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# TEXAS REGISTER

*Volume 33 Number 47*

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*Tasha Runnels*

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

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# IN THIS ISSUE

## **GOVERNOR**

Appointments .....	9351
Proclamation 41-3168 .....	9351

## **ATTORNEY GENERAL**

Request for Opinions .....	9353
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## **EMERGENCY RULES**

### **TEXAS DEPARTMENT OF AGRICULTURE**

#### **QUARANTINES AND NOXIOUS AND INVASIVE PLANTS**

4 TAC §19.101 .....	9355
4 TAC §19.411, §19.413 .....	9355

## **PROPOSED RULES**

### **PUBLIC UTILITY COMMISSION OF TEXAS**

#### **SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS**

16 TAC §25.43 .....	9359
---------------------	------

### **TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

#### **STANDARDS OF PERFORMANCE FOR HAZARDOUS AIR POLLUTANTS AND FOR DESIGNATED FACILITIES AND POLLUTANTS**

30 TAC §§113.2100 - 113.2174 .....	9394
30 TAC §§113.2200 - 113.2261 .....	9410
30 TAC §§113.2300 - 113.2357 .....	9421

#### **UNDERGROUND AND ABOVEGROUND STORAGE TANKS**

30 TAC §334.71 .....	9436
30 TAC §334.201 .....	9436
30 TAC §334.503 .....	9437

#### **TEXAS RISK REDUCTION PROGRAM**

30 TAC §350.2, §350.4 .....	9441
30 TAC §350.77 .....	9443
30 TAC §350.91, §350.92 .....	9444

### **TEXAS YOUTH COMMISSION**

#### **ADMISSION, PLACEMENT, AND PROGRAM COMPLETION**

37 TAC §85.25 .....	9445
---------------------	------

## **WITHDRAWN RULES**

### **TEXAS DEPARTMENT OF AGRICULTURE**

#### **QUARANTINES AND NOXIOUS AND INVASIVE PLANTS**

4 TAC §19.411, §19.413 .....	9449
------------------------------	------

## **ADOPTED RULES**

### **STATE OFFICE OF ADMINISTRATIVE HEARINGS**

#### **RULES OF PROCEDURES**

1 TAC §§155.1, 155.3, 155.5, 155.7, 155.9, 155.11, 155.13, 155.15, 155.17, 155.19, 155.21, 155.23, 155.25, 155.27, 155.29 - 155.31, 155.33, 155.35, 155.37, 155.39, 155.41, 155.43, 155.45, 155.47, 155.49, 155.51, 155.53, 155.55 - 155.57, 155.59 .....	9451
---	------

#### **RULES OF PROCEDURE**

1 TAC §§155.1, 155.3, 155.5, 155.7, 155.9 .....	9452
1 TAC §155.51, §155.53 .....	9453
1 TAC §155.101, §155.103 .....	9453
1 TAC §§155.151, 155.153, 155.155, 155.157 .....	9453
1 TAC §155.201 .....	9453
1 TAC §155.251 .....	9454
1 TAC §§155.301, 155.303, 155.305, 155.307 .....	9455
1 TAC §155.351 .....	9456
1 TAC §§155.401, 155.403, 155.405, 155.407, 155.409, 155.411, 155.413, 155.415, 155.417, 155.419, 155.421, 155.423, 155.425, 155.427, 155.429, 155.431 .....	9457
1 TAC §§155.501, 155.503, 155.505, 155.507 .....	9458

#### **REQUESTS FOR RECORDS**

1 TAC §161.1 .....	9459
--------------------	------

### **TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**

#### **MANUFACTURED HOUSING**

10 TAC §80.23 .....	9460
10 TAC §80.30 .....	9460
10 TAC §80.100 .....	9460

### **TEXAS EDUCATION AGENCY**

#### **PLANNING AND ACCOUNTABILITY**

19 TAC §97.1037 .....	9464
19 TAC §§97.1051, 97.1053, 97.1055 .....	9464

#### **TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR SPANISH LANGUAGE ARTS AND READING AND ENGLISH AS A SECOND LANGUAGE**

19 TAC §§128.1, 128.10 - 128.16 .....	9466
19 TAC §§128.17, 128.18, 128.21 .....	9488
19 TAC §§128.23 - 128.26 .....	9492
19 TAC §§128.30 - 128.32, 128.41 .....	9492
19 TAC §§128.44 - 128.66 .....	9505

### **DEPARTMENT OF STATE HEALTH SERVICES**

#### **NUTRITION SERVICES**

25 TAC §31.30.....	9506	Agreed Orders.....	9562
25 TAC §§31.32 - 31.36 .....	9507	Executive Director's Response to Public Comment on TCEQ General Permit Number WQG200000 .....	9565
<b>TEXAS COMMISSION ON ENVIRONMENTAL QUALITY</b>		Notice of Addendum to Agreed Order, Docket Number 2007-1536-PST-E.....	9566
<b>CONTROL OF CERTAIN ACTIVITIES BY RULE</b>		Notice of a Public Hearing on Proposed Revisions to 30 TAC Chapter 334 and 350.....	9566
30 TAC §§321.301, 321.303, 321.305, 321.307, 321.309, 321.311, 321.313, 321.315, 321.317, 321.319, 321.321, 321.323, 321.325 9507		Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 113 and to the State Plan.....	9566
<b>DEPARTMENT OF AGING AND DISABILITY SERVICES</b>		Notice of Receipt of Application for a New Municipal Solid Waste Permit Number 2359.....	9567
<b>MENTAL RETARDATION AUTHORITY RESPONSIBILITIES</b>		Notice of Water Quality Applications.....	9567
40 TAC §§2.301 - 2.303, 2.305, 2.307, 2.309, 2.311, 2.313, 2.315 9512		Proposal for Decision.....	9568
40 TAC §§2.351 - 2.373 .....	9512	<b>Texas Facilities Commission</b>	
<b>PILOT PROGRAM TO INCREASE THE USE OF ADVANCE DIRECTIVES IN NURSING FACILITIES AND INTERMEDIATE CARE FACILITIES FOR PERSONS WITH MENTAL RETARDATION</b>		Request for Proposals #303-9-10104-A.....	9569
40 TAC §§16.1 - 16.4 .....	9513	Request for Proposals #303-9-10158-A.....	9569
<b>RULE REVIEW</b>		<b>Office of the Governor</b>	
<b>Proposed Rule Reviews</b>		Request for Grant Applications for General Victim Assistance - Direct Services Programs.....	9569
State Board of Dental Examiners.....	9515	Request for Grant Applications for Law Enforcement, Prosecution, Court, and Training Programs Targeting Victims of Domestic Violence, Sexual Assault, and Stalking.....	9571
<b>Adopted Rule Review</b>		<b>Texas Health and Human Services Commission</b>	
Texas Department of Savings and Mortgage Lending .....	9516	Notification of Consulting Procurement .....	9572
<b>TABLES AND GRAPHICS</b>		<b>Texas Department of Insurance</b>	
.....	9519	Company Licensing .....	9572
<b>IN ADDITION</b>		Third Party Administrator Applications .....	9573
<b>Ark-Tex Council of Governments</b>		<b>Texas Lottery Commission</b>	
Request for Proposal for Training Contractor.....	9559	Instant Game Number 1090 "\$250,000 Bingo" .....	9573
<b>Cancer Prevention and Research Institute of Texas</b>		<b>Texas Parks and Wildlife Department</b>	
Request for Applications.....	9559	Notice of Hearing and Opportunity for Public Comment.....	9580
<b>Comptroller of Public Accounts</b>		<b>Public Utility Commission of Texas</b>	
Notice of Contract Amendment .....	9560	Notice of Application for Amendment to Certificated Service Area Boundary .....	9581
<b>Office of Consumer Credit Commissioner</b>		Notice of Application for Approval of Revised Depreciation Rates .....	9581
Notice of Rate Ceilings .....	9561	Notice of Application for Designation as an Eligible Telecommunications Carrier .....	9581
<b>Commission on State Emergency Communications</b>		Notice of Application for Sale, Transfer, or Merger.....	9582
Statutory Annual Review of Rule 255.4, Definition of a Local Exchange Access Line or an Equivalent Local Exchange Access Line .....	9561	Notice of Application for Service Area Exception within Dallas County, Texas.....	9582
<b>Employees Retirement System of Texas</b>		<b>South East Texas Regional Planning Commission</b>	
Request for Applications - Texas Employees Group Benefits Program Health Maintenance Organizations.....	9561	Request for Proposals .....	9582
<b>Texas Commission on Environmental Quality</b>		<b>The University of Texas System</b>	

Award of Consultant Contract Notification .....9583

# 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](mailto:register@sos.state.tx.us)

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

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

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.

<http://www.oag.state.tx.us/opinopen/opengovt.shtml>

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

Additional information about state government may be found here:  
<http://www.state.tx.us/>

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

# THE GOVERNOR

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

## Appointments

### Appointments for November 4, 2008

Appointed to the Texas Alcoholic Beverage Commission for a term to expire November 15, 2013, Melinda Fredricks of Conroe (replacing John Steen, Jr. of San Antonio whose term expired).

### Appointments for November 5, 2008

Appointed to the Texas Medical Board for a term to expire April 13, 2009, Charles David Baucom of Sulphur Springs (replacing Melinda Fredricks of Conroe who resigned).

### Appointments for November 7, 2008

Appointed as Justice of the Fourteenth Appellate District, Place 5, for a term until the next General Election and until his successor shall be duly elected and qualified, Kent C. Sullivan of Houston. Mr. Sullivan is replacing Justice Wanda Fowler who resigned.

Appointed as Presiding Judge of the Sixth Administrative Judicial Region for a term to expire four years from date of qualification, Stephen B. Ables of Kerrville (Judge Ables is being reappointed).

Appointed as Presiding Judge of the Ninth Administrative Judicial Region for a term to expire four years from date of qualification, Kelly G. Moore of Brownfield (Judge Moore is being reappointed).

Designating A. W. Riter, III of Tyler as Chair of the Texas Higher Education Coordinating Board for a term at the pleasure of the Governor. Mr. Riter is replacing Robert W. Shepard of Harlingen as Chair. Mr. Shepard will continue to serve on the board.

Designating Fred W. Heldenfels, IV of Austin as Vice Chair of the Texas Higher Education Coordinating Board for a term at the pleasure of the Governor. Mr. Heldenfels is replacing A. W. Riter, III of Tyler as Vice Chair.

Appointed to the Texas State Board of Plumbing Examiners for a term to expire September 5, 2013, Edward Thompson of Tyler (replacing Robert Tarver of Nederland whose term expired).

Appointed to the Texas State Board of Plumbing Examiners for a term to expire September 5, 2013, Alejandro Meade, III of Brownsville (replacing John Hatchel of Woodway whose term expired).

Appointed to the Texas State Board of Plumbing Examiners for a term to expire September 5, 2013, David Lilley, Jr. of Wichita Falls (replacing Tony Cortes of Cibolo whose term expired).

Ms. Tammy Betancourt will serve as Presiding Officer of the board.

Appointed to the Prepaid Higher Education Tuition Board for a term to expire February 1, 2011, Joseph Colonna, Jr. of Dallas (replacing Zan Statham Prince of Weatherford who resigned).

Rick Perry, Governor  
TRD-200805894



## Proclamation 41-3168

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, RICK PERRY, Governor of the State of Texas, did issue an Emergency Disaster Proclamation on September 8, 2008, as Hurricane Ike posed a threat of imminent disaster along the Texas Coast and in specified counties in Texas. The disaster proclamation was subsequently renewed through November 6, 2008, in the wake of Hurricane Ike.

WHEREAS, Hurricane Ike struck the State of Texas on September 13, 2008, causing substantial destruction in South and East Texas.

WHEREAS, Hurricane Ike continues to create a state of disaster for the people in the State of Texas.

WHEREAS, the state of disaster includes the counties of Anderson, Angelina, Aransas, Archer, Austin, Bell, Bexar, Bowie, Brazoria, Brazos, Burleson, Calhoun, Cass, Chambers, Cherokee, Collin, Colorado, Comal, Coryell, Dallas, Denton, Ellis, El Paso, Fort Bend, Franklin, Freestone, Galveston, Grayson, Gregg, Grimes, Hardin, Harris, Harrison, Henderson, Hill, Hopkins, Houston, Hunt, Jackson, Jasper, Jefferson, Johnson, Kaufman, Lamar, Lavaca, Leon, Liberty, Limestone, Lubbock, Madison, Marion, Matagorda, McLennan, Milam, Montgomery, Morris, Nacogdoches, Navarro, Newton, Nueces, Orange, Panola, Parker, Polk, Potter, Randall, Robertson, Rusk, Sabine, San Augustine, San Jacinto, San Patricio, Shelby, Smith, Tarrant, Titus, Tom Green, Travis, Trinity, Tyler, Upshur, Van Zandt, Victoria, Waller, Walker, Washington, Webb, Wharton, Williamson, Wise and Wood.

THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby renew the disaster proclamation and direct that all necessary measures, both public and private as authorized under Section 418.017 of the code, be implemented to meet that disaster.

As provided in Section 418.016 of the code, all rules and regulations that may inhibit or prevent prompt response to this threat are suspended for the duration of the incident.

The renewal of the disaster proclamation becomes effective on November 7, 2008, and shall remain in effect until December 6, 2008, unless renewed or terminated.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 6th day of November, 2008.

Rick Perry, Governor

Attested by: Esperanza "Hope" Andrade, Secretary of State  
TRD-200805900



# THE ATTORNEY GENERAL

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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>.)

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## Request for Opinions

**RQ-0754-GA**

### Requestor:

The Honorable Armando R. Villalobos  
Cameron County and District Attorney  
Cameron County Courthouse  
974 East Harrison Street  
Brownsville, Texas 78520

Re: Whether an assistant county and district attorney may practice in a neighboring county or in federal court (RQ-0754-GA)

### Briefs requested by December 5, 2008

**RQ-0755-GA**

### Requestor:

The Honorable Homero Ramirez  
Webb County Attorney  
1110 Washington St., Suite 301  
Laredo, Texas 78042-0268

Re: Whether an appraisal district may conduct its appraisals on other than an annual basis (RQ-0755-GA)

## Briefs requested by December 5, 2008

**RQ-0756-GA**

### Requestor:

The Honorable Bill Moore  
Johnson County Attorney  
Guinn Justice Center  
204 South Buffalo Avenue, Suite 410  
Cleburne, Texas 76033-5404

Re: Authority of a commissioners court to lease county property to a non-profit organization for less than fair market value (RQ-0756-GA)

### Briefs requested by December 8, 2008

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

TRD-200805888  
Stacey Napier  
Deputy Attorney General  
Office of the Attorney General  
Filed: November 12, 2008





# EMERGENCY RULES

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034). An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days. (Government Code, §2001.034).

## TITLE 4. AGRICULTURE

### PART 1. TEXAS DEPARTMENT OF AGRICULTURE

#### CHAPTER 19. QUARANTINES AND NOXIOUS AND INVASIVE PLANTS

##### SUBCHAPTER J. RED IMPORTED FIRE ANT QUARANTINE

###### 4 TAC §19.101

The Texas Department of Agriculture (the department) adopts, on an emergency basis, an amendment to §19.101(b) in order to expand the quarantined area for the red imported fire ant, *Solenopsis invicta* Buren. The department conducts annual detection surveys in the counties bordering the red imported fire ant quarantined counties to monitor the sporadic encroachment of fire ant infestations. The detection surveys conducted in 2008 and in prior years indicated that Archer, Baylor, Callahan, Clay, Coke, Coleman, Concho, Crane, Crockett, Fisher, Haskell, Howard, Irion, Lubbock, Martin, Mitchell, Nolan, Reagan, Runnels, Schleicher, Scurry, Shackelford, Starr, Terrell, Throckmorton, Upton, Ward, Wilbarger, and Winkler counties have a widespread fire ant infestation beyond containment. The emergency action will slow the artificial spread of fire ants through movement of hay and nursery-floral commodities to fire ant-free areas. The nursery-floral articles from these counties will be allowed to move to the fire ant-free areas only after USDA approved quarantine treatments. Hay may only be shipped to fire ant free areas if it is stored in a manner that prohibits direct contact with the ground.

The emergency amendment adds Archer, Baylor, Callahan, Clay, Coke, Coleman, Concho, Crane, Crockett, Fisher, Haskell, Howard, Irion, Lubbock, Martin, Mitchell, Nolan, Reagan, Runnels, Schleicher, Scurry, Shackelford, Starr, Terrell, Throckmorton, Upton, Ward, Wilbarger, and Winkler counties to the list of quarantined areas, thereby restricting the movement of quarantined articles when transported from these counties to fire ant-free areas.

The department believes that it is necessary to take this immediate action to prevent the artificial spread of the red imported fire ant into non-infested areas of Texas and other states, and adoption of this quarantine on an emergency basis is both necessary and appropriate. The nursery industry as well as the hay producers in the non-infested counties are in peril because without this emergency quarantine their chances of becoming infested increase significantly. Once infested, they would be borne with the treatment expense to ship regulated articles to non-infested areas of Texas and other states. In addition, the U.S. Department of Agriculture is pressuring the department to quarantine

the infested areas to reduce artificial spread of the ants to other states.

Amended §19.101 expands the quarantined area in correspondence with the detection of the red imported fire ant outside the current quarantined area. The department will be proposing adoption of this rule amendment on a permanent basis in a separate submission.

The amended section is adopted on an emergency basis under the Texas Agriculture Code, §71.004, which provides the Texas Department of Agriculture with the authority to establish emergency quarantines; §71.007 which authorizes the department to adopt rules as necessary to protect agricultural and horticultural interests, including rules to provide for specific treatment of a grove or orchard or of infested or infected plants, plant products, or substances; and the Texas Government Code, §2001.034, which provides for the adoption of administrative rules on an emergency basis, without notice and comment.

###### §19.101. Quarantined Areas.

(a) (No change.)

(b) In addition to the areas described in subsection (a) of this section, Archer, Baylor, Brooks, Brown, Cameron, Callahan, Clay, Coke, Coleman, Concho, Crane, Crockett, Delta, Dimmit, Duval, Ector, Fisher, Haskell, Hidalgo, Howard, Irion, Jack, Jones, Kenedy, Kimble, Kinney, Lamar, La Salle, Lubbock, Mason, Martin, Maverick, McCulloch, Midland, Mills, Mitchell, Montague, Nolan, Palo Pinto, Reagan, Red River, Runnels, San Saba, Schleicher, Scurry, Shackelford, Starr, Stephens, Terrell, Throckmorton, Upton, Val Verde, Ward, Webb, Wilbarger, Willacy, Winkler, Young, and Zavala counties in Texas are quarantined.

This agency hereby certifies that the emergency adoption 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 November 5, 2008.

TRD-200805815

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

Effective Date: November 5, 2008

Expiration Date: March 4, 2009

For further information, please call: (512) 463-4075



##### SUBCHAPTER U. ASIAN CITRUS PSYLLID QUARANTINE

###### 4 TAC §19.411, §19.413

The Texas Department of Agriculture (the department) adopts on an emergency basis amendments to §19.411 and §19.413, concerning a quarantine for a recently introduced and highly threatening pest, *Diaphorina citri* Kuwayama (Homoptera: Psyllidae), the Asian citrus psyllid (ACP). The department adopted this emergency quarantine originally on August 27, 2008, and is now withdrawing the original emergency quarantine and resubmitting the quarantine in order to amend the boundaries of the quarantine due to new detections of ACP in twenty-one additional counties. The emergency amendment to §19.411 adds twenty-four counties (including the three covered in the withdrawn emergency amendment) to the list of quarantined areas. The emergency amendment to §19.413 clarifies restrictions imposed by the quarantine and changes the reference for required Federal treatment procedures. The emergency amendment to §19.411 updates the current quarantine by adding Austin, Blanco, Brazos, Colorado, DeWitt, Fort Bend, Frio, Galveston, Goliad, Gonzales, Grimes, Hays, Jackson, Jefferson, Karnes, Kendall, Kinney, La Salle, Medina, Montgomery, Presidio, Wharton, Wilson, and Zavala counties to the quarantined area, thus combating spread of the psyllid to non-infested counties. The emergency amendment to §19.411 also updates the list of quarantined areas outside of Texas; it adds all or part of Alabama, Georgia, Louisiana, Mississippi and South Carolina. The emergency amendment to §19.413 adds leaves of Kaffir lime leaf (*Citrus hystri* L.) as leaves intended for consumption; it also changes the reference to required treatment procedures detailed in the Animal and Plant Health Inspection Service's (APHIS) treatment schedule.

Emergency adoption of amendments to the ACP quarantine is needed to protect the Texas citrus industry from a new major disease threat from a neighboring state. ACP is the vector for *Candidatus Liberibacter asiaticus*, the species of bacteria that causes citrus greening (also known as huanglongbing or HLB).

Citrus greening causes reduced production of fruit, malformation of fruit, loss of plant vigor and plant death. Control of outbreaks of HLB is complicated by the fact that infected plants do not show symptoms for several months. There is no treatment for HLB; the only effective treatment is removal of infected plants coupled with elimination of ACP that can vector the disease to other citrus plants. The severity of HLB is such that the disease has made commercial production of citrus uneconomical in some parts of the world.

Citrus greening and ACP were unknown in the U.S. until recently. In August 2005, seven years following the first detection of ACP in Florida, that state became the first in the U.S. to be infected with HLB. Currently the whole state of Florida is infected and is prohibited by Federal quarantine from exporting citrus to any citrus producing state.

On May 29, 2008, the USDA confirmed the presence of ACP in southern Louisiana. On June 12, 2008, HLB was confirmed in one citrus tree in Louisiana's Orleans Parish. Subsequent surveys found ACP in 12 Louisiana parishes and disclosed HLB (but no ACP) in Washington Parish, Louisiana. Federal and Louisiana quarantines currently cover the ACP and HLB infested parishes of Louisiana.

Some Texas counties have become infested with ACP, although HLB has not yet been detected in Texas. In 2006-2007 the Texas A&M University-Kingsville Citrus Center (TAMUKCC) in Weslaco surveyed numerous sites in Texas for ACP and HLB; that survey disclosed ACP (but no HLB) infestations in 32 Texas counties,

which subsequently were quarantined for ACP by the department and the USDA.

In the US and its territories, areas that currently are infested with ACP but that are not believed to have HLB include the states of Alabama, California, Georgia, and Hawaii, as well as Guam and Puerto Rico. Surveys in July 2008 identified ACP infestations (but no HLB) in various counties in Alabama, Georgia, and South Carolina. On September 2, 2008, ACP (but no HLB) was detected in San Diego County, California, as a result of cooperative surveys conducted by USDA-APHIS and the California Department of Food and Agriculture (CDFA).

On November 2, 2007, the Animal and Plant Health Inspection Service (APHIS) issued a Federal Domestic Quarantine Order that quarantined 32 Texas counties for the Asian citrus psyllid. APHIS required that Texas establish a parallel quarantine by December 1, 2007 or they would quarantine the entire state of Texas. Consequently, the department filed an Asian citrus psyllid emergency quarantine, which was followed by adoption of a permanent quarantine. The department's quarantine combats the artificial spread of ACP into non-infested counties of Texas and into those states that the Federal Order allows psyllid host material to enter. Prevention of the artificial spread of ACP into non-infested counties of Texas will deter any spread of citrus greening when and if the disease is found in Texas. Emergency revision of §19.411 and §19.413 is justified by the immediate proximity of a new potential source of HLB and by the urgency of avoiding the entry and spread of HLB in Texas.

An emergency rule adopted under Texas Government Code, §2001.034, may be effective for no longer than 120 days and may be renewed for no longer than 60 days. Nevertheless, the department intends to propose adoption of these emergency rules on a permanent basis in a separate submission.

The emergency amendments to §19.411 and §19.413 are adopted in accordance with the Texas Agriculture Code (the Code), §71.001 which authorizes the department to establish a quarantine for an infested area against an in-state pest if it determines that the pest is dangerous and is not widely distributed in this state; §71.007, which authorizes the department to adopt rules as necessary to protect agricultural and horticultural interests, including rules to prevent the selling, moving, or transporting of any plant, plant product, or substance that is found to be infested or found to be from a quarantined area; or provide for specific treatment of a grove or orchard or of infested or infected plants, plant products, or substances; and, Texas Government Code, §2001.034, which provides for the adoption of administrative rules on an emergency basis, without notice and comment.

