application or have further questions, contact Glynis Laing at (512) 936-7800 (htf@tdhca.state.tx.us) or Dee Copeland Patience at (512) 475-2567.

TRD-201102776
Timothy K. Irvine
Acting Director
Texas Department of Housing and Community Affairs
Filed: July 22, 2011

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Texas Department of Insurance

Amended Notice of Public Hearing

The notice of hearing under Docket No. 2727, scheduled for September 13, 2011, is being rescheduled for September 15, 2011, at 9:30 a.m. The location of the hearing has changed to 7551 Metro Center Drive, Room Number 1.107, Tippy Foster Hearing Room, at the Division of Workers' Compensation Central Office.

The hearing is to consider amendments to §§19.1701 - 19.1717, 19.1719 - 19.1721, 19.1723, and 19.1724, concerning utilization review agents (URAs) for health care provided under a health benefit plan or health insurance policy, and §§19.2001 - 19.2011, 19.2013, 19.2014, 19.2016, 19.2017, 19.2019 and 19.2020, and new §§19.2012, 19.2015, and 19.2021, concerning URAs for health care provided under workers' compensation insurance coverage. These amendments and new sections are necessary to: (i) implement HB 4290, 81st Legislature, Regular Session, effective September 1, 2009, which effectively revises the definitions of "adverse determination" and "utilization review" in the Insurance Code Chapter 4201 to include retrospective reviews and determinations regarding the experimental or investigational nature of a service; and (ii) make other changes necessary, as determined by the Department with the advice of the Utilization Review Advisory Committee, for clarity and effective implementation and enforcement of the Insurance Code Chapter 4201.

The initial notice of the hearing was published in the July 8, 2011, issue of the *Texas Register* (36 TexReg 4255).

TRD-201102833
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: July 27, 2011

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Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application of PREFERRED HEALTH ALLIANCE CORPORATION, a foreign third party administrator. The home office is BIRMINGHAM, ALABAMA.

Application of PLATEAU INSURANCE COMPANY, a foreign third party administrator. The home office is CROSSVILLE, TENNESSEE.

Any objections must be filed within 20 days after this notice is published in the *Texas Register*, addressed to the attention of David Moskowitz, MC 305-2E, 333 Guadalupe, Austin, Texas 78701.

TRD-201102834
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: July 27, 2011

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Texas Department of Insurance, Division of Workers' Compensation

Notice of Rescheduled Public Hearing

The Texas Department of Insurance, Division of Workers' Compensation (TDI-DWC) has rescheduled the public hearing on proposed amendments to 28 TAC §§133.2, 133.240, 133.250, 133.270, and 133.305, regarding General Medical Provisions, and 28 TAC §134.600, regarding Preauthorization, Concurrent Utilization Review, and Voluntary Certification of Health Care. This public hearing will be held on Thursday, September 15, 2011 at 1:30 p.m. CST in the Tippy Foster Room of the Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645. The original notices of public hearing published with the proposed amendments in the July 29, 2011, issue of the *Texas Register* set this hearing at 9:30 a.m. CST on September 15, 2011 at the same location.

The public hearing is to take testimony on the proposed amendments which were published in the July 29, 2011, issue of the *Texas Register* which may be accessed at **http://www.sos.state.tx.us/texreg/index.shtml.** A courtesy copy of the proposals is also available on the TDI-DWC's website located at **http://www.tdi.state.tx.us/wc/rules/proposedrules/index.html.**

The TDI-DWC will audio stream the public hearing for persons who are unable to attend in person. Written and oral comments presented at the hearing will be considered. To listen to the audio stream, access the calendar at **www.tdi.state.tx.us/wc/events/index.html** and click "Link to Live Webcast." Media Player 7 (or newer version) or RealPlayer 10 (or newer version) are required to hear the audio stream. Audio streaming will begin approximately five minutes before the scheduled time of the public hearing.