*§19.411. Quarantined Areas.*

The quarantined areas are:

- (1) Alabama--Baldwin County;
- (2) Florida--Entire State of Florida;
- (3) Georgia--Entire State of Georgia;
- (4) Guam--All islands of the Territory of Guam;
- (5) Hawaii--All islands of the State of Hawaii;
- (6) Louisiana--Jefferson, Lafourche, Orleans, Plaquemines, St. Charles, St. James, St. Tammany, and Terrebonne parishes;
- (7) Mississippi--Hancock County;
- (8) Puerto Rico--Entire Commonwealth of Puerto Rico;

(9) South Carolina--Beaufort, Charleston, and Colleton counties;

~~{(1) the states of Florida and Hawaii; the entire territory of Guam and the Commonwealth of Puerto Rico;}~~

(10) ~~{(2) Texas-- [the Texas counties of] Aransas, Atascosa, Austin, Bee, Bexar, Blanco, Brazoria, Brazos, Brooks, Caldwell, Cameron, Colorado, DeWitt, Dimmit, Duval, Fort Bend, Frio, Galveston, Goliad, Gonzales, Grimes, Harris, Hays, Hidalgo, Jackson, Jefferson, Jim Hogg, Jim Wells, Karnes, Kendall, Kenedy, Kinney, Kleberg, La Salle, Live Oak, Matagorda, Maverick, McMullen, Medina, Montgomery, Nueces, Presidio, Refugio, San Patricio, Starr, Uvalde, Wharton, Wilson, Val Verde, Victoria, Waller, Washington, Webb, Willacy, [and] Zapata, and Zavala counties; and~~

(11) ~~{(3)}~~ any other area infested with the Asian citrus psyllid.

§19.413. *Restrictions.*

(a) (No change.)

(b) Exceptions. To be eligible to move from quarantined areas, quarantined articles must meet the following requirements.

(1) Requirements to move from quarantined areas of Texas to free areas of Texas.

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

(C) In the case of quarantined articles that are intended for consumption (e.g., fresh leaves of curry [~~leaf~~] (*Bergera* (=Murraya) *koenigii*) or Kaffir lime (*Citrus hystrix* L.) [~~leaves intended for consumption~~], instead of the treatments specified in subparagraph (B) of this paragraph, the leaves must be treated

prior to the movement in accordance with the Animal and Plant Health Inspection Service's (APHIS) treatment schedule T101-n-2 (methyl bromide fumigation treatment for external feeding insects on fresh herbs) at the times and rates specified in the treatment manual and safeguarded until export. This information can be found on page 5-2-28 of the treatment manual, located on-line at: [http://www.aphis.usda.gov/import\\_export/plants/manuals/ports/downloads/treatment\\_pdf/05\\_02\\_t100schedules.pdf](http://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/treatment_pdf/05_02_t100schedules.pdf) [[http://www.aphis.usda.gov/import\\_export/plants/manuals/ports/downloads/treatment\\_pdf/05\\_02\\_t100schedules.pdf](http://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/treatment_pdf/05_02_t100schedules.pdf)]; and

(D) (No change.)

(2) (No change.)

This agency hereby certifies that the emergency adoption 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 November 5, 2008.

TRD-200805816

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

Effective Date: November 5, 2008

Expiration Date: December 24, 2008

For further information, please call: (512) 463-4075

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# PROPOSED RULES

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

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

## TITLE 16. ECONOMIC REGULATION

### PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

#### CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

#### SUBCHAPTER B. CUSTOMER SERVICE AND PROTECTION

##### 16 TAC §25.43

The Public Utility Commission of Texas (commission) proposes an amendment to §25.43, relating to Provider of Last Resort (POLR). The proposed amendment modifies the structure and the mechanics of POLR service to reflect the experience gained from recent mass transitions of customers to the POLR during the summer of 2008 and account for changed circumstances in the competitive market. The proposed amended rule will strengthen the POLR structure in order to better protect customers in a mass transition and REPs that participate as POLR providers. This rule is a competition rule subject to judicial review as specified in Public Utility Regulatory Act (PURA) §39.001(e). Project Number 35769 is assigned to this proceeding.

Christine Wright, Policy Analyst, Competitive Markets Division, has determined that for the first five years the amended rule is in effect, the enforcement and administration of the rule will not have a foreseeable impact on the costs or revenues of state or local governments.

Ms. Wright has also determined that for each year of the first five years the amended rule is in effect the public benefits anticipated as a result of enforcing the rule will substantially outweigh any costs on persons required to comply with the rule. The amended rule will improve POLR service, by pricing POLR service at prices that better reflect the actual cost to provide the service, and create incentives for REPs to offer competitive market based rates to customers in transition. We believe this will afford the POLR an opportunity of acquiring new customers, as opposed to simply providing temporary service to customers who may not pay the POLR for service. The amended rule will reduce the likelihood that customers in mass transition will be charged rates based on the market clearing price of energy (MCPE) in the spot market operated by the Electric Reliability Council of Texas (ERCOT).

During the summer of 2008, one or more REPs defaulted on their obligations to ERCOT, and the customers of those REPs had to be transitioned to other REPs, at times when the MCPE was

high. Based on information gathered from market participants and other sources, Ms. Wright calculates that the MCPE during the summer varied from a low of (\$37.00) per MWh to a high of \$2250 per MWh. Transitions of customers occurred on May 19, May 30, June 7, June 13 and on July 3. The prices on May 19 ranged from (\$36.91) to \$2250 in ERCOT. The prices on May 30 ranged from (\$37.00) to \$1248.55 across ERCOT. On June 7 the prices ranged from \$41.60 to \$299.00 per MWh. On June 13, the prices ranged from \$26.71 to \$107.22 per MWh. And on July 3, the prices ranged from \$17.23 to \$213.16 per MWh. The amended rule allows the REPs greater flexibility in offering competitive market based rates to customers as they are acquired in a mass transition.

The economic costs to persons who are required to comply with the amended rule are associated with the acquisition of customers in a mass transition, and are likely to vary from business to business, and are difficult to ascertain. However, it is believed that the public benefits accruing from implementation of the amended rule will significantly outweigh these costs. The amended rule is intended to limit the costs to REPs by providing incentives for customers to stay with the new REP and continue to take service. Significant costs to the REP occur when customers in transition do not pay their bills. Therefore, the amended rule is intended to encourage customers to stay with the new REP and establish a new relationship with the provider.

There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing the amended rule. Therefore, no regulatory flexibility analysis is required. Nevertheless, Ms. Wright has prepared an economic impact statement and regulatory flexibility analysis pursuant to Texas Government Code §2006.002. The commission has issued certificates to approximately 130 REPs. Approximately 30 of the 130 REPs (21%) are small or micro businesses. About half of the small and micro businesses are not currently serving customers. The small and micro businesses that are serving customers represent about \$25 million in combined annual revenues and about 0.53% of annual ERCOT load, and therefore mandatory service requirements proposed in the rule would not apply to those REPs.

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

The commission staff will conduct a public hearing on the rule, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on Friday, January 9, 2009, at 10:00 am. The request for a public hearing must be received within 31 days after publication.

Initial comments on the amended rule may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 31 days after publication. Reply comments may be submitted within 45 days after publication. Sixteen copies of comments on the rule are required to be filed pursuant to §22.71(c) of this title. Comments should be organized in a manner consistent with the organization of the rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the rule. The commission will consider the costs and benefits in deciding whether to adopt the rule. All comments should refer to Project Number 35769.

Additionally, the commission solicits comments on questions regarding the following:

(1) The commission is considering a concept to provide a buffer to customers while they shop for a competitive retail electric offering following a mass transition event and to address bad debt incurred by emergency service providers. This concept would include the following elements:

(a) For an initial "limited period" (30 or 45 days) of time, a customer would be charged a specified rate that is lower than the emergency service rate set pursuant to the existing emergency service rule. The commission would post a rate for all emergency service providers on a monthly basis that would only be for mass transition customers.

(b) During that same time period, the customer would not be required to pay a deposit to the emergency service provider.

(c) The emergency service provider would be reimbursed for any bad debt incurred for emergency service during the time period and for the difference between the emergency service rate set pursuant to the existing emergency service rule and the temporary lower rate charged to the mass transition customers during the specified initial period.

(d) At the end of the limited period of time, the regular emergency service rate would go into effect.

(2) What is the appropriate source of funding to reimburse the emergency service providers for bad debt and the initial period rate differential?

(3) Should the commission consider any other concepts or mechanisms to address these issues? If so, please describe.

(4) Regarding the structure proposed for Mandatory Emergency Service Providers (MESPs), is the 2% of load the right amount? Should it be less than 2%? Should the number depend on size of REP?

(5) With respect to the methodology proposed for MCPE, is 120% of MCPE appropriate during times of extremely high prices? Should there be a different percentage of MCPE when prices are very high? If so, what should be the maximum MCPE percentage?

The amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated (Vernon 2007 and Supp. 2008) §14.002, which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; §39.106, which requires that the commission designate retail electric providers of last resort; and PURA §39.101, which authorizes the commission to adopt and enforce rules that ensure retail electric customer protections that entitle a customer: to safe, reliable,

and reasonably priced electricity, to be served by a provider of last resort that offers a commission-approved standard service package, to be protected from unfair, misleading, or deceptive practices, to other information or protections necessary to ensure high-quality service to customers including minimum service standards relating to customer deposits and extension of credit, switching fees, levelized billing programs, termination of service, and quality of service, and which requires the commission to ensure that its customer protection rules provide at least the same level of customer protection against potential abuses and the same quality of service that existed on December 31, 1999.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 39.101, and 39.106.

§25.43. Emergency Service [Provider of Last Resort (POLR)].

(a) Purpose. The purpose of this section is to establish the requirements for emergency service and ensure that it is available to any requesting retail customer and retail customer who is transferred to another retail electric provider (REP) by the Electric Reliability Council of Texas (ERCOT) because the customer's REP failed to provide service to the customer. [ensure that, as mandated by the Public Utility Regulatory Act (PURA) §39.106:]

{(1) A basic, standard retail service package will be offered by a POLR or multiple POLRs at a fixed, non-discountable rate to any requesting customer in all of the Texas transmission and distribution utilities' (TDUs') service areas that are open to competition; and}

{(2) All customers will be assured continuity of service if their retail electric provider (REP) defaults pursuant to subsection (n)(12) of this section and, until January 1, 2007, if their REP terminates service in accordance with the termination provisions of Subchapter R of this chapter (relating to Customer Protection Rules for Retail Electric Service).}

(b) Application[; termination of service for non-payment].

{(4) The provisions of this section relating to the selection of REPs providing emergency service apply to all REPs that are serving retail customers. The remaining provisions apply [This section applies] to REPs that are [may be] designated as providers in transmission and distribution (TDU) [POLRs in TDU] service areas in Texas under this section. This section does not apply when an electric cooperative or a municipally owned utility (MOU) exercises its right to designate an emergency provider [a POLR] within its certificated service area. However, this section is applicable when an electric cooperative delegates its authority to the commission in accordance with subsection (r) [(p)] of this section to select a provider [POLR] within the electric cooperative's service area.

{(2) POLR service for a residential or small non-residential customer of a competitive REP whose electric service is terminated for non-payment under the provisions of §25.482 of this title (relating to Termination of Contract) shall be provided by the affiliated REP for that POLR area. In the case of the territory encompassed by Sharyland Utilities, LP, the affiliated REP shall be deemed to be First Choice Power, Inc, the entity providing default service in that area. The provisions of this section do not apply to any affiliated REP serving non-paying residential and small non-residential customers of competitive REPs except as otherwise specifically stated herein. As of January 1, 2007, this paragraph will expire and REPs will not be permitted to terminate customers to POLR for any reason except pursuant to a mass transition for the reasons described in subsection (n)(12) of this section.}

{(3) POLR service is intended to provide continuity of service, and is available to any requesting customer and any customer

that is transitioned to POLR service consistent with this section. The POLR rate must reflect the inherent level of risk associated with POLR service. POLR service is envisioned as a temporary service and the POLR rate is not intended to be a competitive offering, but a cost and risk based offering.

~~[(4) For 2006, all timeframes and deadlines that pertain to the eligibility and selection of POLR providers shall be extended by one day for every day that the effective date of this section falls after June 1, 2006. The extension shall not apply to the October 15, 2006, deadline to select non-volunteering POLR providers or the December 31, 2006, end of the 2005-2006 POLR term.]~~

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

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

(4) Emergency service provider--A REP that may be required to provide emergency service pursuant to this section.

(5) [(4)] Large non-residential customer--A non-residential customer, at the time of the transition to emergency [POLR] service having a peak demand in the previous 12-month period at or above one megawatt (MW).

(6) Large service provider (LSP)--A REP that may be required to provide emergency service pursuant to subsection (k) of this section.

(7) Mandatory emergency service provider (MESP)--A REP that may be required to provide emergency service pursuant to subsection (j) of this section.

(8) Mass Transition--The transition of ESI IDs from one REP to another provider, in large quantity.

(9) [(5)] Medium non-residential customer--A [Beginning January 1, 2007, a] non-residential retail customer, at the time of the transition to emergency [POLR] service having a peak demand in the previous 12-month period of 50 kW or greater, but less than 1,000 kW.

~~[(6) Non-discountable rate--A rate that does not allow for any deviation from the price offered to all customers within a class, except as provided in §25.454 of this title (relating to Rate Reduction Program).]~~

~~[(7) Non-volunteering POLR provider--A REP that has been selected to provide POLR service consistent with subsection (j) of this section.]~~

(10) [(8)] Emergency [POLR] area(ESA)--The service area of a TDU in an area where customer choice is in effect, except that the service [POLR] area for AEP-Texas Central Company shall be deemed to include the area served by Sharyland Utilities, L.P.

(11) Provider--A volunteer emergency service provider, a mandatory emergency service provider, or a large service provider.

~~[(9) Provider of last resort (POLR)--A REP certified in Texas that has been designated by the commission to provide a basic, standard retail service package in accordance with this section. There may be multiple POLR providers in a TDU service area. The term POLR, when used as a noun, refers to both a volunteer POLR REP and a non-volunteer POLR provider.]~~

(12) [(10)] Residential customer--Retail customers classified as residential by the applicable transmission and distribution utility tariff or, in the absence of classification under a residential rate class, those retail customers that are primarily end users consuming electric-

ity for personal, family, or household purposes and who are not resellers of electricity.

(13) Transitioned customer--An ESI ID that is served by a new provider under this section.

(14) [(11)] Small non-residential customer--A [Beginning January 1, 2007, a] non-residential retail customer, at the time of the transition to emergency [POLR] service having a peak demand in the previous 12-month period of less than 50 kW. [Prior to January 1, 2007, a non-residential retail customer having a peak demand of less than 1,000 kW.]

(15) [(12)] Voluntary emergency service provider (VESP) [Volunteer POLR REP]--A REP that has volunteered [voluntarily agreed] to provide emergency [POLR] service pursuant to [consistent with] subsection (i) of this section.

(d) Emergency [POLR] service.

(1) There are three types of Emergency providers: voluntary emergency service provider (VESP), mandatory emergency service provider (MESP), and large service provider (LSP).

(2) [(4)] For the purpose of Emergency [POLR] service[; beginning with the 2007-2008 POLR term], there will be four classes of customers: residential, small non-residential, medium non-residential, and large non-residential.

(3) [(2)] A Provider [The POLRs] may be designated to serve any or all of the four customer classes in an ESA [a POLR area]. Within the customer class it is designated to serve, the Providers may be required to [POLRs shall] provide service to the following customers:

(A) Any customer requesting Emergency [POLR] service; and

(B) Any customer assigned to the Provider [POLR] pursuant to a mass transition for the reasons described in subsection (o) [(n)(12)] of this section. [; and]

~~[(C) Until January 1, 2007, any customer not receiving service from its selected REP for any reason other than non-payment who is automatically assigned to the POLR.]~~

(4) [(3)] A Provider [The POLRs] shall offer a basic, standard [POLR] retail service package, which will be limited to:

(A) Basic firm service;

(B) Call center facilities for customer inquiries;

(C) Standard retail billing (which may be performed [provided] either by the Provider [POLR] or another entity as the Provider's agent); and[;]

(D) Benefits for low-income customers as provided for under Public Utility Regulatory Act (PURA) [PURA] §39.903 relating to the System Benefit Fund. [; and]

~~[(E) Standard metering, consistent with PURA §39.107(a) and (b) (which may be provided either by the POLR or another entity).]~~

[(4) A POLR and any REP affiliated with the POLR shall make the same competitive products and services available to a POLR customer as they would to a similarly-situated non-POLR customers.]

(5) A Provider [The POLRs] shall, in accordance with §25.108 of this title (relating to Financial Standards for Retail Electric Providers Regarding the Billing and Collection of Transition Charges), provide billing and collection duties for REPs who have defaulted on payments to the servicer of transition bonds or to TDUs.

(6) Each Provider's [POLR] customer billing for residential customers shall notify the customer that other competitive products or services may be available from the Provider [POLR, a REP affiliated with the POLR], or another competitive REP. The notice[ ~~and~~] shall also include contact information for the Provider [POLR] and the Power to Choose, and shall include a notice from the commission in the form of a bill insert or a bill message with the header "A Message from the Public Utility Commission" addressing why the customer has been transitioned to an Emergency Provider [POLR], the continuity of service purpose and the [temporary] nature of emergency [POLR] service, [the need to choose a competitive product or provider,] and that more information on competitive markets to be found at [www.power-tochoose.org](http://www.power-tochoose.org), or toll-free at 1-866-PWR-4-TEX (1-866-797-4839).

(e) Standards of service.

(1) A Provider [REP who has been designated by the commission to serve as a POLR] for a class in a given emergency service [POLR] area may be required to serve any customer in that class requesting emergency service or assigned to the Provider pursuant to a mass transition [shall serve any customer in that class as described in subsection (d)(2) of this section].

(2) A Provider shall serve any customer assigned to it pursuant to a mass transition, in accordance with the Standard Terms of Service in subsection (f)(1) of this section for the Provider customer's class. A Provider may charge a rate less than the Emergency rate prescribed by this section as determined on the day of transition, if it is applied uniformly to all transitioned customers.

(3) A Provider may market competitive products to customers assigned to it pursuant to a mass transition, on a non-discriminatory basis. A Provider shall make the same competitive products and services available to a transitioned customer as are available to similarly-situated non-transitioned customers. A Provider, in any marketing to the customer, shall make it clear that the customer has the right to switch to a different REP or take service from the Provider under a competitive product with a rate structure other than the emergency service rate, if the Provider offers such a competitive product. A customer may agree to a long-term contract for non-emergency service with the Provider, but the Provider shall not represent to the customer that agreeing to a long-term contract is the only option to avoid the emergency service rate. If, based on a customer's choice, the Provider enrolls a customer in a competitive product or service, it shall follow the appropriate enrollment process in §25.474 of this title (relating to Selection of Retail Electric Provider). After enrolling in a product or service, the customer shall no longer be considered a transitioned customer.

[(2) A POLR shall serve any POLR customer, as described in subsection (d)(2) of this section, according to the Standard Terms of Service in subsection (f)(1) of this section for any POLR customer's respective customer class, except that beginning with the 2007 - 2008 POLR term, POLRs may charge a rate less than the POLR rate, if it is applied uniformly to all POLR customers. This paragraph is not intended to prohibit POLR customers from enrolling in a non-POLR product or service provided by the REP serving as a POLR or a REP affiliated with the REP serving as a POLR.]

(4) [(3)] A Provider [POLR] shall abide by the applicable customer protection rules as provided for under Subchapter R of this chapter (relating to Customer Protection Rules for Retail Electric Service), except that if there is an inconsistency or conflict between this section and Subchapter R of this chapter, the provisions of this section shall apply. For the medium non-residential customer class, the customer protection rules as provided for under Subchapter R of this chapter shall be waived, except for §25.481, relating to Unauthorized Charges, §25.485(a) - (b), relating to Customer Access and Com-

plaint Handling, and §25.495, relating to Unauthorized Change of Retail Electric Provider. In addition, a Provider [the POLR] shall be held to the following general standards:

(A) A Provider [The POLRs] shall inform any customer transferred to it, that the Provider [POLR] is now providing service to the customer and shall disclose all charges for which the customer will be responsible; and

(B) A Provider [The POLRs] may not require that a customer sign up for a minimum term as a condition of [POLR] service, except that if the Provider [POLR] offers a level or average payment plan in accordance with Subchapter R of this chapter, a [- A] residential or small or medium non-residential customer who elects such a [to receive POLR service under such] plan may be required to sign up for a minimum term of no more than six months.

(f) Customer information.

(1) The Standard Terms of Service prescribed in subparagraphs (A) - (D) of this paragraph are effective for all [POLR] service by a Provider under this section [beginning with the 2007-2008 POLR term]. These forms may be changed through the rulemaking process and are available in the commission's Central Records Division and on the commission's website at [www.puc.state.tx.us](http://www.puc.state.tx.us).

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

(2) The REPs providing emergency service [POLRs] shall provide each new transitioned [POLR] customer the Standard Terms of Service applicable to the specific customer. Such Standard Terms of Service shall be updated as required under §25.475(d) of this title (relating to Information Disclosures to Residential and Small Commercial Customers[-]).

(g) General description of provider [POLR] selection process.

(1) All REPs shall provide information to the commission in accordance with subsection (h)(1) of this section. Based on this information, the commission's designated representative shall designate REPs that are eligible to serve as Providers [POLRs] in areas of the state in which customer choice is in effect, except that the commission shall not designate Providers [POLRs] in the service areas of MOUs or electric cooperatives unless an electric cooperative has delegated its ESA [POLR] designation authority to the commission in accordance with subsection (q) [(p)] of this section. The commission shall select REPs that will provide emergency service.

[(2) The commission shall select REPs that will provide POLR service for two-year terms as specified in paragraph (3) of this subsection. The POLR rate shall be established under the provisions of subsection (k) of this section.]

(2) [(3)] Providers [POLRs] shall serve two-year terms beginning in January of each odd-numbered year. The initial term for emergency [POLR] service in areas of the state where retail choice is not in effect as of the effective date of the rule shall be set at the time Providers [POLRs] are initially selected in such areas.

(h) REP eligibility to serve as an emergency provider. On a schedule to be determined by the commission [POLR. In each even-numbered year, beginning with 2006], the commission shall determine the eligibility of certified REPs to serve as a Provider [POLR] for the term scheduled to commence in January of the following [next] year.

(1) All REPs shall provide information to the commission necessary to establish their eligibility to serve as Provider [POLR] for the next [POLR] term. All REPs shall file, by July 10th, of each even numbered year, by service area, information on the classes of customers they provide service to, the number of ESI IDs the REP

serves in each [POLR] customer class, the total number of ESI IDs in each [POLR] customer class, the REP's retail sales [amount of MWhs the REP serves] in megawatt-hours for each transitioned [POLR] customer class for the annual period ending March 31 of the current year, and the retail sales of [total number of MWhs sold by] all REPs in megawatt-hours for each [POLR] customer class for the annual period ending March 31 of the current year. ERCOT shall make the total ESI ID and total MWh data available to REPs for inclusion in the eligibility filing. All REPs shall also provide information on their technical capability and financial ability to provide service to additional customers in a mass transition [scenario]. Specific information received from a REP under this subsection shall be treated confidentially if it is submitted to the commission in accordance with the provisions of §22.71(d) of this title (relating to Filing of Pleadings, Documents and Other Materials). However, the commission's determination regarding eligibility of a REP to serve as Provider [POLR] under the provisions of this section shall not be considered confidential information.

(2) Eligibility to be designated as a provider [POLR] is specific to ESA [POLR area] and customer class. A REP is eligible to be designated a Provider for [provide POLR service to] a particular customer class in a TDU service [POLR] area, unless:

(A) A proceeding to revoke or suspend the REP's certificate is pending at the commission, the REP's certificate has been suspended or revoked by the commission, or the REP's certificate is deemed suspended pursuant to §25.107[(4)] of this title (relating to Certification of REPs);

(B) The sum of the [numeric portion of the] REP's percentage of ESI IDs served and percentage of retail sales [MWhs served] in the TDU service [POLR] area, for the particular class, is less than 1.0;

(C) The commission does not reasonably expect the REP to be able to meet the criteria set forth in subparagraph (B) of this paragraph during the entirety of the [POLR] term;

(D) On the date of the commencement of the [POLR] term, the REP or its predecessor, including a REP that has assumed the responsibilities of another REP, will not have served customers in Texas for at least 18 months;

(E) The REP does not serve the applicable customer class, or does not have an agreement with the service area TDU;

(F) The REP is certificated as an Option 2 REP under §25.107[(4)(2)] of this title;

(G) The REP's customers are limited to its own affiliates;

[(H) A REP that files an affidavit stating that it only serves customers subject to the customer protection rules because it was picked by lottery to be a small non-residential customer class POLR for 2005 - 2006 may opt-out of eligibility for the small non-residential customer class;]

(H) [(4)] A REP files an affidavit stating that it does not serve small or medium non-residential customers, except for the low-usage sites of the REP's large non-residential customers, or commonly owned or franchised affiliates of the REP's large non-residential customers and opts [may opt-]out of eligibility for either, or both of the small or medium non-residential customer classes; or

(I) [(4)] The REP does not meet [certain] minimum financial qualifications established [as determined] by the commission under §25.107 of this title.

(3) For each term [POLR term scheduled to commence in January of the next year], the commission shall publish the names of all of the REPs eligible to provide [POLR] service under this section for each customer class in each emergency service [POLR] area. A REP may challenge its eligibility determination within five business days of the notice of eligibility by filing with the commission [submitting to commission staff] additional documentation that includes the specific data, the specific calculation, and a specific explanation that clearly illustrate and prove [illustrates and proves] the REP's assertion. Commission staff shall verify the additional documentation and, if accurate, reassess [recalculate] the REP's eligibility. Commission staff will notify the REP of any change in eligibility status within ten business days of the receipt of the additional documentation. A REP may then appeal to the commission through a contested case if the REP does not agree with the staff determination of eligibility. The contested status will not delay the designation of Providers [volunteer POLR REP list or the selection of the non-volunteering POLR providers].

[(4) A REP that is serving as a POLR in accordance with this section shall submit reports not later than March 1 and September 1 of each year providing the information specified in paragraph (2) of this subsection.]

(4) [(5)] A standard form may be created for REPs to use in filing information concerning their [determining REP] eligibility to serve as a Provider [POLR, that REPs may use to report necessary eligibility information].

(i) VESP [Volunteer POLR REP] list. Based on the information provided in accordance with this subsection and subsection (h) of this section, the commission shall post the VESPs on its webpage. A REP may submit a request to be a VESP [on its webpage the REPs that are willing to serve as POLR on a volunteer basis, beginning in 2006 for the 2007 - 2008 POLR term. REPs may submit an indication of their willingness to voluntarily serve as POLR, in a separate filing from the one required in subsection (h) of this section.] no earlier than July 10, and no later than July 31, of each even-numbered year. This filing shall include a description of the REP's capabilities to serve additional customers [ESI IDs] as well as the REP's [REPs] current financial condition in enough detail to demonstrate that the REP is capable of absorbing a mass transition of customers [ESI IDs] without technically or financially distressing the REP and the specific information set out in this subsection. Specific information received from a REP under this subsection shall be treated confidentially if it is submitted to the commission in accordance with the provisions of §22.71(d) of this title. However, the commission's determination regarding eligibility of a REP to serve as a VESP [volunteer POLR REP], under the provisions of this section, shall not be considered confidential information.

(1) A VESP [volunteer POLR REP] shall provide to the commission the name of the REP, the appropriate contact person with current contact information, which customer classes the REP is willing to serve within each ESA [POLR area], and the number of customers [ESI IDs] the REP is willing to serve by customer class and ESA [POLR area] in each transition event. For the large non-residential class, the REP may specify the maximum load that it is willing to serve.

(2) A REP that has met the eligibility requirements of subsection (h) of this section and provided [shall be eligible for the volunteer POLR REP list contingent upon] the additional information set out [provided] in this subsection is eligible for designation as a VESP.

(3) Commission staff shall make an initial determination of the REPs that are to serve as a VESP for each customer class in each emergency service area and publish their names. A REP may challenge its eligibility determination within five business days of the



notice of eligibility by submitting to commission staff additional of its capability to serve as a VESP. Commission staff shall reassess the REP's eligibility and notify the REP of any change in eligibility status within ten business days of the receipt of the additional documentation. A REP may then appeal to the commission through a contested case if the REP does not agree with the staff determination of eligibility. The contested status will not delay the designation of Providers.

{(3) A volunteer POLR REP shall not charge its POLR customers a rate higher than the POLR rate for POLR service. Any rate charged to POLR customers without the customer's affirmative choice, that is below the POLR rate, must be offered uniformly to all POLR customers. However, a volunteer POLR REP may market to its POLR customers, on a non-discriminatory basis, competitive products using a rate structure other than the POLR rate structure. A POLR and any REP affiliated with the POLR shall make the same competitive products and services available to a POLR customer as are available to similarly-situated non-POLR customers. The volunteer POLR REP, in any marketing to the POLR customer, shall make it clear that the customer has the right to switch to a different REP or take service from the volunteer POLR REP under a competitive product with a rate structure other than the rate structure set out in the POLR's Standard Terms of Service; if the POLR offers such a competitive product. A customer may agree to a long-term contract for non-POLR service with the REP serving as POLR, but the POLR REP shall not represent to the customer that agreeing to a long-term contract is the only option to avoid the POLR rate. If, based on a customer's choice, the volunteer POLR REP enrolls a customer in a competitive product or service, it shall follow the appropriate enrollment process in §25.474 of this title (relating to Selection of Retail Electric Provider). After enrolling in a non-POLR, competitive product or service, the customer shall no longer be considered a POLR customer.}

{(4) Upon the transition of customers to the POLRs, beginning with the 2007 - 2008 POLR term, ERCOT shall use the volunteer POLR REP list to assign customers to the volunteer POLR REPs in a non-discriminatory manner, before assigning customers to the non-volunteering POLR providers. ESI IDs, up to the total number of ESI IDs that all volunteer POLR REPs specified pursuant to paragraph (1) of this subsection, shall be allocated to the volunteer POLR REPs in the non-discriminatory fashion detailed below. A volunteer POLR REP shall not be assigned more ESI IDs than it has indicated it is willing to serve. ERCOT shall use the following methodology to ensure non-discriminatory assignment of ESI IDs to the volunteer POLR REPs. If ERCOT has not implemented an automated process to distinguish between the small and medium non-residential customer class, ERCOT shall manually bifurcate the applicable customers until an automated process is implemented. Such automated process shall be implemented no later than July 1, 2007. ERCOT shall:}

{(A) Sort ESI IDs by TDU service territory;}

{(B) Sort ESI IDs by customer class;}

{(C) Sort ESI IDs numerically;}

{(D) Sort volunteer POLR REPs numerically by randomly generated number; and}

{(E) Assign ESI IDs in numerical order to volunteer POLR REPs, in the order determined in subparagraph (D) of this paragraph, in accordance with the number of ESI IDs each volunteer POLR REP indicated a willingness to serve pursuant to paragraph (1) of this subsection. If the number of ESI IDs is less than the total that the volunteer POLR REPs indicated that they are willing to serve, each volunteer POLR REP shall be assigned a proportionate number of ESI IDs, as calculated by dividing the number that each volunteer POLR REP indicated it was willing to serve by the total that all volunteer POLR

REPs indicated they were willing to serve, multiplying the result by the total number of ESI IDs being transferred to the volunteer POLR REPs, and rounding to a whole number.}

{(5) Each transition event shall be treated as a separate event.}

(4) [(6)] A VESP [volunteer POLR REP] may file a request to be removed from the VESP [volunteer POLR REP] list or to modify the number of customers or load that [ESI IDs] it is willing to serve at any time. If the request is to increase the number of customers or load, it shall provide information to demonstrate that it is capable of serving the additional customers or load. The commission staff shall make an initial determination, which is subject to an appeal to the commission, in accordance with the timelines specified in paragraph (3) of this subsection. If the request is to decrease the number of customers or load, it shall[, and such a request shall] be effective five [30] calendar days after the request is filed with the commission. A VESP [volunteer POLR REP] shall continue to serve customers [ESI IDs] previously acquired through a mass transition event as well as customers [ESI IDs] the VESP [volunteer POLR REP] acquires from a mass transition event during the five-day [30-day] notice period.

(5) [(7)] ERCOT may challenge a VESP's [volunteer POLR REPs] eligibility. If ERCOT has reason to believe that a REP is no longer capable of performing VESP [additional volunteer POLR REP] responsibilities, ERCOT shall make a confidential filing with the commission detailing the basis for its challenge. Commission staff shall review the filing of ERCOT and if commission staff concludes that the REP should no longer provide VESP [POLR] service, it shall request that the REP demonstrate that it still meets the qualifications to provide the service. The commission staff may initiate a proceeding with the commission to disqualify the REP from providing VESP [POLR] service. No ESI IDs shall be assigned to a VESP [volunteer POLR REP] after the commission staff initiates a proceeding to disqualify the VESP [volunteer POLR REP's eligibility], unless the commission by order[-] confirms the VESP's designation [volunteer POLR REP's eligibility].

(j) MESP. All REPs that meet the eligibility criteria in subsection (h) of this section may be required to provide emergency service to transitioned customers as MESP. Upon a request from a MESP and a showing that the MESP will be unable to maintain its financial integrity if customers are transferred to it under this section, the commission may relieve a MESP from a transfer of customers.

(k) LSPs. This subsection governs the selection and service of REPs as LSPs.

{(j) Non-volunteering POLR providers. The provisions of this subsection shall govern the manner in which the non-volunteering POLR providers for a given POLR area and customer class are selected and serve, beginning with the 2007 - 2008 POLR term.}

(1) The REPs eligible to serve as LSPs [POLRs] shall be determined based on the information provided by REPs in accordance with subsection (h) of this section.

(2) In each emergency service [POLR] area, for each [POLR] customer class, there shall be five LSPs [non-volunteering POLR providers]. The LSPs [non-volunteering POLR providers] shall be the five eligible REPs that have the greatest market share based upon retail sales in megawatt-hours [MWhs served], by customer class and [within the POLR] area. Commission staff [The commission's designee] shall designate the LSPs [non-volunteering POLR providers] by October 15[-] of the year preceding the [POLR] term, based upon the data submitted to the commission under subsection (h) of this section [has at the time of the determination]. Selection as a

VESP or MESP does not affect a REP's selection to also serve as a LSP [non-volunteering POLR provider does not affect a REP's ability to also serve as a volunteer POLR REP].

~~{(3) In the event of a mass transition of customers to POLR service, customers shall be allocated to the non-volunteering POLR providers only after the volunteer POLR REP list has been exhausted. The customers to be transitioned to the non-volunteering POLR providers shall be allocated to the non-volunteering POLR providers in a non-discriminatory fashion, in accordance with their percentage of market share based upon MWhs served, as determined in paragraph (2) of this subsection, by POLR area and customer class. To ensure non-discriminatory assignment of ESI IDs to the non-volunteering POLR providers, ERCOT shall:}~~

~~{(A) Sort the ESI IDs in excess of the allocation to volunteer POLR REPs, by TDU service territory;}~~

~~{(B) Sort ESI IDs in excess of the allocation to volunteer POLR REPs, by customer class;}~~

~~{(C) Sort ESI IDs in excess of the allocation to volunteer POLR REPs, numerically;}~~

~~{(D) Sort non-volunteering POLR providers numerically by MWhs served; and}~~

~~{(E) Assign ESI IDs in numerical order to non-volunteering POLR providers, in proportion to the percentage of MWhs served by each non-volunteering POLR provider to the total MWhs served by all non-volunteering POLR providers.}~~

~~(3) [(4)] For the purpose of calculating the emergency service [POLR] rate for each customer class in each [POLR] area, an [a POLR] EFL shall be completed by the LSP [non-volunteering POLR] provider that has the greatest market share in accordance with paragraph (2) of this subsection. The [POLR] EFL shall be supplied to commission staff electronically for placement on the commission webpage.~~

~~(4) To the extent transitioned customers continue to receive service from an LSP under a rate prescribed by subsection (m)(3) of this section for more than 15 consecutive days following a mass transition, the LSP shall provide to the commission available contact information for customers. The commission may disseminate the contact information to REPs for the sole purpose of facilitating marketing to these customers subject to applicable privacy and other laws. Disclosure of customer information pursuant to this subsection shall not constitute a violation of §25.472 of this title (relating to Privacy of Customer Information).~~

~~{(5) Non-volunteering POLR providers may market to transitioned POLR customers to enroll the customers in competitive products or services in the same fashion and under the same conditions as described in subsection (i)(3) of this section.}~~

~~(5) [(6)] Upon a request from an LSP [a non-volunteering POLR provider] and a showing that the LSP [non-volunteering POLR provider] will be unable to maintain its financial integrity if it is allocated additional [POLR] customers, the commission may [shall] relieve an LSP [a non-volunteering POLR provider] from the allocation of [any such] additional customers. The LSP [commission shall provide at least ten business days' notice and an opportunity for hearing on the request for relief. The non-volunteering POLR provider] shall continue providing emergency [POLR] service until the commission issues an order relieving it of this responsibility. In the event the requesting LSP [non-volunteering POLR provider] is relieved of its responsibility, commission staff [the commission's] designee may, with 90 days' notice, designate the next eligible REP as an LSP [a non-volunteering~~

~~POLR provider], based upon the criteria in this subsection [paragraph (2) of this subsection].~~

~~(1) Transfer of customers to Providers. If ERCOT transfers customers to Providers, ERCOT shall first transfer customers to VESPs, up to the number of customers that each VESP has offered to serve. If the number of customers in the ESA to be transferred less the aggregate limit that VESPs have offered to serve and does not exceed two percent of the number of customers in the ESA for a class that MESP's serve, any remaining customers shall be assigned to MESP's. If the number of customers to be transferred in the ESA exceeds the aggregate limit that the VESPs have offered to serve plus two percent of the number of customers for a class that MESP's serve, ERCOT shall transfer any customers remaining after the transfers to VESPs and LSPs but shall not assign customers to MESP's.~~

~~(1) If the number of customers does not exceed the amount that the VESPs have offered to serve, ERCOT shall assign customers to the VESPs in ascending order of the price per kilowatt-hour offered by each VESP. If multiple VESPs offer the same price, then ERCOT shall assign the customers to the VESPs offering the same price on a random basis.~~

~~(2) If the number of customers exceeds the amount that the VESPs have offered to serve, ERCOT shall assign customers to MESP's, within a class and service area, on a random basis.~~

~~(3) ERCOT shall assign customers to MESP's, within a class and service area, on a random basis.~~

~~(4) ERCOT shall assign customers to LSP's in a non-discriminatory fashion, in accordance with their percentage of market share based upon retail sales in megawatt-hours, on a random basis within a class and service area.~~

~~(m) Rates.~~

~~(1) A VESP or MESP shall charge its customers a market-based, month to month service plan that it currently offers to new customers in the customer class.~~

~~(2) Each VESP and MESP shall post its market-based month to month service plan on the commission's Power to Choose website or provide a description of the service and rate to the commission and ERCOT.~~

~~(3) The provisions of this subsection establish the maximum rate for a LSP.~~

~~{(k) POLR rate.}~~

~~{(4) The provisions of this paragraph establish the maximum POLR rate of volunteer POLR REPs and non-volunteering POLR providers beginning with the 2007 - 2008 POLR term.}~~

~~(A) The LSP [POLR] rate for the residential customer class shall be determined by the following formula: LSP [POLR] rate (in \$ per kWh) = (Non-bypassable charges + LSP [POLR] customer charge + LSP [POLR] energy charge) / kWh used Where:~~

~~(i) Non-bypassable charges shall be all TDU and other non-bypassable charges and credits for the appropriate customer class in the applicable service territory, including ERCOT administrative charges, nodal fees or surcharges, replacement reserve charges attributable to LSP [POLR] load, and applicable taxes from various taxing or regulatory authorities, multiplied by the level of kWh and kW [KW] used, where appropriate.~~

~~(ii) LSP [POLR] customer charge shall be \$0.06 per kWh.~~

(iii) LSP [POLR] energy charge shall be the sum over the billing period of the actual hourly MCPEs for the customer multiplied by the level of kWh used, multiplied by 120% [~~130%~~].

(iv) "Actual hourly MCPE" is an hourly rate based on a simple average of the actual interval MCPE prices over the hour.

(v) "Level of kWh used" is based either on interval data or on an allocation of the customer's total actual usage to the hour based on a ratio of the sum of the ERCOT backcasted profile interval usage data over the hour to the total of the ERCOT backcasted profile interval usage data over the customer's entire billing period.

~~{(vi) For each billing period, if the sum over the billing period of the actual hourly MCPEs for a customer multiplied by the level of kWh used falls below the simple average of the zonal MCPE prices over the 12-month period ending September 1 of the preceding year multiplied by the total kWh used over the customer's billing period, then the POLR energy charge shall be the simple average of the zonal MCPE prices over the 12-month period ending September 1 of the preceding year multiplied by the total kWh used over the customer's billing period multiplied by 130%. This methodology shall apply until the commission issues an order suspending or modifying the operation of the floor after conducting an investigation.}~~

(B) The LSP [POLR] rate for the small and medium non-residential customer classes shall be determined by the following formula:  $\text{LSP [POLR] rate (in \$ per kWh)} = (\text{Non-bypassable charges} + \text{LSP [POLR] customer charge} + \text{LSP [POLR] demand charge} + \text{LSP [POLR] energy charge}) / \text{kWh used}$  Where:

(i) Non-bypassable charges shall be all TDU and other non-bypassable charges and credits for the appropriate customer class in the applicable service territory, including ERCOT administrative charges, nodal fees or surcharges, replacement reserve charges attributable to LSP [POLR] load, and applicable taxes from various taxing or regulatory authorities, multiplied by the level of kWh and kW [KW] used, where appropriate.

(ii) LSP [POLR] customer charge shall be \$0.025 per kWh.

(iii) LSP [POLR] demand charge shall be \$2.00 per kW, per month, for customers that have a demand meter, and \$50.00 per month for customers that do not have a demand meter.

(iv) LSP [POLR] energy charge shall be the sum over the billing period of the actual hourly MCPEs, for the customer multiplied by the level of kWh used, multiplied by 120% [~~130%~~, multiplied by the level of kWh used].

(v) "Actual hourly MCPE" is an hourly rate based on a simple average of the actual interval MCPE prices over the hour.

(vi) "Level of kWh used" is based either on interval data or on an allocation of the customer's total actual usage to the hour based on a ratio of the sum of the ERCOT backcasted profile interval usage data over the hour to the total of the ERCOT backcasted profile interval usage data over the customer's entire billing period.

~~{(vii) For each billing period, if the sum over the billing period of the actual hourly MCPEs for a customer multiplied by the level of kWh used falls below the simple average of the zonal MCPE prices over the 12-month period ending September 1 of the preceding year multiplied by the total kWh used over the customer's billing period, then the POLR energy charge shall be the simple average of the zonal MCPE prices over the 12-month period ending September 1 of the preceding year multiplied by the total kWh used over the customer's billing period multiplied by 130%. This methodology shall~~

~~apply until the commission issues an order suspending or modifying the operation of the floor after conducting an investigation.}~~

(C) The LSP [POLR] rate for the large non-residential customer class shall be determined by the following formula:  $\text{LSP [POLR] rate (in \$ per kWh)} = (\text{Non-bypassable charges} + \text{LSP [POLR] customer charge} + \text{LSP [POLR] demand charge} + \text{LSP [POLR] energy charge}) / \text{kWh used}$  Where:

(i) Non-bypassable charges shall be all TDU and other non-bypassable charges and credits for the appropriate customer class in the applicable service territory, including ERCOT administrative charges, nodal fees or surcharges, replacement reserve charges attributable to LSP [POLR] load, and applicable taxes from various taxing or regulatory authorities, multiplied by the level of kWh and kW [KW] used, where appropriate.

(ii) LSP [POLR] customer charge shall be \$2,897.00 per month.

(iii) LSP [POLR] demand charge shall be \$6.00 per kW, per month.

(iv) LSP [POLR] energy charge shall be the appropriate MCPE, determined on the basis of 15-minute intervals, for the customer multiplied by 120%, [~~130%~~, multiplied by] the level of kilowatt-hours used, plus line losses and ancillary services [kWh used]. The energy charge [MCPE] shall have a floor of \$7.25 per MWh.

(4) [(2)] If in response to a complaint or upon its own investigation, the commission determines that a LSP [POLR] failed to charge the appropriate LSP [POLR] rate, and as a result overcharged its customers, the LSP [POLR] shall issue refunds to the specific customers who were overcharged.

(5) [(3)] On a showing of good cause, the commission may permit the LSP [POLR] to adjust the LSP [POLR] rate, if necessary to ensure that the rate is sufficient to allow the Provider [POLR] to recover its costs of providing service. Notwithstanding any other commission rule to the contrary, LSP [POLR] rates may be adjusted on an interim basis for good cause shown and after at least ten business days notice and an opportunity for hearing on the request for interim relief. Any adjusted LSP [POLR] rate shall be applicable to all LSP [POLR] providers charging the LSP [POLR] rate to the specific customer class, within the LSP [POLR] area that is subject to the showing of good cause.

(6) [(4)] Customer and demand charges associated with LSP [POLR] service shall not be pro-rated for partial month usage if a customer switches away from the LSP [POLR] to a REP of choice.

(n) [(4)] Challenges to customer [ESI ID] assignments. A Provider [POLR] is not obligated to serve a customer [an ESI ID] within a customer class or an [a POLR] area for which the REP [POLR] is not designated as a Provider [POLR], after a successful challenge of the customer [ESI ID] assignment. A Provider [POLR] shall use the ERCOT market variance resolution tool to challenge a customer class assignment with the TDU. The TDU shall make the final determination based upon historical usage data and not premise type. If the customer class assignment is changed and a different Provider [POLR] for the customer [ESI ID] is determined appropriate, the customer [ESI ID] will then be served by the appropriate Provider [POLR]. Back dated transactions may be used to correct the Provider [POLR] assignment.

(o) [(m)] Limitation on liability. The Providers [POLRs] will make reasonable provisions to provide [POLR] service under this section to customers who request emergency [POLR] service, or are transferred to the Provider [transitioned to POLR service], individually or

through a mass transition; however, liabilities not excused by reason of force majeure or otherwise shall be limited to direct, actual damages.

(1) Neither the customer nor the emergency [POLR] provider shall be liable to the other for consequential, incidental, punitive, exemplary, or indirect damages. These limitations apply without regard to the cause of any liability or damage.

(2) In no event shall ERCOT or a Provider [POLR] be liable for damages to any REP, whether under tort, contract or any other legal theory of legal liability, for transitioning or attempting to transition a customer from such REP to the Provider to carry out this section [POLR for POLR service], or for marketing, offering or providing competitive retail electric service to a customer taking [POLR] service under this section from the Provider [POLR or being transitioned to the POLR, in compliance with this title].

(p) ~~(n)~~ Transition of customers to emergency [POLR] service.

(1) A customer may initiate service with a non-volunteer Provider by making arrangements for service under this section at the rate prescribed by subsection (m) of this section with any Provider that is designated [POLR service for a requesting customer is initiated when the customer makes arrangements for POLR service, at the POLR rate, with any POLR authorized] to serve the requesting customer's customer class within the requesting customer's service [POLR] area. A Provider [POLR] cannot refuse a customer's request to make arrangements for emergency service, except as otherwise permitted under this title [POLR service].