The TDI-DWC provides reasonable accommodations for persons attending meetings, hearings, or educational events, as required by the Americans with Disabilities Act. If you require accommodations in or-

der to attend the hearing please contact Idalia Salazar at (512) 804-4403 at least two business days prior to the confirmed hearing date.

If there are any questions regarding the information in this notice, please contact Nicholas Gonzalez at (512) 804-4277 or **nicholas.gonzalez@tdi.state.tx.us.**

TRD-201102820
Dirk Johnson
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: July 26, 2011

Public Utility Commission of Texas

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on July 21, 2011, to amend a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Time Warner Cable to Amend its State-Issued Certificate of Franchise Authority, Project Number 39617.

The requested amendment is to expand the service area footprint to include the municipality of Austin, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (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) (800) 735-2989. All inquiries should reference Project Number 39617.

TRD-201102811
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 25, 2011

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on July 21, 2011, to amend a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Friendship Cable of Texas, Inc. d/b/a Suddenlink Communications for an Amendment to a State-Issued Certificate of Franchise Authority (SICFA) to add the Town of Celina, Town of Gunter and City of Rockwall, Project Number 39618.

The requested amendment is to expand the service area footprint to include the municipalities of Celina, Gunter and Rockwall, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (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) (800) 735-2989. All inquiries should reference Project Number 39618.

TRD-201102812
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 25, 2011

Notice of Application for Approval to Revise a Tariff Schedule

Notice is given to the public of an application for approval to revise a tariff schedule filed with the Public Utility Commission of Texas (commission) pursuant to Public Utility Regulatory Act §32.101 and Senate Bill 1910, approved by the Texas Legislature in May 2011 and signed into law on June 17, 2011, and P.U.C. Substantive Rule §25.241.

Docket Style and Number: Application of El Paso Electric Company for Approval to Revise a Tariff Schedule for a Net Metering Provision, Tariff Control Number 39582.

The Application: On July 11, 2011, El Paso Electric Company (EPE) submitted an application for approval to revise Tariff Schedule No. 48 - Non-Firm Purchased Power Service from Distributed Generators, Distributed Renewable Generators and Qualifying Facilities. EPE requested that the tariff become effective no later than September 1, 2011. Specifically, EPE is requesting approval to add to Tariff Schedule No. 48 the option for certain customers with small distributed renewable generation facilities to interconnect with the utility through a single meter that runs forward and backward, thus allowing EPE to measure net consumption and production from the customers' facilities. The revisions are necessary to incorporate the net metering provisions required by Senate Bill 1910. The only persons that will be affected by the tariff revision will be EPE and Texas retail customers who take service under Tariff Schedule No. 48. The requested revisions do not include any change in customer rates.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, 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 telephones (TTY) may contact the Commission at (512) 936-7136 or use Relay Texas (toll-free) (800) 735-2989. All correspondence should refer to Tariff Control Number 39582.

TRD-201102821
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 26, 2011

Notice of Application to Amend a Certificate of Convenience and Necessity for a Proposed Transmission Line

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on July 20, 2011, to amend a certificate of convenience and necessity for a proposed transmission line in Randall County, Texas.

Docket Style and Number: Application of Southwestern Public Service Company to Amend a Certificate of Convenience and Necessity for a Proposed Transmission Line within Randall County. Docket Number 39572.

The Application: Southwestern Public Service Company filed an application to amend a certificate of convenience and necessity for a proposed 230-kV transmission line in Randall County, Texas. The pro-

posed project is designated as the Randall County Substation to Amarillo South Substation Transmission Line Project. The proposed project is presented with eight alternate routes. The commission may approve any route presented in the application. Depending on the route chosen, the proposed line will be approximately 8 to 11 miles in length. The total cost of the project, including the transmission line and substation costs, is estimated to be between approximately $12.6 million and $15.8 million.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. The deadline for intervention in this proceeding is September 6, 2011. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) (800) 735-2989. All comments should reference Docket Number 39572.