~~{(2) A customer other than a residential customer or small commercial customer (as defined in §25.471(d) of this title (relating to General Provisions of Customer Protection Rules) may agree to a contract or terms of service that allow a REP to transfer the customer to a POLR for reasons other than non-payment, including the failure of the customer and its REP to agree on terms of renewal or extension of service. Unless ERCOT has a transaction that allows REPs to transfer such customers to the POLR, the POLR shall accept written requests for such transfers from REPs and shall initiate a switch for the customer to be transferred to the POLR. The acquisition by the POLR of such customers is not a prohibited enrollment under §25.474 of this title. As of January 1, 2007, this paragraph will expire and REPs will not be permitted to terminate customers to POLR for any reason except pursuant to a mass transition for the reasons described in subsection (n)(12) of this section.}~~

~~{(3) If a REP terminates service to a customer whose consumption is determined by monthly meter readings without giving notice, the POLR shall prorate the customer's usage based on the customer's historic data or load profile to establish the customer's charges for the relevant portion of the billing cycle, unless the customer requests and is willing to pay for an out-of-cycle meter read. Nothing in this section precludes a POLR from having an out-of-cycle meter read performed for a new customer on its own initiative provided the POLR does not pass on the cost of that meter read to the customer. As of January 1, 2007, this paragraph will expire and REPs will not be permitted to terminate customers to POLR for any reason except pursuant to a mass transition for the reasons described in subsection (n)(12) of this section.}~~

(2) ~~{(4) The Provider [POLR] is responsible for obtaining resources and services needed to serve a customer once it has been notified that it is serving that customer. The customer is responsible for charges for [POLR] service under this section at the [POLR] rate in effect at that time.~~

(3) ~~{(5) If a REP terminates service to a customer, or transitions a customer to a Provider [POLR], it is financially responsible for the resources and services used to serve the customer until it notifies the independent organization of the termination or transition of the service and the transfer to the Provider [POLR] is complete.~~

(4) ~~{(6) The Provider [POLR] is financially responsible for all costs of providing electricity to customers from the time the transfer or initiation of service is complete until such time as the customer ceases taking [leaves POLR] service under this section.~~

(5) ~~{(7) A REP whose customers are transitioned to an emergency service provider [POLRs] shall return the [any unused portion of a] transitioned customer's deposit within seven calendar days of the transition [receiving an actual or estimated meter read supplied by the TDU].~~

(6) ~~{(8) ERCOT shall create a single standard file format and a standard set of customer billing contact data elements that in the event of a mass transition shall be used by the exiting REP and the Providers [POLRs] to send and receive customer billing contact information. The process, as developed by ERCOT shall be tested on a periodic basis. All REPs shall submit timely, accurate, and complete files, as required by ERCOT in a mass transition event, as well as for the periodic tests. [ERCOT shall retain the data from the last periodic test, to be used in lieu of data from the exiting REP, in instances where the exiting REP does not provide such data. ERCOT shall have the process utilizing the single standard file format designed and implemented as soon as possible, but no later than July 1, 2007. ERCOT shall revise the mass transition process so that customer transfers in a mass transition are initiated by ERCOT, rather than by a POLR, as soon as possible, but no later than July 1, 2007.]~~

(7) ~~{(9) When customers are to be transitioned to a Provider [POLR], the Provider [POLR] may request usage and demand data, and customer contact information including email, telephone number, and address from the appropriate TDU and from ERCOT, once the transition to the Provider [POLR provider] has been initiated (either by the Provider [POLR provider] or by ERCOT). Customer proprietary information provided to a Provider [POLR] in accordance with this section shall be treated as confidential [by the POLR] and shall only be used for mass transition [POLR] related purposes.~~

(8) ~~{(10) Information from the TDU and ERCOT to the Providers [POLRs] shall be provided in Texas SET format. However, the TDU or ERCOT may supplement the information to the Providers [POLRs] in other formats [and fashions] to expedite the transition [to the POLRs. Such supplemental formats shall only be used in exceptional circumstances and at the option of the entity supplying the information]. The transfer of information in accordance with this section will not constitute a violation of the customer protection rules that address confidentiality.~~

(9) ~~{(11) A Provider [POLR] may require a deposit from a customer that has been transitioned to the Provider [POLR] to continue to serve the customer once the Provider [POLR] has begun serving the customer. Despite the lack of a deposit, the Provider [POLR] is obligated to serve the customer transitioned or assigned to it, beginning on the service initiation date of the transition or assignment, and continuing until such time as any disconnection request is effectuated by the TDU. A Provider [POLR] may make the request for the deposit before it [the POLR] begins serving the customer, but the Provider [POLR] shall begin providing service to the customer even if the service initiation date is before it [the POLR] receives the deposit, if any deposit is required, and shall not disconnect the customer until the appropriate time period to submit the deposit has elapsed. For the large non-residential customer class, a Provider [POLR] may require a deposit to be~~

provided in three calendar days. The Provider [POLR] may waive the deposit requirement at the customer's request if deposits are waived in a non-discriminatory fashion. The Provider [POLR] shall waive the deposit requirement for residential customers if the customer meets the qualifications set out [listed] in section 2. SECURITY AND BILLING, of the Standard Terms of Service.

(10) [(12)] On the occurrence of one or more of the following events, ERCOT shall initiate a mass transition to the Providers [POLR providers], of all of the customers [ESI IDs] served by a REP, as of the date the mass transition is initiated: [-]

(A) Termination of the Load Serving Entity (LSE) or Qualified Scheduling Entity (QSE) Agreement for a REP with ERCOT;

(B) Issuance of a commission order [Order] declaring a REP in default of Tariff for Retail Delivery Service;

(C) Issuance of a commission order [Order] de-certifying a REP;

(D) Issuance of a commission order [Order] requiring a mass transition to emergency service [POLR] providers;

(E) Issuance of a judicial order [Order] requiring a mass transition to emergency service [POLR] providers; and

(F) At the request of a REP, for the mass transition of all of that REP's customers [ESI IDs (customers)].

(11) [(13)] A REP shall not use the mass transition process in this section as a means to cease providing service to some customers, [eliminate non-profitable contracts,] while retaining other customers [profitable contracts]. A REP's improper use of the mass transition process may lead to de-certification of the REP.

(12) [(14)] ERCOT may provide procedures for the mass transition process, consistent with this section.

[(15) Until the process described in paragraph (8) of this subsection is complete, a REP whose ESI IDs are to be transitioned to POLRs shall provide the following information to the appropriate POLRs once the switch to the POLR has been initiated. In the event the exiting REP does not provide the required information, the TDUs shall promptly provide any relevant information in their possession with the understanding that the provided information may be out-dated, incomplete, or inaccurate. Providing the information to the POLRs under the conditions of a transition to POLRs shall not constitute a violation of Subchapter R of this chapter:]

[(A) REP's Data Universal Numbering System (DUNS) number;]

[(B) Customer's ESI ID number;]

[(C) Customer's account number with the REP that is losing the customer;]

[(D) Customer's name;]

[(E) Customer's telephone number;]

[(F) Customer's billing "care of" name; and]

[(G) Customer's billing address.]

(13) [(16)] A mass transition under this section [to POLR] shall not override or supersede a switch request made by a customer to switch an ESI ID to a new REP of choice, if the request [that] was made before a mass transition [to POLR] is initiated, unless the customer choice switch is scheduled for any date after [other than] the next available switch date.

(14) ERCOT shall create a new transaction for customers in mass-transition no later than January 31, 2010.

[(17) A "move-in" transaction shall not be used to switch a customer's ESI ID to another REP when a "move-in" has not occurred except when the premise is de-energized or in extreme circumstances as authorized by commission designee.]

[(18) All mass transition event timelines shall be based upon calendar days if not specifically stated as such, unless specifically stated otherwise.]

(15) [(19)] In the event of a transition to a Provider [POLR] or away from a Provider [POLR] to a REP of choice, the switch notification notice detailed in §25.474(l) of this title is not required.

(16) [(20)] In a mass transition event, the ERCOT initiated transactions shall request an out-of-cycle meter read for the associated ESI IDs, for a date two calendar days after the calendar date ERCOT initiates such transactions to the TDU. If an ESI ID does not have the capability to be read in a fashion other than a physical meter read, the out-of-cycle meter read may be estimated. An estimated meter read for the purpose of a mass transition to a Provider [POLR] shall not be considered a break in a series of consecutive months of estimates, but shall not be considered a month in a series of consecutive estimates performed by the TDU. An out-of-cycle meter read or estimate for the purpose of a mass transition shall not be charged to the exiting REP or the Provider acquiring a transitioned customer. The TDU will not charge for out-of-cycle meter reads for customers that are transitioned to and from Providers. The TDU may create a regulatory asset to account for the costs of out-of-cycle meter reads [be charged to the exiting competitive REP].

(q) [(21)] Termination of emergency provider [POLR] status.

(1) The commission may revoke a REP's Provider [POLR] status after notice and opportunity for hearing:

(A) If the Provider [POLR] fails to maintain REP certification;

(B) If the Provider [POLR] fails to provide service in a manner consistent with this section;

(C) For other good cause[, provided the commission affords the POLR due process]; or

(D) The Provider [POLR] fails to maintain appropriate financial qualifications.

(2) If an MESP or LSP Provider [a non-volunteering POLR provider] defaults or has its status revoked before the end of its term, after a review of the eligibility criteria, the next eligible REP will assume the duties of the former Provider [POLR], consistent with subsection (k)(5) [(j)(6)] of this section.

(3) The provisions of this paragraph address the transition to a new Provider [POLR] at the end of a [POLR] term.

(A) At the end of the emergency service [POLR] term, the outgoing Provider [POLR] may choose [either] either to continue to serve [POLR] customers who do not select another provider through a competitive product or service provided by the outgoing Provider [POLR or a REP affiliated with the outgoing POLR] or to transfer the customers who do not select another provider to an [the] incoming Provider [POLR] on the first meter read date after the term of the incoming Provider [POLR] commences.

(B) A notice containing the information specified in either subparagraph (C) or (D) of this paragraph, as applicable, shall be provided to each [POLR] customer at least 60 calendar days prior to the

end of the [POLR] term. The notice shall be in type no smaller than 12 points in size. The notice shall satisfy the requirements of §25.493(b) of this title (relating to Acquisition and Transfer of Customers from one Retail Electric Provider to Another). The notice shall also include a phone number for the outgoing Provider [POLR] for the customer to call to obtain more information.

(C) The notice provided by a Provider [POLR] that elects to transfer customers who fail to switch to another provider, to a competitive product or service provided by the outgoing Provider shall include a description of the rate, terms and conditions of the service to which the customers will be switched, and that other competitive products or services may be available from [POLR or a REP affiliated with the outgoing POLR, shall include a description of the POLR pricing mechanism for the appropriate customer class and service area and a statement that the POLR is generally higher than available competitive prices; that the POLR price is unpredictable, and that the exact POLR rate for each billing period will not be determined until the time the bill is prepared, and the competitive product or service rate offered by] the outgoing Provider [POLR] or a REP affiliated with the outgoing Provider [POLR]. The notice shall specify the deposit requirements of the outgoing Provider [POLR] or REP affiliated with the outgoing Provider [POLR] and shall state that other providers may also require a deposit [and may require payment of any amounts owed the provider for services previously rendered]. The notice shall state where the customer may find additional information about offerings of other providers [and shall inform the customer that, if the customer does not select another provider or request service from the incoming POLR by a specified date, that a competitive affiliate of the outgoing POLR will continue to serve the customer at the rate specified in the notice].

(D) If the Provider [POLR] elects to transfer customers who do not select another provider, to the incoming Provider [POLR] on the first meter read date after the term of the incoming Provider [POLR] commences, the notice to customers shall state where the customer can find more information about other offerings as well as the rates of the incoming Provider [POLR]. The notice shall include a description of the [POLR] pricing mechanism for the appropriate customer class and service area and a statement that the [POLR] price is generally higher than available competitive prices, that the [POLR] price is unpredictable, and that the exact [POLR] rate for each billing period will not be determined until the time the bill is prepared. The notice shall also inform the customer that, if the customer does not select another provider by a specified date, the customer will be transferred to the incoming Provider [POLR] on the first meter read date after the commencement of the [POLR] term. The notice shall also inform the customer that the incoming Provider [POLR] will bill the customer for a deposit and that the deposit can be made in two installments as will be described further in the notice from the incoming Provider [POLR].

(E) If a [POLR] customer either requests service from the incoming Provider [POLR] or is transferred [terminated] to the incoming Provider [POLR] by the outgoing Provider [POLR], the outgoing Provider [POLR] shall offset the customer's final bill against the customer's deposit and refund any remaining balance to the customer within seven calendar days from the customer's final meter read date. An eligible [The customer shall be entitled to pay the deposit required by the incoming POLR] in two installments in the manner provided in §25.478(e)(3) of this title (relating to Credit Requirements and Deposits).

(r) [(p)] Electric cooperative delegation of authority. An electric cooperative that has adopted customer choice may select [propose] to delegate to the commission its authority to select [POLR] providers under PURA §41.053(c) in its certificated service area in accordance

with this section. After notice and opportunity for comment, the commission will, at its option, accept or reject such delegation of authority. If the commission accepts the delegation of authority, the following conditions will apply:

(1) The board of directors will provide the commission with a copy of a board resolution authorizing such delegation of authority;

(2) The delegation of authority will be made at least 30 calendar days prior to the time the commission issues a publication of notice of eligibility;

(3) The delegation of authority will be for a minimum period corresponding to the period for which the solicitation will be made;

(4) The electric cooperative wishing to delegate its authority to designate an emergency provider [a POLR] will also provide the commission with the authority to apply the selection criteria and procedures described in this section in selecting the [POLR] providers within the electric cooperative's certificated service area; and

(5) If there are no competitive REPs offering service in the electric cooperative certificated area, the commission will automatically reject the delegation of authority.

(s) [(q)] Reporting requirements. Each LSP [POLR shall file, and affiliated REPs serving nonpaying customers of competitive REPs] shall file the following information with the commission on a quarterly basis beginning January of each year in a project established by the commission for the receipt of such information. Each quarterly report shall be filed within 30 calendar days of the end of the quarter. [Except as provided in paragraph (5) of this subsection, information filed by an affiliated REP in accordance with paragraph (1) of this subsection will be made publicly available by the commission on an aggregated basis.] Except as provided in paragraph (4) [(5)] of this subsection, information filed by an LSP [a POLR] in accordance with paragraphs (1) - (3) [(2) - (4)] of this subsection will be made publicly available by the commission for each [POLR] area. [After the report applicable to data for the fourth quarter of 2006 is filed, the requirements of this subsection that are applicable to the affiliated REP serving non-paying customers of competitive REPs will expire.]

[(1) For each month of the reporting quarter, the affiliated REP shall report:]

[(A) The number of residential customers who were disconnected for non-payment and the number of those customers that were eligible for the rate reduction program under §25.454 of this title:]

[(B) The number of residential customers who were transferred to the affiliated REP by a competitive REP for non-payment and the number of those customers that were eligible for the rate reduction program under §25.454 of this title:]

[(C) The average amount owed to the affiliated REP by residential customers at the time of disconnection:]

[(D) The average amount owed to the affiliated REP by residential customers eligible for the rate reduction program at the time of disconnection:]

[(E) The number of small non-residential customers who were disconnected for non-payment; and]

[(F) The average amount owed to the affiliated REP by small non-residential customers at the time of disconnection.]

(1) [(2)] For each month of the reporting quarter, each LSP [POLR] shall report the total number of new customers acquired by the

LSP under this section [POLR] and the following information regarding these customers:

(A) The number of customers eligible for the rate reduction program pursuant to §25.454 of this title (relating to Rate Reduction Program);

(B) The number of customers from whom a deposit was requested pursuant to the provisions of §25.478 of this title, and the average amount of deposit requested;

(C) The number of customers from whom a deposit was received, including those who entered into deferred payment plans for the deposit, and the average amount of the deposit;

(D) The number of customers whose service was physically disconnected pursuant to the provisions of §25.483 of this title (relating to Disconnection of Service) for failure to pay a required deposit; and

(E) Any explanatory data or narrative necessary to account for customers that were not included in either subparagraph (C) or (D) of this paragraph.

(2) [(3)] For each month of the reporting quarter each LSP [POLR] shall report the total number of customers to whom a disconnection notice was issued pursuant to the provisions of §25.483 of this title and the following information regarding those customers:

(A) The number of customers eligible for the rate reduction program pursuant to §25.454 of this title;

(B) The number of customers who entered into a deferred payment plan, as defined by §25.480(j) of this title (relating to Bill Payment and Adjustments) with the LSP [POLR];

(C) The number of customers whose service was physically disconnected pursuant to §25.483 of this title;

(D) The average amount owed to the LSP [POLR] by each disconnected customer at the time of disconnection; and

(E) Any explanatory data or narrative necessary to account for customers that are not included in either subparagraph (B) or (C) of this paragraph.

(3) [(4)] For the entirety of the reporting quarter, each LSP [POLR] shall report, for each customer [ESI ID] that received emergency [POLR] service, the TDU and [POLR] customer class associated with the customer's ESI ID, the number of days the customer [ESI ID] received emergency [POLR] service, and whether the customer [ESI ID] is currently an LSP's [a POLR] customer.

(4) [(5)] Reports filed under this subsection are subject to release as public information unless the reports or specific parts of the reports can be shown to be exempt from disclosure under Chapter 552 of the Texas Government Code, commonly known as the Texas Public Information Act (TPIA). If a reporting entity contends that all or part of a report is confidential, then the reporting entity shall file the information in accordance with the requirements of §22.71(d) of this title. The reporting entity must submit in writing specific detailed reasons, including relevant legal authority, in support of its contentions that the material is exempt from disclosure under the TPIA. All reports and parts of reports that are not marked as confidential will be automatically considered public information upon submittal. The validity of any claim of confidentiality may be determined by the commission through a contested case proceeding, by the Office of the Attorney General pursuant to the provisions of the TPIA, or both.

(l) [(#)] Notice of Transition to Emergency [POLR] Service. When a customer is moved to emergency [POLR] service, the cus-

tomers will be provided notice of the transition by ERCOT, the REP transitioning the customer and [as well as] by the Provider [POLR]. Notice shall be provided within two days of the time ERCOT and [as soon as] the transitioning REP know that [knows] the customer will be transitioned and [to POLR service and as soon as the POLR has the] customer contact information is available. If ERCOT cannot provide notice to customers within two days, it shall provide notice as soon as practicable. [The notice of transition to POLR service shall include, at a minimum the following items:]

(1) Notice methods shall include a post-card, containing the official commission seal with language and format approved by the commission. ERCOT shall notify transitioned customers by all reasonable means including, but not limited to, automated phone-calls and emails as available. ERCOT shall study the effectiveness of the notice methods used and report the results to the commission.

(2) [(+)] Notice by the REP transitioning the customer shall include:

(A) The reason for the transition [to POLR service];

(B) A contact number for the REP;

(C) A statement that the customer will receive a separate notice from the Provider [POLR] that will disclose the date the Provider [POLR] will begin serving the customer;

(D) Either the customer's deposit plus accrued interest, or a statement that the deposit will be returned within seven days of the transition [A description of how and when any unused customer deposit will be returned to the customer];

[(E) A description of the POLR pricing mechanism for the appropriate customer class and service territory and a statement that the POLR price is generally higher than available competitive prices, that the POLR price is unpredictable, and that the exact POLR rate for each billing period will not be determined until the time the bill is prepared;]

(E) [(F)] A statement that the customer can leave the assigned [POLR] service by choosing a competitive product or service offered by the Provider [POLR, a REP affiliated with the POLR], or another competitive REP, as well as the following statement: "If you would like to choose a different retail electric provider, please access [www.powertochoose.org](http://www.powertochoose.org), or call toll-free 1-866-PWR-4-TEX (1-866-797-4839) for a list of providers in your area;"

(F) [(G)] For residential customers, notice from the commission in the form of a bill insert or a bill message with the header "A Message from the Public Utility Commission" addressing why the customer has been transitioned to another REP [POLR], the continuity of service purpose [and temporary nature of POLR service], the need to choose a competitive provider, and information on competitive markets to be found at [www.powertochoose.org](http://www.powertochoose.org), or toll-free at 1-866-PWR-4-TEX (1-866-797-4839);

(G) [(H)] If applicable, a description of the activities that the REP will use to collect any outstanding payments, including the use of consumer reporting agencies, debt collection agencies, small claims court, and other remedies allowed by law, if the customer does not pay or make acceptable payment arrangements with the REP; and

(H) [(I)] Notice to the customer that after being transitioned to emergency [POLR] service, the customer may accelerate a switch to another REP by requesting a "special or out-of-cycle meter read." [and that applicable transmission and distribution utility charges for the meter read will be charged to the gaining REP, which may pass the charge on to you as a customer.]

(3) [(2)] Notice by the Provider shall include [POLR]:

(A) The date the Provider [POLR] will begin serving the customer and a contact number for the Provider [POLR];

(B) A description of the Provider's rate [POLR pricing mechanism] for [the appropriate customer class and] service and, in the case of a notice from a non-volunteering provider, [area and] a statement that the [POLR] price is generally higher than available competitive prices, that the [POLR] price is unpredictable, and that the exact [POLR] rate for each billing period will not be determined until the time the bill is prepared;

(C) The deposit requirements of the customer and any applicable deposit waiver provisions and a statement that, if the customer chooses a competitive product or service offered by the Provider [POLR], a REP affiliated with the Provider [POLR], or another competitive REP, a deposit may be required;

(D) A statement that the competitive products or services may be available through the Provider [POLR], a REP affiliated with the Provider [POLR], or another competitive REP, and the customer can leave Provider's [POLR] service by choosing a competitive product or service offered by the Provider [POLR], a REP affiliated with the Provider [POLR], or another competitive REP, as well as the following statement: "If you would like to choose a different retail electric provider, please access [www.powertochoose.org](http://www.powertochoose.org), or call toll-free 1-866-PWR-4-TEX (1-866-797-4839) for a list of providers in your area;"

(E) The applicable [POLR] Standard Terms of Service;

(F) The applicable disconnection procedures;

(G) Notice to the customer that after being transitioned to [POLR] service from a Provider, the customer may accelerate a switch to another REP by requesting a "special or out-of-cycle meter read," [and that the applicable transmission and distribution utility charge for the meter read will be charged to the gaining REP, which may pass the charge on to you as the customer;]

(H) Notice that after enrolling in a ~~non-POLR,~~ competitive product or service, the customer shall no longer be considered a [POLR] customer; and

(I) For residential customers, with each bill from the Provider [POLR], notice from the commission in the form of a bill insert or a bill message with the header "A Message from the Public Utility Commission" addressing why the customer has been transitioned to the Provider [POLR], the continuity of service purpose under this section [and temporary nature of POLR service], the need to choose a competitive provider, and information on competitive markets to be found at [www.powertochoose.org](http://www.powertochoose.org) or toll-free 1-866-PWR-4-TEX (1-866-797-4839); and[-]

(J) For residential customers that are transitioned to service based on the pricing in subsection (m)(3) of this subsection and those customers do not choose an alternative product from the Provider or switch to another REP, that proprietary information will be made available to competitive REPs for marketing purposes.

(u) [(s)] Disconnection by a Provider [POLR]. The Provider [POLR] must comply with the applicable customer protection rules as provided for under Subchapter R of this chapter, except as otherwise stated in this section. To ensure continuity of service, [POLR] service under this section shall begin when the customer's [ESI ID] transition to the Provider [POLR] is complete. A customer deposit is not a prerequisite for the initiation of [POLR] service under this section. Once [POLR] service has been initiated, a customer deposit may be required to prevent disconnection. Disconnection for failure to pay a deposit

may not occur until after the proper notice and after that appropriate payment period detailed in §25.478 of this title[-] has elapsed, except where otherwise noted in this section.

(v) Reporting by REPs. All REPs shall provide to ERCOT a monthly report containing valid customer information. This information shall include ESI ID, service address, phone number, email address, and customer name. A REP is subject to enforcement action for failure to provide a report or failure to provide accurate information. The commission shall establish a procedure in order to verify customer information submitted by REPs to ERCOT. ERCOT shall notify the commission if any REP fails to comply with the reporting requirements in this subsection.

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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For further information, please call: (512) 936-7223



## TITLE 30. ENVIRONMENTAL QUALITY

### PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

#### CHAPTER 113. STANDARDS OF PERFORMANCE FOR HAZARDOUS AIR POLLUTANTS AND FOR DESIGNATED FACILITIES AND POLLUTANTS

##### SUBCHAPTER D. DESIGNATED FACILITIES AND POLLUTANTS

The Texas Commission on Environmental Quality (TCEQ or commission) proposes Subchapter D, new Division 3, §§113.2100 - 113.2174; new Division 4, §§113.2200 - 113.2261; and new Division 5, §§113.2300 - 113.2357.

The commission also proposes to include these proposed rules in the accompanying Federal Clean Air Act (FCAA), §111(d)/129 State Plan.

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The proposed amendments to Chapter 113 would revise Subchapter D (Designated Facilities and Pollutants), to add new Division 3 (Emission Guidelines and Compliance Times for Small Municipal Waste Combustion Units Constructed on or Before August 30, 1999), new Division 4 (Emissions Guidelines and Compliance Times for Commercial and Industrial Solid Waste Incineration Units that Commenced Construction On or Before November 30, 1999), and new Division 5 (Emission Guidelines and Compliance Times for Other Solid Waste Incineration Units That Commenced Construction On or Before December 9, 2004)



to incorporate the emission guidelines found in 40 Code of Federal Regulations (CFR) Part 60 (Standards of Performance for New Stationary Sources).

#### *New Source Performance Standards and Emission Guidelines*

The FCAA, §111 (Standards of Performance for New Stationary Sources) and §129 (Solid Waste Combustion) require the United States Environmental Protection Agency (EPA) to develop and adopt performance standards and other requirements for each category of solid waste incineration units. The standards are required to include emissions limitations and other requirements applicable to new units and other requirements applicable to existing units. The new source performance standards (NSPS) apply to new stationary sources in which construction begins after the NSPS is proposed or that are reconstructed or modified on or after a specified date. Emission guidelines are similar to the NSPS, except that they apply to existing sources in which construction begins on or before the date the NSPS is proposed or that are reconstructed or modified before a specified date. Unlike the NSPS, emission guidelines are not enforceable until the EPA approves a state plan or adopts a federal plan for implementing and enforcing them, and the state or federal plan becomes effective. The emission guidelines proposed for incorporation as part of this rulemaking are for certain solid waste incineration units, as specified in this preamble. Under the FCAA, §129, the NSPS and emission guidelines adopted for solid waste incineration units must meet maximum achievable control technology, or the maximum degree of reduction in emissions of air pollutants that the EPA determines is achievable, taking into consideration the cost of achieving reductions and any non-air quality health and environmental impacts and energy requirements.

Additionally, states are required under the FCAA, §129 and the emission guidelines, to adopt and submit to the EPA for approval, a state plan to implement and enforce the emission guidelines. The state plan is required to be at least as protective as the emission guidelines. The FCAA, §129 requires the EPA to develop, implement, and enforce a federal plan if a state fails to submit a satisfactory state plan. The EPA promulgated a federal plan to implement 40 CFR Part 60, Subpart BBBB for existing small municipal waste combustors on January 31, 2003, in 40 CFR Part 62, Subpart JJJ. This federal plan became effective on January 31, 2003. The EPA also promulgated a federal plan to implement 40 CFR Part 60, Subpart DDDD for existing commercial and industrial solid waste incinerators (CISWIs) on October 3, 2003, in 40 CFR Part 62, Subpart III. This federal plan became effective on November 3, 2003. While the EPA proposed a federal plan to implement 40 CFR Part 60, Subpart FFFF for other solid waste incineration (OSWI) units on December 18, 2006 (40 CFR Part 62, Subpart KKK), the EPA has not yet finalized the federal plan. Interested persons may consult the emission guidelines and proposed and final federal plans for further information concerning the requirements that are the subject of this proposed rulemaking. The commission is proposing a state plan to implement and enforce the emission guidelines that are the subject of this proposed rulemaking as part of a separate, concurrent process.

#### *40 CFR Part 60, Subparts BBBB, DDDD, and FFFF*

To meet the requirements of the FCAA, §129, the commission proposes to incorporate three new emission guidelines into Chapter 113: 40 CFR Part 60, Subpart BBBB (Emission Guidelines and Compliance Times for Small Municipal Waste Combustion Units Constructed on or Before August 30, 1999) published in the December 6, 2000, issue of the *Federal Register* (65 FR 76378); Subpart DDDD (Emissions Guidelines and

Compliance Times for Commercial and Industrial Solid Waste Incineration Units that Commenced Construction On or Before November 30, 1999) published in the December 1, 2000, issue of the *Federal Register* (65 FR 75338); and Subpart FFFF (Emission Guidelines and Compliance Times for Other Solid Waste Incineration Units That Commenced Construction On or Before December 9, 2004) published in the December 16, 2005, issue of the *Federal Register* (70 FR 74870).

Copies of these emission guidelines are available through the EPA, the commission, or online from the EPA Federal Register Web site at: <http://www.epa.gov/fedrgstr/>.

#### *40 CFR Part 60, Subpart BBBB, Emission Guidelines and Compliance Times for Small Municipal Waste Combustion Units Constructed on or Before August 30, 1999*

On December 6, 2000, the EPA promulgated emission guidelines for small municipal waste combustion (MWC) units constructed on or before August 30, 1999, defined as any MWC unit with a combustion design capacity of 35 to 250 tons per day. As required by the FCAA, §129, the emission guidelines establish numerical emission limits for dioxins/furans, cadmium, lead, mercury, particulate matter, opacity, sulfur dioxide, hydrogen chloride, nitrogen oxides, and carbon monoxide, in addition to other requirements.

#### *40 CFR Part 60, Subpart DDDD, Emissions Guidelines and Compliance Times for Commercial and Industrial Solid Waste Incineration Units that Commenced Construction On or Before November 30, 1999*

On December 1, 2000, the EPA promulgated emission guidelines for CISWI units that commenced construction on or before November 30, 1999, defined as any combustion device that combusts commercial and industrial waste, as defined in this subpart. As required by the FCAA, §129, the emission guidelines establish numerical emission limits for cadmium, carbon monoxide, dioxins/furans, hydrogen chloride, lead, mercury, opacity, oxides of nitrogen, particulate matter, and sulfur dioxide, in addition to other requirements.

#### *40 CFR Part 60, Subpart FFFF, Emission Guidelines and Compliance Times for Other Solid Waste Incineration Units That Commenced Construction On or Before December 9, 2004*

On December 16, 2005, the EPA promulgated emission guidelines for OSWI units that commenced construction on or before December 9, 2004, defined as either a very small MWC unit or an institutional waste incineration unit, as defined in this subpart. As required by the FCAA, §129, the emission guidelines establish numerical emission limits for cadmium, carbon monoxide, dioxins/furans, hydrogen chloride, lead, mercury, opacity, oxides of nitrogen, particulate matter, and sulfur dioxide, in addition to other requirements.

#### *EPA Model Rules*

In the emission guidelines for 40 CFR Part 60, Subparts BBBB, DDDD, and FFFF, the EPA included model rule language. The EPA states that the model rule is the portion of each of the emission guidelines that addresses the applicable requirements for each subpart in a standard regulation format, and that a state may either use the EPA's model rules as a part of its state plan, or may use alternative language if it is at least as protective as the model rule contained in each subpart.

To meet the federal requirements for its FCAA, §111(d)/129 State Plan, the commission opted to use the model language provided

by the EPA in 40 CFR, and proposes to incorporate the EPA rules into 30 TAC Chapter 113, Standards of Performance for Hazardous Air Pollutants and for Designated Facilities and Pollutants; Subchapter D, Designated Facilities and Pollutants; new Divisions 3 - 5, with the administrative changes noted in this preamble.

## SECTION BY SECTION DISCUSSION

The commission proposes various changes to the EPA model rules that would be incorporated into Chapter 113 primarily to revise rule subdivision formatting and cross-references to conform with the publication requirements of the Texas Register. Throughout the rules, where appropriate, the commission also proposes additional changes to the model rule language for administrative ease and clarity, including: changing the word "Administrator" to "executive director" so that when the Chapter 113 rules and state plan are approved by the EPA, the rules reflect that the commission will enforce the rules, rather than the EPA; changing the EPA's subpart references to the appropriate TCEQ division references; defining acronyms as they are used in each section; and revising legal citations so that they will clearly identify the federal statute, such as the FCAA. Finally, the commission proposes minor spelling, capitalization, and grammatical revisions, such as the addition of "United States" before "Environmental Protection Agency" and consistent use of the term "operating permit" throughout the rules. These non-substantive changes conform to both Texas Register formatting requirements and agency style conventions.

Besides the general changes listed in the previous paragraph, throughout the rules, the commission also proposes specific changes that are noted in this preamble under the specific section number where the change is proposed. The commission proposes these additional, specific changes to the EPA model rules to ensure clear understanding of the rule requirements and proper state enforcement of the rules.

*Division 3, Emission Guidelines and Compliance Times for Small Municipal Waste Combustion Units Constructed on or Before August 30, 1999 (40 CFR Part 60, Subpart BBBBB)*

### *§113.2100--Definitions.*

The commission proposes new §113.2100, which defines terms used in new Division 3 that are either previously undefined or are used differently by the federal emission guidelines that are the basis for the rules. The definitions are taken from 40 CFR §60.1940 (What definitions must I know?).

### *§113.2101--What are my requirements for meeting increments of progress and achieving final compliance?*

The commission proposes new §113.2101, which specifies what must be completed for both Class I and Class II units to meet final compliance. The proposed section states that the increments of progress for Class I units include the following: final control plan, notification of retrofit contract award, initiation of onsite construction, completion of onsite construction, and final compliance. Class II units need only submit a final control plan and achieve final compliance.

### *§113.2102--When must I complete each increment of progress?*

The commission proposes new §113.2102, which specifies that the compliance dates for each of the increments of progress for Class I and Class II units are located in Table 1 of Division 3 (§113.2174).

### *§113.2103--What must I include in the notifications of achievement of my increments of progress?*

The commission proposes new §113.2103, which specifies that notifications demonstrating achievement of increments of progress must include three items: notification that the increment of progress has been achieved; any items required to be submitted with the increment of progress; and signature on the notification by the owner or operator.

### *§113.2104--When must I submit the notifications of achievement of increments of progress?*

The commission proposes new §113.2104, which specifies that notifications demonstrating compliance with the increments of progress must be postmarked no later than 10 days after the compliance date for the increment.

### *§113.2105--What if I do not meet an increment of progress?*

The commission proposes new §113.2105, which describes what notification must be submitted to the executive director if an increment of progress is not completed. The proposed section states that the notification: must be postmarked within 10 business days after the specified date in Table 1 of Division 3 (§113.2174); and must convey to the executive director that the increment was not met, contain an explanation of why the increment was not met, and contain the plan to meet the requirements of the increment. The proposed section further states that the reports must continue to be submitted each subsequent month until the increment of progress is met.

For clarification, the commission proposes to specify that monthly progress reports be due on the first day of each month.

### *§113.2106--How do I comply with the increment of progress for submittal of a control plan?*

The commission proposes new §113.2106, which describes two items that must be completed for the control plan increment of progress. The first item is to submit the complete final control plan as specified.

In paragraph (2), the commission proposes to clarify the wording to specify that a copy of the final control plan must be maintained at the same location as the solid waste incineration unit.

### *§113.2107--How do I comply with the increment of progress for awarding contracts?*

The commission proposes new §113.2107, which specifies that a signed copy of the contracts awarded must be submitted to initiate onsite construction, initiate onsite installation of emission control equipment, and incorporate process changes. The proposed section further states that the copy of the contracts with notification that the increment of progress has been achieved must be submitted to comply with the increment of progress for awarding contracts.

For clarification, the commission proposes to add, in two locations of the section, that items for submittal must be provided to the executive director.

### *§113.2108--How do I comply with the increment of progress for initiating onsite construction?*

The commission proposes new §113.2108, which specifies that onsite construction and installation of emission control equipment and process changes must be completed to achieve the increment of progress for initiating onsite construction.

*§113.2109--How do I comply with the increment of progress for completing onsite construction?*

The commission proposes new §113.2109, which specifies that onsite construction and installation of control equipment and process changes must be completed to achieve the increment of progress for completing onsite construction.

*§113.2110--How do I comply with the increment of progress for achieving final compliance?*

The commission proposes new §113.2110, which specifies the two items that must be completed to achieve the final compliance increment of progress. The proposed section states that this includes completion of all process changes and retrofit construction and connection of the air pollution control equipment with the MWC unit, as well as completion of process changes to the MWC unit.

*§113.2111--What must I do if I close my municipal waste combustion unit and then restart my municipal waste combustion unit?*

The commission proposes new §113.2111, which describes what must be met when a MWC unit is closed and restarted. The proposed section specifies different requirements, depending on whether the MWC unit reopens before or after the final compliance date in the state plan.

*§113.2112--What must I do if I plan to permanently close my municipal waste combustion unit and not restart it?*

The commission proposes new §113.2112, which states that a closure notification must be submitted by the date the final control plan is due if an MWC unit is permanently closed. The proposed section also states that if the closure date is later than 1 year after the effective date of state plan approval, the owner or operator must enter into a legally binding closure agreement with the executive director.

*§113.2113--What types of training must I do?*

The commission proposes new §113.2113, which describes the types of training that operators and plant personnel must receive.

*§113.2114--Who must complete the operator training course? By when?*

The commission proposes new §113.2114, which states the classifications of employees who must complete the operator training course and by what date. These employees include: chief facility operators, shift supervisors, and control room operators. The section specifies EPA or state-approved training courses, unless the employee has obtained full certification from the American Society of Mechanical Engineers on or before the effective date of state plan approval. The proposed section also states that if these employees have obtained provisional certification from the American Society of Mechanical Engineers on or before the effective date of state plan approval, the EPA may waive the requirement for completion of the EPA or state-approved operator training course, if requested.

*§113.2115--Who must complete the plant-specific training course?*

The commission proposes new §113.2115, which states the classifications of employees who must complete the plant-specific training course. These employees include: chief facility operators, shift supervisors, control room operators, ash handlers, maintenance personnel, and crane or load handlers.

*§113.2116--What plant-specific training must I provide?*

The commission proposes new §113.2116, which details what must be included in the plant-specific training provided to employees, and when. This includes: developing a specific operating manual for that plant; establishing a program to review the manual with people whose responsibilities affect the operation of the MWC unit; updating the manual annually; and reviewing it with staff annually.

*§113.2117--What information must I include in the plant-specific operating manual?*

The commission proposes new §113.2117, which details what must be included in the plant-specific operating manual for the plant, such as a summary of applicable requirements, description of the basic combustion principles that apply to MWC units, and several specific procedures.

*§113.2118--Where must I keep the plant-specific operating manual?*

The commission proposes new §113.2118, which specifies that the plant-specific operating manual must be maintained in an easily accessible location at the plant. The proposed section further states that the manual must be available for review or inspection by employees and the executive director.

*§113.2119--What types of operator certification must the chief facility operator and shift supervisor obtain and by when must they obtain it?*

The commission proposes new §113.2119, which details what types of operator certifications must be obtained and by when. The proposed section states that each chief facility operator and shift supervisor must receive certification from the American Society of Mechanical Engineers or a state certification program. The proposed section also describes the requirements and time frames for both provisional operator certification and full certification.

*§113.2120--After the required date for operator certification, who may operate the municipal waste combustion unit?*

The commission proposes new §113.2120, which specifies that the MWC unit cannot be operated unless one of four certified employees are on duty. These four employees include a fully certified chief facility operator, a provisionally certified chief facility operator, a fully certified shift supervisor, and a provisionally certified shift supervisor.

*§113.2121--What if all the certified operators must be temporarily offsite?*

The commission proposes new §113.2121, which details the three criteria that must be met if a certified operator is temporarily offsite and a provisionally certified control room operator is fulfilling the requirement. The proposed section states that these criteria are dependant upon how long the certified operator is temporarily offsite. For instance, if the certified operator is offsite for more than 2 weeks, the executive director must be notified.

For clarification, the commission proposes to add the word "prior" before "notice" in paragraph (3) to reflect that the provisionally certified control room operator may perform the necessary duties without first giving notice and receiving approval from the executive director. Though prior notice and approval is not necessary, in paragraph (3)(A), the owner or operator is required to follow up with a notification to the executive director, an explanation of what caused the absence of the certified operator, and

what is being done to ensure that a certified operator is onsite. Paragraph (3)(B) then contains the required procedures for status reports and corrective action summaries.

In paragraph (3)(A), the commission proposes to add clarification that the notification to the executive director must be done within 10 days after the end of the 2-week period in which a certified operator is required to be onsite. The 10-day clarification is consistent with the time period provided in §§113.2219, 113.2243, 113.2313, and 113.2341, and the commission proposes the clarification regarding the beginning of the 10-day period to clearly outline the rule requirements for regulated entities.

*§113.2122--What are the operating practice requirements for my municipal waste combustion unit?*

The commission proposes new §113.2122, which specifies the operating practice requirements for MWC units. These requirements include maximum loads, maximum temperatures, carbon feed rate, and total carbon usage. The proposed section states the conditions and time frames under which the MWC unit is exempt from requirements, as well as specific activities that are exempt.

For clarification, the commission proposes to modify the sentence in subsection (e)(5). This paragraph refers to both the executive director and the delegated state authority, and since the executive director is the delegated state authority for Texas, the additional wording is unnecessary.

*§113.2123--What happens to the operating requirements during periods of startup, shutdown, and malfunction?*

The commission proposes new §113.2123, which states that all operating requirements apply at all times except during periods of startup, shutdown, or malfunction, which should last no longer than 3 hours.

*§113.2124--What pollutants are regulated by this division?*

The commission proposes new §113.2124, which lists the 11 pollutants that are regulated. The groups of pollutants include: organics, metals, acid gases, and other.

*§113.2125--What emission limits must I meet? By when?*

The commission proposes new §113.2125, which states the emission limits for Class I and II units in Tables 2 through 5 of Division 3 (§113.2174) that must be met, as applicable, after the date the initial stack test and continuous emission monitoring system evaluation are required or completed.

*§113.2126--What happens to the emission limits during periods of startup, shutdown, and malfunction?*

The commission proposes new §113.2126, which states that the emission limits of Division 3 apply at all times except during periods of startup, shutdown, or malfunction, which should last no longer than 3 hours. The proposed section states that a maximum of 3 hours of test data can be dismissed from compliance calculations during periods of startup, shutdown, or malfunction.

*§113.2127--What types of continuous emission monitoring must I perform?*

The commission proposes new §113.2127, which specifies the four tasks that must be performed to continuously monitor emissions. These tasks include: installing a continuous emission monitoring system; operating it correctly; obtaining the minimum amount of monitoring data; and installing a continuous opacity monitoring system.

*§113.2128--What continuous emission monitoring systems must I install for gaseous pollutants?*

The commission proposes new §113.2128, which states that a continuous emission monitoring system must be installed, calibrated, maintained, and operated for oxygen (or carbon dioxide), sulfur dioxide, and carbon monoxide. The proposed section states that the system must meet the monitoring requirements in 40 CFR §60.13 (Monitoring requirements).

*§113.2129--How are the data from the continuous emission monitoring systems used?*

The commission proposes new §113.2129, which states that the data from the continuous emission monitoring systems for sulfur dioxide, nitrogen oxides, and carbon monoxide must be used to demonstrate continuous compliance with the applicable emission limit tables of Division 3 (§113.2174).

*§113.2130--How do I make sure my continuous emission monitoring systems are operating correctly?*

The commission proposes new §113.2130, which describes how and when to verify that continuous emission monitoring systems are operating properly. The proposed section specifies that initial, daily, quarterly, and annual evaluations must be conducted, and that the initial evaluation must be completed within 180 days after the final compliance date. Verification includes evaluating the continuous emission monitoring system, collecting data, and following quality assurance procedures in 40 CFR Part 60, Appendix F (Quality Assurance Procedures).

*§113.2131--Am I exempt from any 40 Code of Federal Regulations Part 60, Appendix B or Appendix F requirements to evaluate continuous emission monitoring systems?*

The commission proposes new §113.2131, which states that the accuracy tests for sulfur dioxide continuous emission monitoring systems require evaluation of oxygen (or carbon dioxide) continuous emission monitoring systems; therefore, the oxygen system (or carbon dioxide) is exempt from two specific requirements in 40 CFR Part 60.

*§113.2132--What is my schedule for evaluating continuous emission monitoring systems?*

The commission proposes new §113.2132, which states that annual evaluations of continuous emission monitoring systems must be conducted no more than 13 months after the previous evaluations. This proposed section also states that continuous emission monitoring systems will be evaluated daily and quarterly as specified in 40 CFR Part 60, Appendix F.

*§113.2133--What must I do if I choose to monitor carbon dioxide instead of oxygen as a diluent gas?*

The commission proposes new §113.2133, which states that if carbon dioxide is monitored instead of oxygen, the relationship between oxygen and carbon dioxide must be established during the initial evaluation of the continuous emission monitoring systems by three specific procedures.

*§113.2134--What is the minimum amount of monitoring data I must collect with my continuous emission monitoring systems and is the data collection requirement enforceable?*

The commission proposes new §113.2134, which details what monitoring data must be collected from the continuous emission monitoring systems and how often. In addition, requirements, including notifying the executive director, are included if the minimum data requirements are not met.

*§113.2135--How do I convert my 1-hour arithmetic averages into appropriate averaging times and units?*

The commission proposes new §113.2135, which includes the specific equations and methods that must be used to convert 1-hour arithmetic averages into appropriate averaging times and units.

*§113.2136--What is required for my continuous opacity monitoring system and how are the data used?*

The commission proposes new §113.2136, which details the requirements for the continuous opacity monitoring system. The proposed section includes specific time frames, CFR cites, and table references for the opacity limit.

*§113.2137--What additional requirements must I meet for the operation of my continuous emission monitoring systems and continuous opacity monitoring system?*

The commission proposes new §113.2137, which requires the use of span values and applicable performance specifications in Table 8 of Division 3 (§113.2174) for the operation of continuous emission monitoring systems and continuous opacity monitoring system.

*§113.2138--What must I do if any of my continuous emission monitoring systems are temporarily unavailable to meet the data collection requirements?*

The commission proposes new §113.2138, which refers to Table 8 of Division 3 (§113.2174). This table provides alternate methods for collecting data when continuous emission monitoring systems are temporarily unavailable.

*§113.2139--What types of stack tests must I conduct?*

The commission proposes new §113.2139, which states that initial and annual stack tests must be conducted to measure emission levels of dioxins/furans, cadmium, lead, mercury, particulate matter, opacity, hydrogen chloride, and fugitive ash.

*§113.2140--How are the stack test data used?*

The commission proposes new §113.2140, which requires the use of stack test results to demonstrate compliance with the applicable emission limits in Tables 2 and 4 of Division 3 (§113.2174) for dioxins/furans, cadmium, lead, mercury, particulate matter, opacity, hydrogen chloride, and fugitive ash.

*§113.2141--What schedule must I follow for the stack testing?*

The commission proposes new §113.2141, which requires that initial stack testing be conducted no later than 180 days after the final compliance date. The proposed section also states that annual stack tests must be conducted no later than 13 months after the previous stack test.

*§113.2142--What test methods must I use to stack test?*

The commission proposes new §113.2142, which describes the test methods that must be used for stack testing, including the criteria in Table 8 of Division 3 (§113.2174), number of test runs, determining diluent gas levels, calculating emission levels, and procedures for applying for an alternative method.

*§113.2143--May I conduct stack testing less often?*

The commission proposes new §113.2143, which allows testing less often for a Class II MWC unit for which all stack tests for a given pollutant over 3 consecutive years show compliance with the emission limit. In addition, this proposed section allows testing less often for dioxins/furans emissions for a MWC plant that

meets the following two conditions: multiple MWC units are on-site that are subject to this division; and all those MWC units have demonstrated levels of dioxins/furans emissions less than or equal to 15 nanograms per dry standard cubic meter (total mass) for Class I units, or 30 nanograms per dry standard cubic meter (total mass) for Class II units, for 2 consecutive years.

*§113.2144--May I deviate from the 13-month testing schedule if unforeseen circumstances arise?*

The commission proposes new §113.2144, which does not allow for deviation from the 13-month testing schedules, unless the executive director has approved an alternative schedule.

*§113.2145--Must I meet other requirements for continuous monitoring?*

The commission proposes new §113.2145, which specifies three other operating parameters for continuous monitoring: load level, flue gas temperature, and carbon feed rate.

*§113.2146--How do I monitor the load of my municipal waste combustion unit?*

The commission proposes new §113.2146, which specifies two ways to monitor the load of the MWC unit. If the unit generates steam, the owner or operator must install, calibrate, maintain, and operate a steam flowmeter or a feed water flowmeter. If the unit does not generate steam or units have shared steam systems, the owner or operator must determine one or more operating parameters that can be used to continuously estimate load level and receive approval from the executive director.

*§113.2147--How do I monitor the temperature of flue gases at the inlet of my particulate matter control device?*

The commission proposes new §113.2147, which states that to monitor the temperature of the flue gases, a device to continuously measure the temperature must be installed, calibrated, maintained, and operated.

*§113.2148--How do I monitor the injection rate of activated carbon?*

The commission proposes new §113.2148, which requires that owners or operators of MWC units using activated carbon to control dioxins/furans or mercury emissions do the following: select a carbon injection system operating parameter to calculate carbon feed rate; during stack tests, determine the average carbon feed rate; and continuously monitor the selected operating parameter during all periods when the unit is operating and combusting waste.

*§113.2149--What is the minimum amount of monitoring data I must collect with my continuous parameter monitoring systems and is the data collection requirement enforceable?*

The commission proposes new §113.2149, which details the parameter monitoring data collection requirements. If continuous parameter monitoring is used, a 1-hour arithmetic average must be calculated with at least two data points per hour. Valid 1-hour averages for at least 75 percent of the operating hours per day for 90 percent of the operating days per calendar quarter must be obtained. The proposed section states that failure to collect the minimum data requires notification to the executive director.

*§113.2150--What records must I keep?*

The commission proposes new §113.2150, which states that the four types of records that must be kept are: operator training and

certification; stack tests; continuously monitored pollutants and parameters; and carbon feed rate.

*§113.2151--Where must I keep my records and for how long?*

The commission proposes new §113.2151, which requires that all records be maintained onsite in paper copy or electronic format for at least 5 years. The proposed section states that these records must be available for submittal to the executive director or for onsite review.

*§113.2152--What records must I keep for operator training and certification?*

The commission proposes new §113.2152, which requires records for operator training and certification of the following six items: provisional certifications; full certifications; completion of the operator training course; reviews for plant-specific operating manuals; records of when a certified operator is temporarily offsite; and calendar dates on each record.

*§113.2153--What records must I keep for stack tests?*

The commission proposes new §113.2153, which requires that stack test records contain the following four items: results of stack tests for eight pollutants or parameters; test reports; maximum demonstrated load and temperature; and calendar date of each record.

*§113.2154--What records must I keep for continuously monitored pollutants or parameters?*

The commission proposes new §113.2154, which requires that eight records be maintained for continuously monitored pollutants or parameters. These eight records are: monitoring data; average concentrations and percent reductions; exceedances; minimum data; exclusions; drift and accuracy; relationship between oxygen and carbon dioxide; and calendar dates.

*§113.2155--What records must I keep for municipal waste combustion units that use activated carbon?*

The commission proposes new §113.2155, which requires five records for MWC units that use activated carbon to control dioxins/furans or mercury emissions. These five records are: average carbon feed rate; low carbon feed rates; minimum carbon feed rate data; exclusions; and calendar dates.

*§113.2156--What reports must I submit and in what form?*

The commission proposes new §113.2156, which states what reports must be submitted and how. These reports include initial, semiannual, and annual reports and the section states that reports must be submitted on paper, postmarked on or before the submittal dates. The section further states that the executive director must approve submission of electronic reports, and that copies of all reports must be maintained onsite for 5 years.