TRD-201102810
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 25, 2011

Public Notice of CCN Holders Filing Requirements in Order to Calculate the Weighted Statewide Average Composite Usage Sensitive Intrastate Switched Access Rates

The Public Utility Commission of Texas (commission) is required to recalculate the weighted statewide average composite usage sensitive intrastate switched access rates pursuant to P.U.C. Substantive Rule §26.223. In order to calculate the statewide average, Certificate of Convenience (CCN) holders are required to submit updated intrastate switched access data. Therefore, all CCN holders must provide the following intrastate data to the commission as a compliance filing pursuant to P.U.C. Substantive Rule §26.223(g) by 3:00 p.m. on Thursday, September 15, 2011:

(1) The current tariffed rate for originating and terminating common carrier line (CCL);

(2) The current tariffed rate for originating and terminating local switching (LS);

(3) The current tariffed rate for originating and terminating transport (TR);

(4) The current tariffed rate for originating and terminating tandem switching (TS);

(5) The current average per minute rate for originating and terminating tandem switch transport (TST);

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

(7) The total actual originating and terminating minutes of use (MOU) for the most recent 12-month period (August 1 through July 31) for each rate element in (1) - (6) listed above that is billed on an MOU basis; and

(8) The total revenues for the most recent 12-month period (August 1 through July 31) received from any switched access monthly rate element used to transport or switch the access traffic listed in (1) - (6) above that may be specifically attributable to the element identified (e.g., local switching, transport).

CCN holders' compliance filings should be filed in Project Number 39555 no later than 3:00 p.m. on Thursday, September 15, 2011.

Questions concerning this notice should be referred to Stephen Mendoza, Senior Rate Analyst, Rate Regulation Division, at (512) 936-7377, or Bill Abbott, Rate Analyst, Rate Regulation Division at (512) 936-7453. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7132.

TRD-201102757
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 21, 2011

Request for Proposals to Provide Technical Consulting Services

The Public Utility Commission of Texas (PUCT or commission) is issuing a Request for Proposals (RFP) for a person or entity to provide consulting services related to proceedings before the Federal Energy Regulatory Commission (FERC) and the PUCT concerning the membership of Entergy Texas, Inc. (ETI) in a regional transmission organization. The contractor will provide evaluation services and may, at the PUCT's election, provide contested case services as described below.

Evaluation Services

Under the direction of a PUCT staff attorney, the contractor will evaluate the costs and benefits of ETI joining a regional transmission organization, as specified below:

* Analyze and evaluate the cost-benefit studies performed by Charles River Associates related to membership of Entergy Operating Companies (OpCos) in the Southwest Power Pool (SPP) or the Midwest Independent Transmission System Operator (MISO). This will include evaluation of the additional cost and benefits of joining SPP or MISO identified by Entergy, and evaluation of the allocation of costs and benefits to the OpCos performed by Entergy.

* Analyze and evaluate the impact of SPP or MISO membership on ETI and its customers, including the impact of their respective market designs, transmission cost allocation methods, governance, and membership agreements.

* Analyze and evaluate the costs and benefits to ETI of continued participation in the Entergy System Agreement (ESA) if the OpCos in the Entergy System join SPP or MISO. Also review and evaluate proposed changes to the ESA.

* Develop findings and recommendations with regard to the costs and benefits to ETI and its customers of the Entergy OpCos joining SPP or MISO.

Hearing Services

At the PUCT's election, the contractor will work with PUCT staff and attorneys in connection with FERC and PUCT proceedings related to the topics in the evaluation services scope of work. The contractor's duties may include, but are not limited to:

* propounding and responding to discovery requests;

* reviewing and providing critical analysis of testimony submitted by other parties;

* preparing and presenting testimony at a hearing in FERC or PUCT proceedings;

* attending hearings in FERC or PUCT proceedings;

* assisting PUCT counsel in cross-examining expert witnesses;

* assisting PUCT staff during hearings as directed; and

* assisting PUCT counsel in preparing post-hearing briefing.