The commission proposes to add, for clarification, that electronic reporting must meet the specifications of 30 TAC Chapter 19 (Electronic Reporting).

*§113.2157--What are the appropriate units of measurement for reporting my data?*

The commission proposes new §113.2157, which refers readers to Tables 2 through 5 of Division 3 (§113.2174) for appropriate units of measurement to be used when reporting data.

*§113.2158--When must I submit the initial report?*

The commission proposes new §113.2158, which requires that the initial report be submitted no later than 180 days after the

final compliance date. The final compliance date is contained in Table 1 of Division 3 (§113.2174), and for both Class I and Class II units, is no later than 36 months from the date the TCEQ publishes notice in the *Texas Register* of state plan approval.

*§113.2159--What must I include in my initial report?*

The commission proposes new §113.2159, which states the seven items that must be included in the initial report. These items include the following: emission levels measured on the date of the initial evaluation of the continuous emission monitoring systems; results of initial stack tests; the test report that documents initial stack tests; the initial performance evaluation of the continuous emissions monitoring systems; the maximum demonstrated load and temperature; the average carbon feed rate recorded during the initial stack tests; and documentation of the relationship between oxygen and carbon dioxide.

*§113.2160--When must I submit the annual report?*

The commission proposes new §113.2160, which states that annual reports must be submitted no later than February 1 of each year that follows the calendar year in which data was collected.

To clarify and simplify the requirements of this section, the commission proposes to delete the reference to 40 CFR Part 71, since federal requirements are contained within this part and they are not necessary for state implementation of the rules.

*§113.2161--What must I include in my annual report?*

The commission proposes new §113.2161, which states that a summary of data collected for all pollutants and parameters regulated must be included in the annual report. The 12 items that must be included in the summary are: the results of the annual stack test; a list of the highest average levels recorded; the highest 6-minute opacity level measured; for MWC units that use activated carbon for controlling dioxins/furans or mercury emissions, four records; the total number of days that minimum number of hours of data were not obtained; the number of hours of excluded data from the calculation of average levels; notice of intent to begin a reduced stack testing schedule for dioxins/furans; a summary of any emission or parameter level that did not meet the limits; a summary of data that gives a summary of the performance of the MWC unit; documentation of the relationship between oxygen and carbon dioxide; and documentation of periods when all certified chief facility operators and certified shift supervisors are offsite for more than 12 hours.

*§113.2162--What must I do if I am out of compliance with the requirements of this division?*

The commission proposes new §113.2162, which requires that a semiannual report be submitted on any recorded emission or parameter level that is out of compliance.

*§113.2163--If a semiannual report is required, when must I submit it?*

The commission proposes new §113.2163, which requires that the semiannual report be submitted by August 1 of the year for data collected during the first half of the calendar year. The section requires that data collected during the second half of the calendar year be submitted in the semiannual report by February 1 of the following year.

*§113.2164--What must I include in the semiannual out-of-compliance reports?*

The commission proposes new §113.2164, which requires that three items be included in the semiannual reports: calendar

dates in which limits were exceeded, along with averaged and recorded data, the reasons for exceeding the limits, and corrective actions; if stack tests indicate that emissions are above specified limits, a copy of the test report that documents emission levels and corrective actions; and for MWC units that apply activated carbon to control dioxins/furans or mercury emissions, documentation of all dates when the 8-hour block average carbon feed rate is less than the highest carbon feed rate established during the most recent mercury and dioxins/furans stack test and documentation of each quarter when total carbon purchased and delivered to the MWC plant is less than the total required quarterly usage of carbon.

*§113.2165--Can reporting dates be changed?*

The commission proposes new §113.2165, which states that if the executive director agrees, semiannual and annual reporting dates may be changed. The proposed section cites 40 CFR §60.19(c) (General notification and reporting requirements) for procedures to seek approval to change a reporting date.

*§113.2166--What is an air curtain incinerator?*

The commission proposes new §113.2166, which defines an air curtain incinerator. The proposed section states that an air curtain incinerator operates by forcefully projecting a curtain of air across an open chamber or open pit in which combustion occurs. The rules in this division require that owners or operators of air curtain incinerators obtain a Title V permit; however, these units are only required to comply with limited requirements, as opposed to larger entities.

*§113.2167--What is yard waste?*

The commission proposes new §113.2167, which defines yard waste as grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs. The proposed section further states that yard waste comes from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands. Finally, the proposed section states that yard waste does not include construction, renovation, and demolition wastes that are exempt from the definition of "Municipal solid waste" in §113.2100, or clean wood that is exempt from the definition of "Municipal solid waste" in §113.2100.

*§113.2168--What are the emission limits for air curtain incinerators that burn 100 percent yard waste?*

The commission proposes new §113.2168, which states that air curtain incinerators that burn 100 percent yard waste must meet an opacity limit of 10 percent (6-minute average) and 35 percent (6-minute average) during the startup period that is within the first 30 minutes of operation. The section states that the emission limits must be met by 180 days after the final compliance date.

*§113.2169--How must I monitor opacity for air curtain incinerators that burn 100 percent yard waste?*

The commission proposes new §113.2169, which requires the use of EPA Reference Method 9 in 40 CFR Part 60, Appendix A (Test Methods 1 through 30B), to determine compliance with the opacity limit. The proposed section states that an initial test must also be conducted as specified in 40 CFR §60.8 (Performance tests). Annual tests must be conducted no more than 13 calendar months following the date of the previous test. As discussed in the FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT portion of this preamble, there would be costs associated with training for conducting opacity testing.

*§113.2170--What are the recordkeeping and reporting requirements for air curtain incinerators that burn 100 percent yard waste?*

The commission proposes new §113.2170, which requires that a notice of construction be provided that includes four items: intent to construct; planned initial startup date; types of fuels to be combusted; and capacity of the incinerator. The proposed section states that records of opacity test results, as well as copies of all reports, must be maintained onsite for each incinerator for at least 5 years and that all records must be made available to the executive director or for onsite review by an inspector. The proposed section further states that all opacity test results must be submitted by February 1 of the year following the year of the test as a paper copy, unless the executive director approves electronic submission.

*§113.2171--What equations must I use?*

The commission proposes new §113.2171, which details the equations that must be used in Division 3. Equations are provided to calculate the following: concentration correction to 7 percent oxygen; percent reduction in potential mercury emissions; percent reduction in potential hydrogen chloride emissions; capacity of an MWC unit; capacity of a batch MWC unit; and quarterly carbon usage, for plant basis and unit basis.

*§113.2172--Does this subpart require me to obtain an operating permit under Title V of the Federal Clean Air Act?*

The commission proposes new §113.2172, which states that units subject to Chapter 113, Subchapter D, Division 3 on the effective date of state plan approval or later are required to apply for and obtain a Title V operating permit. Because these rules and FCAA, §111(d)/129 State Plan are not enforceable by Texas until they are approved by the EPA, the commission proposes to state that applicants are subject to Division 3 on the effective date of state plan approval, rather than on the effective date of the division, which would be 20 days after the commission files the Chapter 113 rule adoption with the Texas Secretary of State's Office. Upon state plan approval, the commission will publish notice in the *Texas Register* and on the TCEQ Web site, to ensure that all affected entities are notified.

This section was not included in the emission guidelines published in the December 6, 2000, issue of the *Federal Register*; however, it was included in the federal plan promulgation that was published in the January 31, 2003, issue of the *Federal Register* (68 FR 5144), as 40 CFR Part 62, Subpart JJJ, §65.15020 (Can my small municipal waste combustion unit be exempt from this subpart?) and §62.15395 (Does this subpart require me to obtain an operating permit under title V of the Clean Air Act?). The federal plan promulgation, including this Title V requirement, became effective on December 6, 2002. Therefore, to ensure that the incorporated rules are as protective as the EPA's rules, as required by FCAA, §129, the commission included this section regarding the Title V permit requirement into its incorporation in Division 3.

In particular, the commission notes that 40 CFR §60.1555 (Are any small municipal waste combustion units exempt from my State plan?) has added some confusion to whether air curtain incinerators are obligated to apply for and obtain Title V permits, since §60.1555 provides that air curtain incinerators that burn 100 percent yard waste must only meet the requirements under §§60.1910 - 60.1930, which do not include the requirement to apply for and obtain a Title V operating permit. As noted above, the federal plan for these sources, 40 CFR Part 62, Subpart JJJ,

in §62.15020, requires that air curtain incinerators that burn 100 yard waste must meet only the requirements of §§62.15365 - 62.15385 and the Title V operating permit requirements of Subpart 62.

*§113.2173--When must I submit a Title V permit application for my existing small municipal waste combustion unit?*

The commission proposes new §113.2173, which contains the deadlines for submitting a complete Title V permit application for existing small MWC units. The Title V application submittal date is based either on the promulgation of 40 CFR Part 60, Subpart BBBB (December 6, 2003), or the effective date of the applicable state, tribal, or federal operating permits program, whichever is later. The section also defines a "complete" Title V permit application as one that has been determined or deemed complete by the relevant permitting authority under the FCAA, §503(d) and 40 CFR §70.5(a)(2).

To clarify and simplify the requirements of this section, the commission proposes to delete references to 40 CFR Part 71 in subsections (a) and (c), since federal requirements are contained within this part and they are not necessary for state implementation of the rules.

This section was not included in the emission guidelines published in the December 6, 2000, issue of the *Federal Register*; however, it was included in the federal plan promulgation that was published in the January 31, 2003, issue of the *Federal Register* (68 FR 5144), as 40 CFR Part 62, Subpart JJJ, §62.15400 (When must I submit a title V permit application for my existing small municipal waste combustion unit?). The federal plan promulgation, including this Title V requirement, became effective on December 6, 2002. Therefore, to ensure that the incorporated rules are as protective as the EPA's rules, as required by FCAA, §129, the commission included this section regarding the Title V permit requirement into its incorporation in Division 3.

*§113.2174--Tables Relating to Division 3.*

The commission proposes new §113.2174, which contains the tables referenced in Division 3. These tables include the following: Compliance Schedules and Increments of Progress; Class I Emission Limits for Existing Small Municipal Waste Combustion Units; Class I Nitrogen Oxides Emission Limits for Existing Small Municipal Waste Combustion Units; Class II Emission Limits for Existing Small Municipal Waste Combustion Unit; Carbon Monoxide Emission Limits for Existing Small Municipal Waste Combustion Units; Requirements for Validating Continuous Emission Monitoring Systems (CEMS); Requirements for Continuous Emission Monitoring Systems (CEMS); and Requirements for Stack Tests.

Table 1 specifies the compliance schedules and increments of progress for Class I and Class II units. The emission guidelines for 40 CFR Part 60, Subpart BBBB define Class I units as small MWC units subject to the subpart that are located at MWC plants with an aggregate plant combustion capacity greater than 250 tons per day of municipal solid waste. Class II units are defined as small MWC units subject to the subpart that are located at MWC plants with aggregate plant combustion capacity less than or equal to 250 tons per day of municipal solid waste. If the owner or operator plans to achieve final compliance for a unit more than 1 year following the effective date of state plan approval, and a permit modification is not required, or more than 1 year following the date of issuance of a revised construction or operating permit if a permit modification is required, owners or operators

of the units must meet the deadlines for defined increments of progress. Five increments of progress are required for Class I units, and two are required for Class II units. The last increment for both types of units is final compliance. The first increment for all units, which is submission of the final control plan, is within 60 days from the date the TCEQ publishes notice in the *Texas Register* of state plan approval. Class I units are required to meet three additional increments of progress before meeting the final compliance date, and these increment deadlines are: no later than 18 months from the date the TCEQ publishes notice in the *Texas Register* of state plan approval for Increment 2; no later than 24 months from the date the TCEQ publishes notice in the *Texas Register* of state plan approval for Increment 3; no later than 34 months from the date the TCEQ publishes notice in the *Texas Register* of state plan approval for Increment 4; and no later than 36 months from the date the TCEQ publishes notice in the *Texas Register* of state plan approval for Increment 5. Class II units must only meet Increment 1 and then Increment 5, or final progress. Class II units are also given no later than 36 months from the date the TCEQ publishes notice in the *Texas Register* of state plan approval to meet Increment 5.

To clarify and simplify the information in the tables contained in this section, the commission proposes minor formatting changes and also proposes to delete information that may confuse regulated entities, such as references to past federal compliance dates.

*Division 4, Emissions Guidelines and Compliance Times for Commercial and Industrial Solid Waste Incineration Units That Commenced Construction On or Before November 30, 1999 (40 CFR Part 60, Subpart DDDD)*

*§113.2200--Definitions.*

The commission proposes new §113.2200, which defines terms used in new Division 4 that are either previously undefined or are used differently by the federal emission guidelines that are the basis for the rules. The definitions are taken from 40 CFR §60.2875 (What definitions must I know?).

For clarification, the commission proposes to modify the wording in paragraph (14)(C), under the definition of deviation. In the portion of the sentence in paragraph (14)(C) that states ". . . regardless or whether or not such failure is permitted by this division. . .," the commission proposes to insert the word "of." Therefore, the sentence would read as ". . .regardless of whether or not such failure is permitted by this division."

Also for clarification, the commission proposes to modify the wording in paragraph (16), under the definition of discard. This definition includes a reference both to Division 4 and to 40 CFR Part 60, Subpart DDDD, and because the Chapter 113 rules in Division 4 are equivalent to Subpart DDDD, the additional wording is unnecessary. The definition of solid waste, paragraph (30), contains a similar reference to Subpart CCCC, and the commission also proposes to delete this reference, because Subpart CCCC applies to new sources, not existing sources, which is the subject of Division 4.

In the September 22, 2005, issue of the *Federal Register* (70 FR 55568), the EPA published amended versions of the definitions for solid waste, commercial or industrial waste, and CISWI unit. Because a federal court has issued a full vacatur of these three definitions, the versions contained in this rule package are the versions as published in the December 1, 2000, issue of the *Federal Register* (65 FR 75338).



*§113.2201--What are my requirements for meeting increments of progress and achieving final compliance?*

The commission proposes new §113.2201, which states that to achieve compliance more than 1 year following the effective date of the state plan approval, a final control plan must be submitted and final compliance must be achieved.

*§113.2202--When must I complete each increment of progress?*

The commission proposes new §113.2202, which states that the compliance dates for each increment of progress are established in Table 1 of Division 4 (§113.2261).

*§113.2203--What must I include in the notifications of achievement of increments of progress?*

The commission proposes new §113.2203, which requires that the following three items be included in the notification of achievement of increments of progress: notification that the increment of progress has been achieved; items required to be submitted with each increment of progress; and signature of the owner or operator of the unit.

*§113.2204--When must I submit the notifications of achievement of increments of progress?*

The commission proposes new §113.2204, which states that the notifications of achievement of increments of progress must be postmarked no later than 10 business days after the compliance date for the increment.

*§113.2205--What if I do not meet an increment of progress?*

The commission proposes new §113.2205, which states that a notification must be submitted to the executive director postmarked within 10 business days if an increment of progress is not met. The proposed section also states that reports must continue to be submitted until the increment of progress is met.

*§113.2206--How do I comply with the increment of progress for submittal of a control plan?*

The commission proposes new §113.2206, which states that to be in compliance with the increment of progress for submittal of a control plan, the final control plan must include the following: description of control devices and process changes; type of waste burned; maximum design waste burning capacity; maximum charge rate; and petition for site-specific operating limits, if applicable. In addition, a copy of the final control plan must be maintained onsite.

*§113.2207--How do I comply with the increment of progress for achieving final compliance?*

The commission proposes new §113.2207, which requires that all process changes and retrofit construction be completed for the final compliance of the increment of progress.

*§113.2208--What must I do if I close my commercial and industrial solid waste incineration unit and then restart it?*

The commission proposes new §113.2208, which states that if a CISWI unit is closed and restarted before the final compliance date, the increments of progress must be met as specified in §113.2201. The section states that if the CISWI is restarted after the final compliance date, emission control retrofits must be completed and the emission limitations and operating limits must be met on the date the unit restarts.

*§113.2209--What must I do if I plan to permanently close my commercial and industrial solid waste incineration unit and not restart it?*

The commission proposes new §113.2209, which states that if the owner or operator chooses to permanently close the CISWI unit rather than comply with the state plan, a closure notification must be submitted to the executive director by the date the final control plan is due.

*§113.2210--What is a waste management plan?*

The commission proposes new §113.2210, which states that a waste management plan is a written plan that identifies both the feasibility and the methods used to reduce or separate certain components of solid waste from the waste stream to reduce or eliminate toxic emissions from incinerated waste.

*§113.2211--When must I submit my waste management plan?*

The commission proposes new §113.2211, which specifies that Table 1 of Division 4 (§113.2261) contains the dates to submit the waste management plan.

*§113.2212--What should I include in my waste management plan?*

The commission proposes new §113.2212, which details what must be included in the waste management plan, such as consideration of the reduction or separation of waste-stream elements and any additional waste management measures. The proposed section states that measures that are considered practical and feasible, based on certain specific criteria, must be implemented.

*§113.2213--What are the operator training and qualification requirements?*

The commission proposes new §113.2213, which states that no CISWI unit can be operated unless a fully trained and qualified CISWI unit operator is accessible within 1 hour. The proposed section also states that operator training and qualification must be obtained through a state-approved program or an incinerator operator training course must be completed. The proposed section lists the three elements that the operator training course must include, which are: training on 11 topics as specified in this section; an examination designed and administered by the instructor; and written material covering the training course topics that can serve as a reference following completion of the course.

*§113.2214--When must the operator training course be completed?*

The commission proposes new §113.2214, which requires that the operator training course be completed by the later of the following: the final compliance date; six months after CISWI unit startup; or six months after an employee assumes responsibility for operating or supervising the operation of the CISWI unit.

*§113.2215--How do I obtain my operator qualification?*

The commission proposes new §113.2215, which states that operator qualification must be obtained by completing a training course. The proposed section also states that the qualification is valid from the date the training course is completed and the operator passes the examination successfully. As stated in §113.2216, operators must complete an annual review or refresher course to maintain qualification.

*§113.2216--How do I maintain my operator qualification?*

The commission proposes new §113.2216, which requires completion of an annual review or refresher course to maintain qualification. The section specifies that five topics must be included: update of regulations; incinerator operation; inspection and maintenance; malfunctions; and operating problems.

*§113.2217--How do I renew my lapsed operator qualification?*

The commission proposes new §113.2217, which requires completion of a standard annual refresher course or a repeat of the initial qualification requirements to renew a lapsed operator qualification. The requirement that applies is based on either a lapse of less than 3 years or 3 years or more.

*§113.2218--What site-specific documentation is required?*

The commission proposes new §113.2218, which requires the following for site-specific documentation: availability and accessibility of documents at the facility for all CISWI unit operators; establishment of a program for reviewing this information with each incinerator operator; and maintenance of specific CISWI unit operator information in the records.

*§113.2219--What if all the qualified operators are temporarily not accessible?*

The commission proposes new §113.2219, which states that a CISWI unit may be operated by other plant personnel familiar with the operation if all qualified operators are temporarily not accessible for more than 8 hours, but less than 2 weeks. The proposed section also states that if all qualified operators are not accessible for 2 weeks or more, the executive director must be notified within 10 days and a status report submitted every 4 weeks following the outlined conditions and procedures.

In paragraph (2)(A), the commission proposes to add clarification that the notification to the executive director must be done within 10 days after the end of the 2-week period in which a certified operator is not accessible. The commission proposes the clarification regarding the beginning of the 10-day period to clearly outline the rule requirements for regulated entities, and similar clarification is proposed to be added in §§113.2121, 113.2243, 113.2313, and 113.2341.

*§113.2220--What emission limitations must I meet and by when?*

The commission proposes new §113.2220, which requires that the emission limits specified in Table 2 of Division 4 (§113.2261) be met on the date the initial performance test is required or completed.

*§113.2221--What operating limits must I meet and by when?*

The commission proposes new §113.2221, which describes the operating limits based on whether a wet scrubber or fabric filter is used. In both cases, the operating limits established during the initial performance test must be met on the date the initial performance test is required or completed.

For clarification and for consistency with §113.2228, the commission proposes to use the word "hydrogen chloride" rather than HCl in subsection (a)(4).

*§113.2222--What if I do not use a wet scrubber to comply with the emission limitations?*

The commission proposes new §113.2222, which requires a petition to the executive director for specific operating limits to be established during the initial performance test and continuously monitored thereafter for use of an air pollution control device other than a wet scrubber. The section states that the initial per-

formance test must not be conducted until after the petition has been approved, and specifies five items that must be included in the petition.

*§113.2223--What happens during periods of startup, shutdown, and malfunction?*

The commission proposes new §113.2223, which requires that emission limitations and operating limits apply at all times except during startups, shutdowns, or malfunctions of the CISWI unit. The proposed section further states that each malfunction must last no longer than 3 hours.

*§113.2224--How do I conduct the initial and annual performance test?*

The commission proposes new §113.2224, which details the requirements for conducting initial and annual performance tests. The requirements include conducting a minimum of three test runs, and documenting that the waste burned during the test is representative. The proposed section specifies minimum run duration and test methods. The proposed section also includes an equation regarding the pollutant concentration that must be adjusted to 7 percent oxygen, except for opacity.

*§113.2225--How are the performance test data used?*

The commission proposes new §113.2225, which states that the results of the performance tests must be used to determine compliance with emission limitations in Table 2 of Division 4 (§113.2261).

*§113.2226--How do I demonstrate initial compliance with the emission limitations and establish the operating limits?*

The commission proposes new §113.2226, which requires an initial performance test to determine compliance with emission limitations and to establish operating limits. The proposed section states that the initial performance test must be conducted using the methods in Table 2 of Division 4 (§113.2261) and §113.2224.

*§113.2227--By what date must I conduct the initial performance test?*

The commission proposes new §113.2227, which requires that the initial performance test be conducted no later than 180 days after final compliance. The section further states that final compliance dates are specified in Table 1 of Division 4 (§113.2261).

The commission also proposes to add language to clarify that the initial performance test must be conducted no later than 180 days after the deadline for the final compliance date.

*§113.2228--How do I demonstrate continuous compliance with the emission limitations and the operating limits?*

The commission proposes new §113.2228, which requires an annual performance test for particulate matter, hydrogen chloride, and opacity to determine compliance with emission limitations. The proposed section also states that the operating parameters must be continuously monitored and only the same types of waste used to establish the operating limits must be burned.

*§113.2229--By what date must I conduct the annual performance test?*

The commission proposes new §113.2229, which requires that the annual performance tests for particulate matter, hydrogen chloride, and opacity be conducted within 12 months following the initial performance test. The proposed section further states

that subsequent annual performance tests must be conducted within 12 months following the previous one.

*§113.2230--May I conduct performance testing less often?*

The commission proposes new §113.2230, which allows performance testing to be conducted less often if there is test data for at least 3 years and all performance tests for the pollutant over 3 consecutive years show compliance. In addition, if the CISWI unit continues to meet the emission limitations, performance tests may be conducted every third year, but within 36 months of the previous performance test, unless there is a deviation.

*§113.2231--May I conduct a repeat performance test to establish new operating limits?*

The commission proposes new §113.2231, which allows a repeat performance test to establish new values for operating limits. The performance test must be repeated if the feed stream is different than the feed streams during any performance test used to demonstrate compliance.

*§113.2232--What monitoring equipment must I install and what parameters must I monitor?*

The commission proposes new §113.2232, which specifies that if a wet scrubber is used to comply with emission limitations, devices for monitoring the value of the operating parameters must be installed, calibrated, maintained, and operated so that the wet scrubber complies with the operating limits listed in Table 3 of Division 4 (§113.2261). The proposed section states that if a fabric filter is used, a bag leak detection system must be installed, calibrated, maintained, and continuously operated as specified in this section and if something other than a wet scrubber is used, equipment necessary to monitor compliance must be installed, calibrated, maintained, and operated.

*§113.2233--Is there a minimum amount of monitoring data I must obtain?*

The commission proposes new §113.2233, which requires that all monitoring be conducted at all times the CISWI unit is operating, except for monitoring malfunctions, associated repairs, and required quality assurance or quality control activities.

*§113.2234--What records must I keep?*

The commission proposes new §113.2234, which specifies the 13 items that must be recorded and maintained: calendar date of each record; records of various types of data; identification of calendar dates and times for which monitoring systems used to monitor operating limits were inoperative, inactive, malfunctioning, or out of control; identification of calendar dates, times, and durations of malfunctions; identification of calendar dates and times for which data show a deviation from the operating limits in Table 3 of this division (§113.2261); the results of the initial, annual, and any subsequent performance tests conducted to determine compliance with the emission limits and/or to establish operating limits, as applicable; records showing the names of CISWI unit operators who have completed review of the required site-specific documentation; records showing the names of CISWI unit operators who have completed the operator training requirements, met the criteria for qualification, and maintained or renewed qualification; for each qualified operator, a phone and pager number; records of calibration of any required monitoring devices; equipment vendor specifications and related operation and maintenance requirements for the incinerator, emission controls, and monitoring equipment; the

information listed in §113.2218(a); and on a daily basis, a log of the quantity of waste burned and the types of waste burned. The section states that these records must be maintained for at least 5 years.