RFP documentation may be obtained by contacting:

Purchaser

Public Utility Commission of Texas

P.O. Box 13326

Austin, Texas 78711-3326

(512) 936-7069

purchasing@puc.state.tx.us

RFP documentation is also located on the PUCT website at:

http://www.puc.state.tx.us/agency/about/procurement/Default.aspx.

Deadline for proposal submission is 3:00 p.m. on Friday, August 12, 2011.

TRD-201102756
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 21, 2011

Texas Department of Transportation

Change in Public Hearing Location - Texas Manual on Uniform Traffic Control Devices (TMUTCD)

In the July 15, 2011, issue of the *Texas Register* (36 TexReg 4544), the Texas Department of Transportation proposed amendments to Texas Administrative Code, Title 43, Chapter 25, Traffic Operations, §25.1, Uniform Traffic Control Devices.

The location for the public hearing was originally scheduled for the Greer Building in Austin. However, due to incomplete construction work in the Greer Building, the location for the public hearing has changed. The new location for the hearing concerning **§25.1, Uniform Traffic Control Devices,** is at the **Texas Department of Transportation, 200 East Riverside Drive, Room 1A1, Austin, Texas,** on August 29, 2011, 9:30 a.m. Additional information may be obtained from Carol Rawson, Director, Texas Department of Transportation Traffic Operations Division, (512) 416-3200.

TRD-201102765
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: July 22, 2011

Notice of Request for Proposal

The Texas Department of Transportation (department) announces a Request for Proposal (RFP) for:

1. State Planning Assistance - 49 U.S.C. §5304, 43 Texas Administrative Code (TAC) §31.22

2. Rural Transportation Assistance - 49 U.S.C. §5311(b)(3), 43 TAC §31.37

3. Intercity Bus - 49 U.S.C. §5311(f), 43 TAC §31.36

4. Rural Discretionary - 49 U.S.C. §5311 - Disc. Prgm., 43 TAC §31.36

5. Job Access Reverse Commute - 49 U.S.C. §5316, 43 TAC §31.17

6. New Freedom - 49 U.S.C. §5317, 43 TAC §31.18

These public transportation projects will be funded through the Federal Transit Administration (FTA) §§5304, 5311(b)(3), (f), and §5311 - Discretionary programs, §5316, and §5317. It is anticipated that multiple projects from multiple funding programs will be selected for State Fiscal Year 2013. Project selection will be administered by the Public Transportation Division (PTN). Selected projects will be awarded in the form of grants, with payments made for allowable reimbursable expenses or for defined deliverables. The proposer will become a sub-recipient of the department.

Purpose: The RFP invites proposals for services to develop, promote, coordinate, or support public transportation. The objectives for these proposals are to support the non-urbanized and small urban areas of Texas, to support services to meet the intercity travel needs of residents, or to support the infrastructure of the public transportation network through planning, marketing assistance, local match assistance, and vehicle capital and facility investment. In the process of meeting these objectives, projects are also to support and promote the coordination of public transportation services across geographies, jurisdictions, and program areas. Coordination between non-urbanized and urbanized areas and between client transportation services and other types of public transportation are particular objectives.

Eligible Projects: Eligible types of projects have been defined by the department in accordance with FTA guidelines, other laws and regulations, and in consultation with members of the public transportation and the intercity bus industries. Projects include funding for vehicle capital, planning, marketing, facilities, training, technical and operating assistance, and research.

Eligible Proposers: Proposers shall be required to enter into a grant agreement as a sub-recipient of the department. Eligible sub-recipients include state agencies, local public bodies and agencies thereof, private-nonprofit organizations, operators of public transportation services, private consultants, state transit associations, transit districts, and private for-profit operators. Eligible applicants are defined in 43 TAC Chapter 31.

Availability of Funds: In accordance with Transportation Code, Chapter 455, the department currently provides funding for public transportation projects, funded through FTA §5304 State Planning Assistance, §5311(b)(3) Rural Transportation Assistance, §5311(f) Intercity Bus program, §5311 - Rural Discretionary programs, §5316 Job Access Reverse Commute, and §5317 New Freedom. The department will also consider offering transportation development credits to assist with some local match needs for capital projects.

Review and Award Criteria: Proposals will be evaluated against a matrix of criteria and then prioritized. Subject to available funding, the department is placing no precondition on the number or on the types of projects to be selected for funding. The department reserves the right to conduct negotiations pertaining to a proposer's initial responses including but not limited to specifications and prices. An approximate balance in funding awarded to the types of projects, or an approximate geographic balance to selected projects, may be seen as appropriate, depending on the proposals that are received. The department may consider these additional criteria when recommending prioritized projects to the Texas Transportation Commission.

Key Dates and Deadlines:

October 31, 2011: Written questions for the proposal are due to PTN.

November 10, 2011: Written responses to questions posted on PTN website and mailed to all firms who submitted questions.

December 1, 2011: Deadline for receipt of proposals.

March 1, 2012: Target date for the department to complete the evaluation, prioritization, and negotiation of proposals.

April 30, 2012: Target date for presentation of project selection recommendations to the Texas Transportation Commission for action.

September 1, 2012: Target date for all project grant agreements to be executed, with approved scopes of work and calendars of work.

To Obtain a Copy of the RFP: The RFP will be posted on the Public Transportation Division website at http://www.txdot.gov/business/governments/grants/public_transportation.htm.

Proposers with questions relating to the RFP should contact Cheryl Mazur at cheryl.mazur@txdot.gov or by phone at (512) 374-5234 or Kris Dudley at kris.dudley@txdot.gov or by phone at (512) 374-5248.

TRD-201102808
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: July 25, 2011

Public Hearing Notice - Statewide Transportation Improvement Program

The Texas Department of Transportation will hold a public hearing on Tuesday, August 23, 2011 at 10:00 a.m. at the Texas Department of Transportation, 200 East Riverside Drive, Room 1A-2, in Austin, Texas to receive public comments on the August 2011 Quarterly Revisions to the Statewide Transportation Improvement Program (STIP) for FY 2011-2014. The STIP reflects the federally funded transportation projects in the FY 2011-2014 Transportation Improvement Programs (TIPs) for each Metropolitan Planning Organization (MPO) in the state. The STIP includes both state and federally funded projects for the nonattainment areas of Beaumont, Dallas-Fort Worth, El Paso, and Houston. The STIP also contains information on federally funded projects in rural areas that are not included in any MPO area, and other statewide programs as listed.

Title 23, United States Code, §134 and §135 require each designated MPO and the state, respectively, to develop a TIP and STIP as a condition to securing federal funds for transportation projects under Title 23 or the Federal Transit Act (49 USC §5301, et seq.).

Section 134(j) requires an MPO to develop its TIP in cooperation with the state and affected public transit operators and to provide an opportunity for interested parties to participate in the development of the program. Section 135(g) requires the state to develop a STIP for all areas of the state in cooperation with the designated MPOs and, with respect to non-metropolitan areas, in consultation with affected local officials, and further requires an opportunity for participation by interested parties as well as approval by the Governor or the Governor's designee.

A copy of the proposed August 2011 Quarterly Revisions to the FY 2011-2014 STIP will be available for review, at the time the notice of hearing is published, at each of the department's district offices, at the department's Transportation Planning and Programming Division offices located in Building 118, Second Floor, 118 East Riverside Drive, Austin, Texas, and on the department's website at:

www.txdot.gov

Persons wishing to review the August 2011 Quarterly Revisions to the FY 2011-2014 STIP may do so online or contact the Transportation Planning and Programming Division at (512) 486-5033.