*§113.2235--Where and in what format must I keep my records?*

The commission proposes new §113.2235, which requires that records be available onsite, and in either paper or electronic format that can be printed upon request, unless an alternative format is approved by the executive director.

*§113.2236--What reports must I submit?*

The commission proposes new §113.2236, which states that the reporting requirements summary is contained in Table 5 of Division 4 (§113.2261).

*§113.2237--When must I submit my waste management plan?*

The commission proposes new §113.2237, which states that the dates for submittal of the waste management plan are located in Table 1 of Division 4 (§113.2261) for submittal of the final control plan.

*§113.2238--What information must I submit following my initial performance test?*

The commission proposes new §113.2238, which details the information that must be submitted no later than 60 days following the initial performance test. The proposed section states that these reports must be signed by the facilities manager.

*§113.2239--When must I submit my annual report?*

The commission proposes new §113.2239, which states that annual reports must be submitted no later than 12 months following the submittal of the information in §113.2238. The section also states that subsequent reports must be submitted no later than 12 months following the previous report.

*§113.2240--What information must I include in my annual report?*

The commission proposes new §113.2240, which details the ten items that must be included in the annual report. The ten items listed include: company name and address; statement by a responsible official, along with the official's name, title, and signature; date of report and beginning and ending dates of the reporting period; the values for the operating limits; if no deviation from any emission limitation or operating limit that applies to the owner or operator has been reported, a statement to that effect; the highest recorded 3-hour average and the lowest recorded 3-hour average, as applicable, for each operating parameter recorded by calendar year; information recorded under §113.2234(2)(F) and (3) through (5), by calendar year; if a performance test was conducted during the reporting period, the results of that test; if the requirements of §113.2230(a) or (b) were met, and a performance test was not conducted during the reporting period, a statement that the requirements of §113.2230(a) or (b) were met; and documentation of periods when all qualified CISWI unit operators were unavailable for more than 8 hours, but less than 2 weeks. The section also states that deviation reports must be submitted to record a deviation from the operating limits or the emission limitations.

*§113.2241--What else must I report if I have a deviation from the operating limits or the emission limitations?*

The commission proposes new §113.2241, which states that a deviation report must be submitted if any recorded 3-hour average parameter level is above the maximum operating limit or be-

low the minimum operating limit established under this division, if the bag leak detection system alarm sounds for more than 5 percent of the operating time for the 6-month reporting period, or if a performance test was conducted that deviated from any emission limitation. The proposed section specifies that the deadline is August 1 for the first half of the calendar year, and February 1 for the second half of the calendar year.

*§113.2242--What must I include in the deviation report?*

The commission proposes new §113.2242, which details the six items that must be included in the deviation report: the calendar dates and times the unit deviated from the emission limitations or operating limit requirements; the averaged and recorded data; the duration and causes of each deviation from the emission limitations or operating limits and corrective actions; a copy of the operating limit monitoring data during each deviation and any test report that documents the emission levels; the dates, times, number, duration, and causes for monitoring downtime incidents; and whether each deviation occurred during a period of startup, shutdown, or malfunction, or during another period.

*§113.2243--What else must I report if I have a deviation from the requirement to have a qualified operator accessible?*

The commission proposes new §113.2243, which requires that if all qualified operators are not accessible for 2 weeks or more, a notification of the deviation must be submitted within 10 days and a status report must be submitted to the executive director every 4 weeks. The proposed section also states that a unit that was shut down by the executive director because of a failure to provide an accessible qualified operator requires notification to the executive director once operations resume and a qualified operator is accessible.

In subsection (a)(1), the commission proposes to add clarification that the notification to the executive director must be done within 10 days after the end of the 2-week period in which a certified operator is not accessible. The commission proposes the clarification regarding the beginning of the 10-day period to clearly outline the rule requirements for regulated entities, and similar clarification is proposed to be added in §§113.2121, 113.2219, 113.2313, and 113.2341.

*§113.2244--Are there any other notifications or reports that I must submit?*

The commission proposes new §113.2244, which requires that notifications or reports be submitted as required by 40 CFR §60.7 (Notification and record keeping).

*§113.2245--In what form can I submit my reports?*

The commission proposes new §113.2245, which allows initial, annual, and deviation reports to be submitted electronically or in paper format. The proposed section also specifies that reports must be postmarked on or before the submittal due dates.

*§113.2246--Can reporting dates be changed?*

The commission proposes new §113.2246, which allows semi-annual or annual reporting dates to be changed if approved by the executive director. The section references 40 CFR §60.19(c) for procedures to seek approval to change a reporting date.

*§113.2247--Am I required to apply for and obtain a Title V operating permit for my unit?*

The commission proposes new §113.2247, which requires each CISWI unit owner or operator to obtain a Title V permit. As required by the model rule, the Title V application submittal date

is based either on the promulgation of 40 CFR Part 60, Subpart DDDD (December 1, 2003), or on the effective date of the Title V permit program to which the unit is subject.

For further clarity and precision, the commission proposes to change the reference to the deadlines "noted above" in paragraph (2) to the deadlines noted in "this section."

*§113.2248--What is an air curtain incinerator?*

The commission proposes new §113.2248, which states that an air curtain incinerator operates by forcefully projecting a curtain of air across an open chamber or open pit in which combustion occurs. The proposed section further states that incinerators of this type can be constructed above or below ground and with or without refractory walls and floor.

In particular, the commission notes that 40 CFR §60.2555 (What combustion units are exempt from my State plan?) and this section have added some confusion to whether air curtain incinerators are obligated to apply for and obtain Title V permits, since both sections provide that air curtain incinerators that burn only 100 percent wood waste, 100 percent clean lumber, and 100 percent mixture of only wood waste, clean lumber, and/or yard waste must only meet the requirements under §§60.2810 - 60.2870, which do not include the requirement to apply for and obtain a Title V operating permit. However, the federal plan for these sources, 40 CFR Part 62, Subpart III, §62.14525, requires that air curtain incinerators that burn 100 percent wood waste, 100 percent clean lumber, and 100 percent mixture of only wood waste, clean lumber, and/or yard waste must meet only the requirements of §§62.14765 - 62.14825 and the Title V operating permit requirements of Subpart 62. Therefore, to further clarify the requirements for air curtain incinerators under §113.2248, the commission proposes to add the following sentence at the end of subsection (b): "In addition, air curtain incinerators must meet the requirements of §113.2247 of this title (relating to Am I required to apply for and obtain a Title V operating permit for my unit?)."

*§113.2249--What are my requirements for meeting increments of progress and achieving final compliance?*

The commission proposes new §113.2249, which states that two increments of progress must be met if achieving compliance more than one year following the effective date of state plan approval: a final control plan must be submitted; and final compliance must be achieved.

*§113.2250--When must I complete each increment of progress?*

The commission proposes new §113.2250, which specifies that the compliance dates for each increment of progress are contained in Table 1 of Division 4 (§113.2261).

*§113.2251--What must I include in the notifications of achievement of increments of progress?*

The commission proposes new §113.2251, which states what must be included in the notification of achievement of increments of progress: notification of the achievement; any items required to be submitted with each increment of progress; and signature of the owner or operator of the incinerator.

*§113.2252--When must I submit the notifications of achievement of increments of progress?*

The commission proposes new §113.2252, which requires that the notifications of achievement of increments of progress be

postmarked no later than 10 business days after the compliance date for the increment.

*§113.2253--What if I do not meet an increment of progress?*

The commission proposes new §113.2253, which states that if an increment of progress is not met, a notification must be submitted to the executive director postmarked within 10 business days after the date for that increment of progress. The proposed section further states that the submittal of reports must continue for each subsequent calendar month until the increment of progress is met.

*§113.2254--How do I comply with the increment of progress for submittal of a control plan?*

The commission proposes new §113.2254, which states that a control plan increment of progress must include submitting a final control plan and maintaining a copy onsite.

*§113.2255--How do I comply with the increment of progress for achieving final compliance?*

The commission proposes new §113.2255, which requires that all process changes and retrofit construction of control devices be completed for the final compliance increment of progress.

*§113.2256--What must I do if I close my air curtain incinerator and then restart it?*

The commission proposes new §113.2256, which states that if the incinerator is closed, but will reopen before the final compliance date, the increments of progress must be met. If the incinerator will restart after the final compliance date, emission control retrofits must be completed and emission limitations met on the date the incinerator restarts.

*§113.2257--What must I do if I plan to permanently close my air curtain incinerator and not restart it?*

The commission proposes new §113.2257, which states that if the incinerator will be closed rather than comply with the state plan, a closure notification must be submitted to the executive director by the date the final control plan is due.

*§113.2258--What are the emission limitations for air curtain incinerators?*

The commission proposes new §113.2258, which states that air curtain incinerators must meet an opacity limit of 10 percent (6-minute average) and 35 percent (6-minute average) during the startup period that is within the first 30 minutes of operation. The proposed section states that the requirements apply at all times except during malfunctions, and each malfunction must not exceed three hours.

*§113.2259--How must I monitor opacity for air curtain incinerators?*

The commission proposes new §113.2259, which requires the use of EPA Reference Method 9 in 40 CFR Part 60, Appendix A to determine compliance with the opacity limit. The proposed section states that an initial test must be conducted no later than 180 days after the final compliance date, and that annual tests must be conducted thereafter, no more than 12 calendar months following the date of the previous test.

As discussed in the FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT portion of this preamble, there would be costs associated with training for conducting opacity testing.

*§113.2260--What are the recordkeeping and reporting requirements for air curtain incinerators?*

The commission proposes new §113.2260, which requires that records of opacity test results be maintained onsite for at least 5 years. The proposed section states that all records must be made available for submittal to the executive director or for an inspector's onsite review. Finally, the proposed section requires that an initial report be submitted no later than 60 days following the initial opacity test and that annual opacity test results be submitted within 12 months following the previous report.

*§113.2261--Tables Relating to Division 4.*

The commission proposes new §113.2261, which contains the tables as referenced in Division 4. The tables include the following: Increments of Progress and Compliance Schedules; Emission Limitations; Operating Limits for Wet Scrubbers; Toxic Equivalency Factors; and Summary of Reporting Requirements.

Table 1 specifies the compliance schedules and increments of progress for units subject to this division. Increment 1 is for submittal of the final control plan, and the compliance date is no later than 12 months from the date the TCEQ publishes notice in the *Texas Register* of state plan approval. Increment 2 is for final compliance, and the compliance date is no later than 36 months from the date the TCEQ publishes notice in the *Texas Register* of state plan approval.

To clarify and simplify the information in the tables contained in this section, the commission proposes minor formatting changes and also proposes to delete information that may confuse regulated entities, such as references to past federal compliance dates.

*Division 5, Emission Guidelines and Compliance Times for Other Solid Waste Incineration Units That Commenced Construction On or Before December 9, 2004 (40 CFR Part 60, Subpart FFFF)*

*§113.2300--Definitions.*

The commission proposes new §113.2300, which defines terms used in new Division 5 that are either previously undefined or are used differently by the federal emission guidelines that are the basis for the rules. The definitions are taken from 40 CFR §60.3078 (What definitions must I know?).

For clarification, the commission proposes to modify the wording in paragraph (1)(C), under the definition of administrator. The commission proposes to add that the NSPS are located within 40 CFR Part 60.

Also for clarification, the commission proposes to modify the wording in paragraph (2), under the definition of air curtain incinerator. This definition contains a reference both to Division 5 and to 40 CFR Part 60, Subpart EEEE. The commission proposes to delete the subpart reference, because Subpart EEEE applies to new sources, not existing sources, which is the subject of Division 5. The definition of MWC unit, paragraph (28), contains a similar reference to Subpart EEEE, and the commission also proposes to delete the subpart reference.

*§113.2301--When must I comply?*

The commission proposes new §113.2301, which specifies the final compliance date in Table 1 of Division 5 (§113.2357), as December 16, 2010. The proposed section also states that notification of final compliance must be submitted to the executive director and postmarked within 10 business days after the final compliance date.

*§113.2302--What must I do if I close my other solid waste incineration unit and then restart it?*

The commission proposes new §113.2302, which requires achievement of final compliance by the date specified in Table 1 of Division 5 (§113.2357) if the OSWI unit closes and then will restart before this date. If the OSWI unit will restart after the final compliance date, an emission control retrofit must be completed and emission limitations met when the OSWI restarts.

*§113.2303--What must I do if I plan to permanently close my other solid waste incineration unit and not restart it?*

The commission proposes new §113.2303, which states that an OSWI unit must permanently close before the final compliance date specified in Table 1 of Division 5 (§113.2357).

*§113.2304--What is a waste management plan?*

The commission proposes new §113.2304, which states that a waste management plan is a written plan that identifies both the feasibility and the methods used to reduce or separate certain components of solid waste from the waste stream to reduce or eliminate toxic emissions from incinerated waste.

*§113.2305--When must I submit my waste management plan?*

The commission proposes new §113.2305, which requires that a waste management plan be submitted no later than 60 days following the initial performance test as specified in Table 5 of Division 5 (§113.2357).

*§113.2306--What should I include in my waste management plan?*

The commission proposes new §113.2306, which specifies what must be included in the waste management plan. The proposed section includes the following components: consideration of the reduction or separation of waste-stream elements; and identification of additional waste management measures and implementation of those measures that are considered practical and feasible, based on certain specific criteria.

*§113.2307--What are the operator training and qualification requirements?*

The commission proposes new §113.2307, which does not allow an OSWI unit to be operated unless a fully trained and qualified OSWI unit operator is accessible to the facility within 1 hour. The proposed section also states that operator training and qualification must be obtained through a state-approved program or by completing an incinerator operator training course that includes at least three of the elements listed. The elements include: training on 13 specified subjects; an examination designed and administered by the instructor; and written material covering the training course topics that may be a reference following completion of the course.

*§113.2308--When must the operator training course be completed?*

The commission proposes new §113.2308, which requires that the operator training be completed by the latest of the following three dates: the final compliance date as specified in Table 1 of Division 5 (§113.2357); six months after OSWI unit startup; or six months after an employee assumes responsibility for operating the OSWI unit or for supervising operation of the OSWI unit.

*§113.2309--How do I obtain my operator qualification?*

The commission proposes new §113.2309, which requires that operator qualification be obtained by completing a training

course that satisfies certain criteria. The proposed section further states that qualification is valid from the date on which the training course is completed and the operator successfully passes the required examination. As stated in §113.2310, operators must complete an annual review or refresher course to maintain qualification.

*§113.2310--How do I maintain my operator qualification?*

The commission proposes new §113.2310, which states that to maintain operator qualification, an annual review or refresher course must be completed. The proposed section specifies that, at a minimum, five topics must be included: update of regulations; incinerator operation; inspection and maintenance; responses to malfunctions; and operating problems.

*§113.2311--How do I renew my lapsed operator qualification?*

The commission proposes new §113.2311, which states that if operator qualification lapses for less than 3 years, a standard annual refresher course must be completed. The proposed section states that if the lapse is 3 years or more, the initial qualification requirements must be repeated.

*§113.2312--What site-specific documentation is required?*

The commission proposes new §113.2312, which describes the site-specific documentation that is required to be in compliance. The proposed section specifies nine types of documents that must be available at the facility and readily accessible for all OSWI unit operators. The proposed section further states that a program for reviewing the information must be established with each incinerator operator by the dates specified. Finally, the proposed section includes the required training records.

*§113.2313--What if all the qualified operators are temporarily not accessible?*

The commission proposes new §113.2313, which states that depending on the length of time the qualified operator is not accessible, one of three criteria must be met. The criteria are: for 12 hours or less, the OSWI unit may be operated by other plant personnel familiar with the operation of the OSWI unit; for more than 12 hours, but less than 2 weeks, the OSWI unit may be operated by other plant personnel familiar with the operation of the OSWI unit; however, records of the period when the qualified operator was not accessible must be maintained and reported; for 2 weeks or more, the executive director must be notified of the deviation in writing within 10 days and status reports must be provided to the EPA every 4 weeks. The proposed section also states that status reports must outline what is being done to ensure that a qualified operator is accessible, when a qualified operator might be accessible, and contain a request for approval to continue operation.

In paragraph (3)(A), the commission proposes to add clarification that the notification to the executive director must be done within 10 days after the end of the 2-week period in which a certified operator is not accessible. The commission proposes the clarification regarding the beginning of the 10-day period to clearly outline the rule requirements for regulated entities, and similar clarification is proposed to be added in §§113.2121, 113.2219, 113.2243, and 113.2341.

In paragraph (3)(B) and in paragraph (3)(B)(ii), the commission proposes to change the recipient of status reports and approval of continued operation from the EPA, as is stated in 40 CFR Part 60, Subpart FFFF, to the executive director. The commission proposes this change so that this section is

consistent with §113.2121 (40 CFR §60.1685, Subpart BBBB) and with §113.2219 (40 CFR §60.2665, Subpart DDDD). The commission also proposes this change because it is appropriate that the TCEQ be informed of changes in the status of qualified operators for consistent and effective enforcement of the rules.

*§113.2314--What emission limitations must I meet and by when?*

The commission proposes new §113.2314, which states that the emission limitations that must be met on the date the initial performance test is required or completed are specified in Table 2 of Division 5 (§113.2357).

*§113.2315--What operating limits must I meet and by when?*

The commission proposes new §113.2315, which, for wet scrubbers, requires that operating limits for four operating parameters be established: maximum charge rate; minimum pressure drop across the wet scrubber; minimum scrubber liquor flow rate; and minimum scrubber liquor pH. The operating limits established during the initial performance test must be met beginning on the date 180 days after the final compliance date.

*§113.2316--What if I do not use a wet scrubber to comply with the emission limitations?*

The commission proposes new §113.2316, which states that if an air pollution control device other than a wet scrubber is used, or emissions are limited in some other manner to comply with the emission limitations, a petition must be submitted to the EPA for specific operating limits, the values of which are to be established during the initial performance test and then continuously monitored thereafter. The proposed section states that an initial performance test must not be conducted until after the petition has been approved by the EPA. A listing of what must be included in the petition is detailed in this proposed section.

*§113.2317--What happens during periods of startup, shutdown, and malfunction?*

The commission proposes new §113.2317, which states that emission limitations and operating limits apply at all times, except during OSWI unit startups, shutdowns, or malfunctions.

For clarification, the commission proposes to add that OSWI unit startups, shutdowns, and malfunctions should last no longer than 3 hours. This additional language will make this section consistent with similar sections in Division 3 (§113.2123) and Division 4 (§113.2223).

*§113.2318--How do I conduct the initial and annual performance test?*

The commission proposes new §113.2318, which requires that all performance tests be conducted using the methods and specifications listed in this proposed section to be in compliance.

*§113.2319--How are the performance test data used?*

The commission proposes new §113.2319, which requires that the results of performance tests be used to demonstrate compliance with the emission limits in Table 2 of Division 5 (§113.2357).

*§113.2320--How do I demonstrate initial compliance with the emission limitations and establish the operating limits?*

The commission proposes new §113.2320, which requires that an initial performance test be conducted to determine compliance with the emission limitations and to establish operating limits. The proposed section states that the requirements for emission limitations and the test methods for the initial performance test are found in Table 2 of Division 5 (§113.2357).

*§113.2321--By what date must I conduct the initial performance test?*

The commission proposes new §113.2321, which requires that the initial performance test be conducted no later than 180 days after the final compliance date listed in Table 1 of Division 5 (§113.2357).

*§113.2322--How do I demonstrate continuous compliance with the emission limitations and the operating limits?*

The commission proposes new §113.2322, which requires that an annual performance test be conducted for all the pollutants in Table 2 of Division 5 (§113.2357) for each OSWI unit to determine compliance with the emission limits. The proposed section also states that to determine compliance with the carbon monoxide limits, carbon monoxide emissions and operating parameters must be continuously monitored.

*§113.2323--By what date must I conduct the annual performance test?*

The commission proposes new §113.2323, which requires that annual performance tests be conducted within 12 months of the initial performance test. The proposed section also states that subsequent annual performance tests must be conducted within 12 months following the previous one.

*§113.2324--May I conduct performance testing less often?*

The commission proposes new §113.2324, which allows performance tests to be conducted less often for a given pollutant if test data exists for at least three consecutive annual tests, and all performance tests over that period show compliance with the emission limit. The proposed section further states that if a performance test shows a deviation from an emission limitation for any pollutant, annual tests must be conducted for that pollutant until three consecutive annual performance tests for that pollutant all demonstrate compliance.

*§113.2325--May I conduct a repeat performance test to establish new operating limits?*

The commission proposes new §113.2325, which allows a repeat performance test to be conducted at any time to establish new operating limits. The proposed section also states that the executive director may request a repeat performance test at any time.

*§113.2326--What continuous emission monitoring systems must I install?*

The commission proposes new §113.2326, which requires that continuous emission monitoring systems be installed, calibrated, maintained, and operated for carbon monoxide and oxygen. The proposed section states that each continuous emission monitoring system must be in compliance with 40 CFR §60.13.

*§113.2327--How do I make sure my continuous emission monitoring systems are operating correctly?*

The commission proposes new §113.2327, which details the four requirements for ensuring that the continuous emission monitoring systems are operating correctly. The proposed section specifies evaluation and quality assurance procedures that must be followed.

For clarification in subsection (c), the commission proposes to specify that the reference to EPA Method 3 or 3A is located in 40 CFR Part 60, Appendix A.

*§113.2328--What is my schedule for evaluating continuous emission monitoring systems?*

The commission proposes new §113.2328, which requires that annual evaluations of the continuous emission monitoring systems be conducted no more than 12 months after the previous evaluation. The proposed section also states that daily and quarterly evaluations must be conducted in accordance with 40 CFR Part 60, Appendix F.

*§113.2329--What is the minimum amount of monitoring data I must collect with my continuous emission monitoring systems, and is the data collection requirement enforceable?*

The commission proposes new §113.2329, which details the minimum amount of monitoring data that is required to be collected from the continuous emission monitoring systems to be in compliance. The proposed section also states that a failure to obtain the minimum required data is a deviation from the data collection requirement. The proposed section further references Table 4 in Division 5 (§113.2357) for alternatives if continuous emission monitoring systems are temporarily unavailable to meet the data collection requirements.

*§113.2330--How do I convert my 1-hour arithmetic averages into the appropriate averaging times and units?*

The commission proposes new §113.2330, which requires the use of equations in 30 TAC §113.2356 (What equations must I use?) to calculate emissions at 7 percent oxygen and the 12-hour rolling averages for concentrations of carbon monoxide.

*§113.2331--What operating parameter monitoring equipment must I install, and what operating parameters must I monitor?*

The commission proposes new §113.2331, which specifies required procedures for using a wet scrubber or a method or air pollution control device other than a wet scrubber to comply with the emission limitations.

*§113.2332--Is there a minimum amount of operating parameter monitoring data I must obtain?*

The commission proposes new §113.2332, which requires that monitoring be conducted at all times the OSWI unit is operating, except for monitor malfunctions, associated repairs, and required quality assurance or control activities. The proposed section states that valid data must be obtained for at least 75 percent of the operating hours per day for at least 90 percent of the operating days per calendar quarter and that to not obtain the minimum data is a deviation.

*§113.2333--What records must I keep?*

The commission proposes new §113.2333, which lists the 14 items that must be maintained for a period of at least 5 years: the calendar date of each record; several types of records as specified in the section; an identification of calendar dates and times for which continuous emission monitoring systems or monitoring systems used to monitor operating limits were inoperative, inactive, malfunctioning, or out of control; an identification of calendar dates, times, and durations of malfunctions; an identification of calendar dates and times for which monitoring data show a deviation from the carbon monoxide emissions limit in Table 2 of this division (§113.2357) or a deviation from the operating limits in Table 3 of this division (§113.2357) or a deviation from other operating limits established under §113.2316; calendar dates when continuous monitoring systems did not collect the minimum amount of data required under §113.2329 and §113.2332; for carbon monoxide continuous emissions monitoring systems,

documentation of the results of the daily drift tests and quarterly accuracy determinations; records of the calibration of any monitoring devices required under §113.2331; the results of the initial, annual, and any subsequent performance tests conducted to determine compliance with the emission limits and/or to establish operating limits, as applicable; records showing the names of OSWI unit operators who have completed review of the information in §113.2312(a) as required by §113.2312(b); records showing the names of the OSWI unit operators who have completed the operator training requirements under §113.2307, met the criteria for qualification under §113.2309, and maintained or renewed their qualification under §113.2310 or §113.2311; for each qualified operator, the phone and/or pager number at which the operator can be reached; equipment vendor specifications and related operation and maintenance requirements for the incinerator, emission controls, and monitoring equipment; and the information listed in §113.2312(a).