Persons wishing to speak at the hearing may register in advance by notifying Lori Morel, Transportation Planning and Programming Division, at (512) 486-5033 not later than Monday, August 22, 2011, or they may register at the hearing location beginning at 9:00 a.m. on the day of the hearing. Speakers will be taken in the order registered. Any interested person may appear and offer comments or testimony, either orally or in writing; however, questioning of witnesses will be reserved exclusively to the presiding authority as may be necessary to ensure a complete record. While any persons with pertinent comments or testimony will be granted an opportunity to present them during the course of the hearing, the presiding authority reserves the right to restrict testimony in terms of time or repetitive content. Groups, organizations, or associations should be represented by only one speaker. Speakers are requested to refrain from repeating previously presented testimony. Persons with disabilities who have special communication or accommodation needs or who plan to attend the hearing may contact the Government and Public Affairs Division, at 125 East 11th Street, Austin, Texas 78701-2483, (512) 463-9957. Requests should be made no later than three days prior to the hearing. Every reasonable effort will be made to accommodate the needs.

Further information on the FY 2011-2014 STIP may be obtained from Lori Morel, Transportation Planning and Programming Division, 118 East Riverside Drive, Austin, Texas 78704, (512) 486-5033. Interested parties who are unable to attend the hearing may submit comments to James L. Randall, P.E., Director, Transportation Planning and Programming Division, 118 East Riverside Drive, Austin, Texas 78704. In order to be considered, all written comments must be received at the Transportation Planning and Programming office by Tuesday, September 6, 2011 at 4:00 p.m.

TRD-201102809
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: July 25, 2011

Texas A&M University System

Request for Proposals

Main 11-0030 Consulting Services for Program Development and Foundation Relations

Description of RFP

Texas A&M University is seeking proposals for a qualified consultant to develop a joint corporate and foundation relations strategy for the Colleges of Architecture and GeoSciences. The expectation is that the outcome of this proposal will be identification of a potential revenue stream that will justify the addition of an officer at the Development Foundation to support our Colleges in pursing these kinds of gifts.

Contact Information

The RFP documentation may be obtained by contacting: Pam Pantel, Senior Buyer, Department of Procurement Services, Texas A&M University, P.O. Box 30013, College Station, Texas 77842 or e-mail at ppantel@tamu.edu.

Selection Criteria

Texas A&M University will base its choice on demonstrated competence, knowledge, references and qualifications and on the reasonable-

ness of the proposed fee for the services; and if other considerations are equal, give preference to a consultant whose principal place of business is in the state or who will manage the consulting contract wholly from an office in the state.

Date and Time Proposal is due:

Proposals must be received on or before 2:00 p.m. CDT on August 19, 2011.

TRD-201102823
Donna Harrell
Buyer
Texas A&M University System
Filed: July 27, 2011

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University of North Texas System

Notice of Intent to Renew and Extend Consulting Contract

The University of North Texas System (UNT System) intends to renew and extend a contract for consulting services related to federal government relations. The consulting services have been provided by Congressional Solutions, Inc. under a contract with an initial term beginning September 1, 2009, and ending August 31, 2011. UNT System intends to renew and extend the term of the contract through August 31, 2014.

As required by Chapter 2254 of the Texas Government Code, prior to renewing and extending its contract with Congressional Solutions, Inc., UNT System is posting this Notice of Intent to Renew and Extend the Consulting Contract, and hereby extends this invitation to qualified and experienced consultants interested in providing the consulting services described in this notice.

Scope of Work: The federal government relations consulting firm will assist UNT System and its member institutions in: developing and executing a government relations strategy to attract support for research facilities, equipment, technology, and programs through federal initiatives pertaining, but not limited to, the United States Congress, federal agencies, and related entities; evaluating research resources, developing concepts and themes for agreed upon research initiatives, developing objectives and strategies in presenting opportunities to utilize the available resources of UNT Institutions for existing and new initiatives, formulating strategies and timetables for presentation of research initiatives, assisting in preparation of supporting documentation, coordinating meetings with pertinent representatives and their staff, serving as a liaison to all federal entities, and preparing testimony for presentation; developing legislative and other strategies; and monitoring and reporting on government and other programs relevant to research initiatives and other areas of interest to UNT System and UNT Institutions.

How to Respond; Submittal Deadline: To respond to this invitation, consultants must submit the information requested in the Specifications section of this invitation and any other relevant information in a clear and concise written format to: Carrie Stoeckert, Assistant Director of PPS, University of North Texas, 1155 Union Circle #310499, Denton, Texas 76203-5017 (2310 North Interstate 35-E, Denton, Texas 76201). Offers must be submitted in an envelope or other appropriate container and the name and return address of the consultant must be clearly visible. All offers must be received at the above address no later than 2:00 p.m., CST, August 26, 2011. Submissions received after the submittal deadline will not be considered.

Specifications:

Any consultant submitting an offer in response to this invitation must provide the following: (1) the consultant's legal name, type of entity (individual, partnership, corporation, etc.), and address; (2) background information regarding the consultant, including the number of years in business and the number of employees; (3) information regarding the qualifications, education, and experience of the team members proposed to conduct the requested services; (4) the monthly fee to be charged for providing the services and any applicable hourly rate for any team member providing services; (5) the earliest date by which the consultant could begin providing the services; (6) a list of five client references, including any complex institutions or systems of higher education for which the consultant has provided similar consulting services; (7) a statement of the consultant's approach to providing the services described in the Scope of Work section of this invitation, any unique benefits the consultant offers UNT System, and any other information the consultant desires UNT System to consider in connection with the consultant's offer; (8) information to assist UNT System in assessing the consultant's demonstrated competence and experience providing consulting services similar to the services requested in this invitation; (9) information to assist UNT System in assessing the consultant's experience performing the requested services for other complex institutions or systems of higher education; (10) information to assist UNT System in assessing whether the consultant will have any conflicts of interest in performing the requested services; (11) information to assist UNT System in assessing the overall cost to UNT System; and (12) information to assist UNT System in assessing the consultant's capability and financial resources to perform the requested services.

Selection Process:

The consulting services sought herein relate to services previously provided to UNT System by Congressional Solutions, Inc. UNT System intends to renew and extend its contract with Congressional Solutions, Inc. unless a better offer, as determined by UNT System in its sole discretion, is received in response to this invitation.

The successful offer must be submitted in response to this invitation no later than the submittal deadline and will be the offer that is the most advantageous to UNT System in UNT System's sole discretion. Offers will be evaluated by UNT System and member institution personnel. The evaluation of offers and the selection of the successful offer will be based on information provided to UNT System by the consultant in response to the Specifications section of this invitation. Consideration may also be given to any additional information and comments if such information or comments increase the benefits to UNT System. The successful consultant will be required to enter into a contract acceptable to UNT System.

Finding by Chancellor:

The Chancellor of UNT System finds that specialized experience is needed in Washington, D.C. to support existing and proposed programs of the UNT System and its member institutions. The consulting services are necessary because the UNT System does not have the specialized experience or staff resources available to achieve these objectives. The UNT System believes that such expert consulting services will be cost effective by expanding federal investment in research, teaching, and related programs in Texas throughout the UNT System.

Questions:

Questions concerning this invitation should be directed to: Carrie Stoeckert, Assistant Director of Purchasing, University of North Texas, via e-mail carries@unt.edu or phone (940) 565-3203. UNT System may in its sole discretion respond in writing to questions concerning this invitation. Only UNT System's responses made by formal written addenda to this invitation shall be binding. Oral or other written interpretations or clarifications shall be without legal effect.

TRD-201102818

Carrie Stoeckert
Assistant Director
University of North Texas System
Filed: July 26, 2011

How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 36 (2011) is cited as follows: 36 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 "36 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 36 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 at: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The ***Texas Administrative Code (TAC***) is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac.

The following companies also provide complete copies of the TAC: Lexis-Nexis (800-356-6548), and West Publishing Company (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 ***Index of Rules***. The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register***. If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with the ***Texas Register*** page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION
Part 4. Office of the Secretary of State
Chapter 91. Texas Register
40 TAC §3.704..950 *(P)*