*§113.2334--Where and in what format must I keep my records?*

The commission proposes new §113.2334, which requires that records be maintained on site for at least 2 years. The proposed section states that the records may be maintained off site for the remaining 3 years, and that all records must be in paper or electronic format that can be printed upon request, unless an alternative format has been approved by the executive director.

For clarification, the commission proposes to state at the beginning of subsection (a) that each record must be maintained for at least five years. This additional language ensures that there is no conflict with the requirements of §113.2333.

*§113.2335--What reports must I submit?*

The commission proposes new §113.2335, which states that reporting requirements are located in Table 5 of Division 5 (§113.2357).

*§113.2336--What information must I submit following my initial performance test?*

The commission proposes new §113.2336, which states that the following information must be submitted no later than 60 days following the initial performance test: the complete test report; values for the site-specific operating limits; and the waste management plan.

*§113.2337--When must I submit my annual report?*

The commission proposes new §113.2337, which requires that the annual report be submitted no later than 12 months following the submission of information required in §113.2336. The proposed section further states that subsequent reports must be submitted no more than 12 months following the previous report.

*§113.2338--What information must I include in my annual report?*

The commission proposes new §113.2338, which lists the 10 items that are required to be included in the annual report to be in compliance: company name and address; statement by the owner or operator certifying the truth, accuracy, and completeness of the report; the date of the report and beginning and ending dates of the reporting period; the values for the operating limits; if no deviation from any emission limitation or operating limit that applies to the owner or operator has been reported, a statement that there was no deviation from the emission limitations or operating limits during the reporting period; the highest recorded 12-hour average and the lowest recorded 12-hour average, as applicable, for carbon monoxide emissions and the highest recorded 3-hour average and the lowest recorded 3-hour



average, as applicable, for each operating parameter recorded for the calendar year being reported; information recorded under §113.2333(2)(F) and (3) through (5) for the calendar year being reported; if a performance test was conducted during the reporting period, the results of that test; if the requirements of §113.2324(a) or (b) were met, and a performance test was not conducted during the reporting period, a statement that the requirements of §113.2324(a) or (b) were met, and therefore, a performance test was not required during the reporting period; and documentation of periods when all qualified OSWI unit operators were unavailable for more than 12 hours, but less than 2 weeks.

To clarify and simplify the requirements of this section, the commission proposes to delete the reference to 40 CFR Part 71 in paragraph (2), since federal requirements are contained within this part and they are not necessary for state implementation of the rules.

*§113.2339--What else must I report if I have a deviation from the operating limits or the emission limitations?*

The commission proposes new §113.2339, which requires that a deviation report be submitted if any recorded 3-hour average parameter level is above the maximum operating limit or below the minimum operating limit, if any recorded 12-hour average carbon monoxide emission rate is above the emission limitation, if the control device was bypassed, or if a performance test was conducted that showed a deviation from any emission limitation. The proposed section also states that the deviation report must be submitted by August 1 of the year the data was collected during the first half of the calendar year (January 1 to June 30), and by February 1 of the following year for data collected during the second half of the calendar year (July 1 to December 31).

*§113.2340--What must I include in the deviation report?*

The commission proposes new §113.2340, which details the seven items that must be included in deviation reports for any pollutant or operating parameter that deviated from the emission limitations or operating limits: the calendar dates and times the unit deviated from the emission limitations or operating limit requirements; the averaged and recorded data for those dates; durations and causes of each deviation from the emission limitations or operating limits and your corrective actions; a copy of the operating limit monitoring data during each deviation and any test report that documents the emission levels; the dates, times, number, duration, and causes for monitor downtime incidents; whether each deviation occurred during a period of startup, shutdown, or malfunction, or during another period; and the dates, times, and durations of any bypass of the control device.

*§113.2341--What else must I report if I have a deviation from the requirement to have a qualified operator accessible?*

The commission proposes new §113.2341, which states that if all qualified operators are not accessible for 2 weeks or more, a notification of deviation must be submitted within 10 days and a status report must be submitted to the EPA every 4 weeks. In addition, the proposed section states that a request must be submitted to the EPA to continue operation of the OSWI unit. The proposed section further states that the EPA must be notified once a qualified operator is accessible and operations have resumed if the unit was shut down by the EPA due to a failure to provide an accessible qualified operator.

In subsection (a)(1), the commission proposes to add clarification that the notification to the executive director must be done within 10 days after the end of the 2-week period in which a certified operator is required to be onsite. The commission proposes the clarification regarding the beginning of the 10-day period to clearly outline the rule requirements for regulated entities, and similar clarification is proposed to be added in §§113.2121, 113.2219, 113.2243, and 113.2313.

In subsection (a)(2), subsection (a)(2)(C), and in subsection (b), the commission proposes to change the recipient of status reports and approval of continued operation from the EPA, as is stated in 40 CFR Part 60, Subpart FFFF, to the executive director. The commission proposes this change so that this section is consistent with §113.2243 (40 CFR §60.2785, Subpart DDDD). The commission also proposes this change because it is appropriate that the TCEQ be informed of changes in the status of qualified operators for consistent and effective enforcement of the rules.

*§113.2342--Are there any other notifications or reports that I must submit?*

The commission proposes new §113.2342, which requires that the notifications in 40 CFR §60.7 also be submitted.

*§113.2343--In what form can I submit my reports?*

The commission proposes new §113.2343, which requires that initial, annual, and deviation reports be submitted electronically or in paper format, postmarked on or before the submittal due dates.

*§113.2344--Can reporting dates be changed?*

The commission proposes new §113.2344, which states that if the executive director agrees, the semiannual and annual reporting dates may be changed. The proposed section references 40 CFR §60.19(c) for the required procedures to seek approval to change a reporting date.

*§113.2345--Am I required to apply for and obtain a Title V operating permit for my unit?*

The commission proposes new §113.2345, which states that unless you meet the requirements for an exemption in 40 CFR §60.2993 (Are any combustion units excluded from my State plan?), if you are subject to an applicable EPA-approved and effective FCAA, §111(d)/129 state or tribal plan or an applicable and effective federal plan, you are required to apply for and obtain a Title V operating permit. The rules in this division require that owners or operators of air curtain incinerators obtain a Title V permit; however, these units are only required to comply with limited requirements, as opposed to larger entities.

*§113.2346--When must I submit a Title V permit application for my existing unit?*

The commission proposes new §113.2346, which provides the specific dates that a Title V permit application must be submitted for existing units: 12 months after the effective date of any applicable EPA-approved FCAA, §111(d)/129 state or tribal plan; 12 months after the effective date of any applicable federal plan; or December 16, 2008, whichever is earlier. Because there is currently no approved state or federal plan, December 16, 2008, is the required submission date for federal operating permit applications.

To clarify and simplify the requirements of this section, the commission proposes to delete references to 40 CFR Part 71 in sub-

sections (a), (c), and (d), since federal requirements are contained within this part and they are not necessary for state implementation of the rules.

*§113.2347--What are the requirements for temporary-use incinerators and air curtain incinerators used in disaster recovery?*

The commission proposes new §113.2347, which states that temporary-use incinerators and air curtain incinerators used in disaster recovery are exempt from Division 5 if they follow certain requirements. The proposed section defines a disaster or emergency as a tornado, hurricane, flood, ice storm, high winds, or act of bioterrorism, and specifies that the exclusion only applies in an area declared a State of Emergency. The proposed section specifies the periods of time and required notifications for the exclusion from the rules in Division 5.

*§113.2348--What is an air curtain incinerator?*

The commission proposes new §113.2348, which states that an air curtain incinerator operates by forcefully projecting a curtain of air across an open, integrated combustion chamber (fire box) or open pit or trench (trench burner) in which combustion occurs. The proposed section also states that air curtain incinerators used to burn only 100 percent wood waste, clean lumber, yard waste, or a mixture of the three materials are required to meet only the requirements in §§113.2348 - 113.2355.

For clarification, the commission proposes to modify the wording in subsection (a), which contains a reference both to Division 5 and to 40 CFR Part 60, Subpart EEEE. The commission proposes to delete the subpart reference, because Subpart EEEE applies to new sources, not existing sources, which is the subject of Division 5.

*§113.2349--When must I comply if my air curtain incinerator burns only wood waste, clean lumber, and yard waste?*

The commission proposes new §113.2349, which requires air curtain incinerators that burn only wood waste, clean lumber, and yard waste to comply with the final compliance date listed in Table 1 of Division 5 (§113.2357). The proposed section states that notification to the executive director is required and must be postmarked within 10 business days after the final compliance date.

*§113.2350--What must I do if I close my air curtain incinerator that burns only wood waste, clean lumber, and yard waste and then restart it?*

The commission proposes new §113.2350, which states that if the incinerator is closed, but will reopen before the final compliance date, the final compliance date specified in Table 1 of Division 5 (§113.2357) must be met. If the incinerator is closed, but will restart after the final compliance date, the emission limitations must be met on the date the incinerator restarts operation.

*§113.2351--What must I do if I plan to permanently close my air curtain incinerator that burns only wood waste, clean lumber, and yard waste and not restart it?*

The commission proposes new §113.2351, which states that if the incinerator is permanently closed and will not restart, the unit must be closed before the final compliance date listed in Table 1 of Division 5 (§113.2357).

*§113.2352--What are the emission limitations for air curtain incinerators that burn only wood waste, clean lumber, and yard waste?*

The commission proposes new §113.2352, which states that within 180 days after the final compliance date in Table 1 of Division 5 (§113.2357), air curtain incinerators that burn only wood waste, clean lumber, and yard waste must meet an opacity limit of 10 percent (6-minute average) and 35 percent (6-minute average) during the startup period that is within the first 30 minutes of operation.

*§113.2353--How must I monitor opacity for air curtain incinerators that burn only wood waste, clean lumber, and yard waste?*

The commission proposes new §113.2353, which requires the use of EPA Reference Method 9 in 40 CFR Part 60, Appendix A, to determine compliance with the opacity limit. An initial test would be conducted within 180 days after the final compliance date, and annual tests conducted thereafter. As discussed in the FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT portion of this preamble, there would be costs associated with training for conducting opacity testing.

*§113.2354--What are the recordkeeping and reporting requirements for air curtain incinerators that burn only wood waste, clean lumber, and yard waste?*

The commission proposes new §113.2354, which requires that records of results of all initial and annual opacity test results, as well as a copy of the initial and annual reports, be maintained for at least 5 years. The proposed section also states that records of results must be kept in either paper copy or computer-readable format that can be printed upon request, and that all records must be made available to the executive director or for an inspector's review. The proposed section further states that an initial report must be submitted no later than 60 days following the initial opacity test and annual opacity test results must be submitted within 12 months following the previous report. As specified in the proposed section, initial and annual opacity test reports must be submitted as electronic or paper copy on or before the applicable submittal date.

*§113.2355--Am I required to apply for and obtain a Title V operating permit for my air curtain incinerator that burns only wood waste, clean lumber, and yard waste?*

The commission proposes new §113.2355, which specifies that if the air curtain incinerator is subject to Division 5, an application for a Title V operating permit must be submitted. 40 CFR §60.2993 contains a listing of types of units that are excluded from the requirements of the state plan, as long as the owner or operator meets the requirements of 40 CFR §60.2993.

*§113.2356--What equations must I use?*

The commission proposes new §113.2356, which contains the two equations that must be used in Division 5. The equations are for determining the following: pollutant concentration adjusted to 7 percent oxygen and average carbon monoxide pollutant rate for each 12-hour period.

For clarification and for consistency with the equation contained within subsection (a), the commission proposes to use the word "oxygen," rather than using O<sub>2</sub> in subsection (d).

*§113.2357--Tables Relating to Division 5.*

The commission proposes new §113.2357, which contains the tables relating to Division 5. The tables are as follows: Compliance Schedule; Emission Limitations; Operating Limits for Incinerators and Wet Scrubbers; Requirements for Continuous Emission Monitoring Systems (CEMS); and Summary of Reporting Requirements.

Table 1 specifies the compliance schedule for units subject to this division. Final compliance is required by December 16, 2010.

To clarify and simplify the information in the tables contained in this section, the commission proposes minor formatting changes and also proposes to delete information that may confuse regulated entities, such as references to past federal compliance dates.

#### FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Assessment, determined that, for the first five-year period the proposed rules are in effect, fiscal implications are anticipated for the agency as a result of administration or enforcement of the proposed rules. Revenue in Account 5094 - Operating Permit Fees - Dedicated will increase due to the collection of annual emissions fees on units that have not previously been required to obtain Title V permits. Any additional revenue collected will be used to offset any additional costs to implement and administer the proposed rules. Other state agencies and local governments that own or operate existing waste combustion or incineration units may also experience fiscal implications under the proposed rules.

The purpose of the proposed rules is to incorporate existing EPA regulations that affect air emissions of the following waste combustion or incineration units: small MWC units constructed on or before August 30, 1999; CISWI units that commenced construction on or before November 30, 1999; and OSWI units that commenced construction on or before December 9, 2004. The agency is not imposing any new costs in this rulemaking that would not have been imposed by the EPA. The proposed rules will amend 30 TAC Chapter 113, Subchapter D by adding new Divisions 3, 4, and 5 in order to receive delegated authority from the EPA to administer these emission guidelines. In addition to the proposed rules, the agency must submit a corresponding state plan before the EPA will delegate regulatory responsibility to the agency.

In establishing new emission guidelines for these waste combustion and incineration units, the EPA allowed some flexibility with regards to emission and testing requirements and various exclusions and alternative disposal methods in order to minimize the economic impact on small entities that might own or operate these units. For MWC units, the EPA allowed for less frequent testing. For CISWI units, the EPA allowed for alternative disposal methods, such as off-site landfills. For OSWI units, the EPA provided various exclusions or alternative disposal options for some emission sources. For these reasons, the EPA determined that these emission guidelines would have no significant economic impact on the majority of small entities affected by the federal rules.

The agency expects that many of the state agencies, local governments, and businesses owning these types of waste combustion and incineration units will already have complied with the emission guidelines established by the EPA or be able to avail themselves of the alternative methods of compliance provided by the EPA. However, those entities that have not yet complied with these guidelines or cannot utilize alternative methods of compliance will incur additional costs to comply with the proposed rules. Staff does not have sufficient information to know which regulated entities will choose to implement a control technology, which control will be utilized, or whether an alternate compliance method will be chosen. If controls must be installed, owners or operators of MWC units, CISWI units, and OSWI units may incur

training costs, stack testing costs, continuous monitoring costs, public notice costs, and annual emissions fees.

#### *Impact to the Agency*

The proposed rules for Divisions 3, 4, and 5 will require regulated parties to obtain a Title V permit. This permit does not require the payment of an application fee, but regulated parties will be required to pay annual emissions fees. The annual emissions fee will vary depending on the size of the combustion or incineration unit and the amount of pollutants emitted. Under current rules, annual emissions fees are \$33 per ton of emissions.

The proposed rules for Divisions 3, 4, and 5 will require an estimated 471 owners of air curtain incinerators to obtain a Title V permit and pay annual emissions fees. Staff estimates that annual emissions fees for air curtain incinerators may be as much as \$1,000 per unit and that the increase in Account 5094 - Operating Permit Fees - Dedicated for air curtain incinerators may be as much as \$471,000 per year for the first five years the proposed rules are in effect.

There may be as many as one local government and four large businesses that will be required to pay annual emissions fees estimated to be \$1,000 per unit per year under the proposed Division 3 rules. The increase in revenue for Account 5094 is estimated to be \$5,000 per year.

Staff estimates that there may be as many as 201 businesses that own or operate CISWI units that will be subject to the proposed rules in Division 4. Staff expects that many of these units will already have Title V permits since they are mostly located at major sources. However, if a Title V permit must be obtained under the proposed rules, annual emissions fees could range from \$400 to \$200,000 per unit depending on the type and quantity of air emissions. Data is not available to determine how many of the 201 businesses with CISWI units will have to obtain a new Title V permit under the proposed Division 4 rules, and the total statewide revenue increase to Account 5094 for these units cannot be reasonably estimated at this time.

Staff estimates that as many as 12 institutions will be required to obtain Title V permits under the proposed rules for Division 5. Annual emissions fees are estimated to range from \$400 to \$8,000 per unit. The total revenue increase to Account 5094 could range from \$4,800 to \$96,000.

#### *Impact on State and Local Government*

The proposed rules for Division 3 regarding MWC units may have fiscal impacts for one state higher education medical facility if EPA emission requirements have not already been met. Costs for the first year of complying with the proposed Division 3 rules are: an estimated \$1,000 per unit for emissions fees; public notice costs ranging from \$200 - \$2,000 depending on the newspaper chosen; cost of monitoring equipment estimated to range from \$150,000 to \$400,000; operating costs for continuous monitoring of \$50,000 to \$125,000; and initial stack testing ranging from \$30,000 to \$100,000 per stack. In years two through five, costs are estimated to be: an estimated \$1,000 per unit per year for emissions fees; annual operating costs for continuous monitoring of \$50,000 to \$125,000; and annual stack testing costs ranging from \$20,000 to \$30,000 per stack.

Staff estimates that there may be one university that owns an OSWI unit that may incur costs to comply with proposed Division 5 rules. Costs for the first year of complying with the proposed Division 5 rules are: an estimated \$400 to \$8,000 per unit for emissions fees; public notice costs ranging from \$200 - \$2,000

depending on the newspaper chosen; cost of monitoring equipment estimated to range from \$85,000 to \$300,000; operating costs for continuous monitoring of \$35,000 to \$85,000; and initial stack testing ranging from \$30,000 to \$100,000 per stack. In years two through five, costs are estimated to be: an estimated \$400 to \$8,000 per unit per year for emissions fees; annual operating costs for continuous monitoring of \$35,000 to \$85,000, and annual stack testing costs ranging from \$20,000 to \$30,000 per stack.

Staff estimates that there may be as many as 27 local governments that own air curtain incinerators that will be subject to the proposed Division 3, 4, or 5 rules. Each local government will be responsible for determining which division will govern any needed Title V permit for their air curtain incinerators. In any case, staff estimates that local governments owning air curtain incinerators will be required to incur the same costs regardless of which proposed division governs their Title V permit. Costs are annual emissions fees of approximately \$1,000 per unit per year and approximately \$470 of training costs per person per year for Method 9 opacity testing. There will also be public notice costs ranging from \$200 to \$2,000 when the Title V permit is issued or renewed.

The proposed rules for Division 4 principally affect manufacturers of chemicals, electronic equipment, wholesale trade and durable goods, and lumber and wood furniture and are not expected to have fiscal implications for state agencies and local governments. Local governments do not typically participate in these activities.

#### PUBLIC BENEFITS AND COSTS

Nina Chamness also determined that for each year of the first five years the proposed new rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be compliance with federal regulations and increased protection of public health by reducing exposure to air contaminants.

Staff estimates that there may be as many as 444 businesses that own air curtain incinerators that may be required to obtain Title V permits under the proposed rules for either Division 3, 4, or 5. Most of these 444 businesses are thought to be small or micro-businesses, and the fiscal implications of the proposed rules for these owners of air curtain incinerators are discussed in the SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT portion of this fiscal note.

The proposed rules for Division 3 may affect as many as four businesses that own MWC units. If these businesses are not already in compliance with EPA rules or cannot avail themselves of alternate methods proposed by the EPA, they will incur the same types of costs to obtain a Title V permit as those incurred by local governments. Costs for the first year of complying with the proposed Division 3 rules are: an estimated \$1,000 per unit for emissions fees; public notice costs ranging from \$200 - \$2,000 depending on the newspaper chosen; cost of monitoring equipment estimated to range from \$150,000 to \$400,000; operating costs for continuous monitoring of \$50,000 to \$125,000; and initial stack testing ranging from \$30,000 to \$100,000 per stack. In years two through five costs are estimated to be: an estimated \$1,000 per unit per year for emissions fees; annual operating costs for continuous monitoring of \$50,000 to \$125,000; and annual stack testing costs ranging from \$20,000 to \$30,000 per stack.

Staff estimates that there are 201 manufacturers statewide of chemical, electronic equipment, wholesale trade and durable

goods, and lumber and wood furniture that own or operate CISWI units. If these entities do not already have Title V permits, they could incur costs to comply with the proposed Division 4 rules. Costs in the first year would be: public notice costs ranging from \$200 to \$2,000, depending on the newspaper; annual emissions fees estimated to range from \$400 to \$200,000 per unit; cost of monitoring equipment estimated to range from \$5,000 - \$50,000; operating costs for continuous monitoring of approximately \$10,000; and initial stack testing ranging from \$30,000 to \$100,000 per stack. In years two through five, costs are estimated to be: an estimated \$400 to \$200,000 per unit per year for emissions fees; annual operating costs for continuous monitoring of \$10,000; and annual stack testing costs ranging from \$20,000 to \$30,000 per stack.

Staff estimates that there may be as many as 11 institutions (Department of Defense facilities, hospitals, etc.) that are not local governments that may have to obtain Title V permits for OSWI units. These entities will incur the same costs as local governments required to comply with the proposed Division 5 rules. Costs for the first year of complying with the proposed Division 5 rules are: an estimated \$400 to \$8,000 per unit for emissions fees; public notice costs ranging from \$200 - \$2,000 depending on the newspaper chosen; cost of monitoring equipment estimated to range from \$85,000 to \$300,000; operating costs for continuous monitoring of \$35,000 to \$85,000; and initial stack testing ranging from \$30,000 to \$100,000 per stack. In years two through five costs are estimated to be: an estimated \$400 to \$8,000 per unit per year for emissions fees; annual operating costs for continuous monitoring of \$35,000 to \$85,000; and annual stack testing costs ranging from \$20,000 to \$30,000 per stack.

#### SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

Adverse fiscal implications, which are not expected to be significant, are anticipated for small or micro-businesses that own or operate air curtain incinerators as a result of the proposed rules. Small or micro-businesses are expected to incur the same annual emissions fees, public notice costs, and Method 9 opacity training costs as those incurred by local governments that own air curtain incinerators. Staff estimates that there may be as many as 444 small or micro-businesses that own or operate air curtain incinerators that have not previously been required to obtain Title V permits. Estimated costs to obtain a Title V permit for air curtain incinerators under the proposed Division 3, 4, or 5 rules are: approximately \$1,000 in annual emissions fees, \$470 per person per year to train in-house personnel to conduct opacity tests, and public notice costs ranging from \$200 to \$2,000 when the Title V permit is issued or renewed.

#### SMALL BUSINESS REGULATORY FLEXIBILITY ANALYSIS

The commission reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules are required to comply with federal rules concerning the protection of the environment. The agency is implementing EPA guidelines for incinerators and combustion units, and the EPA's guidelines include a variety of options that can be utilized by small or micro-businesses to comply with the proposed rules. LOCAL EMPLOYMENT IMPACT STATEMENT

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules are required to comply with federal law concerning the protection of the environment.

## DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking does not meet the definition of a major environmental rule as defined in that statute, and in addition, if it did meet the definition, would not be subject to the requirement to prepare a regulatory impact analysis.

A major environmental rule means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The specific intent of these proposed rules is to adopt emission guidelines for existing certain solid waste incineration units mandated by 42 United States Code (USC), and required to be included in operating permits by 42 USC, §7661a, as specified elsewhere in this preamble. These sources are required to comply with the emission guidelines whether or not the commission adopts the emission guidelines or takes delegation from the EPA, due to the federal plans that are adopted by the EPA to implement and enforce the emission guidelines if states do not adopt state plans to do so. As discussed in the FISCAL NOTE portion of this preamble, the proposed rules are not anticipated to add any significant additional costs to affected individuals or businesses beyond what is already required to comply with these federal standards on the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

Additionally, the rulemaking does not meet any of the four applicability criteria for requiring a regulatory impact analysis for a major environmental rule, which are listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225, applies only to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

Under 42 USC, §7661a, states are required to have federal operating permit programs that provide authority to issue permits and assure compliance with each applicable standard, regulation, or requirement under the FCAA, including emission guidelines, which are required under 42 USC, §7429. Similar to requirements in 42 USC, §7410, regarding the requirement to adopt and implement plans to attain and maintain the national ambient air quality standards, states are not free to ignore requirements in 42 USC, §7661a, and must develop and submit programs to provide for operating permits for major sources that include all applicable requirements of the FCAA. Additionally, states are required by 42 USC, §7429 to adopt and implement plans to implement and enforce emission guidelines.

The requirement to provide a fiscal analysis of regulations in the Texas Government Code was amended by Senate Bill (SB) 633 during the 75th legislative session. 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 ad-

verse 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 agency. 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.

Because of the ongoing need to meet federal requirements, the commission routinely proposes and adopts rules incorporating or designed to satisfy specific federal requirements. The legislature is presumed to understand this federal scheme. If each rule proposed by the commission to meet a federal requirement was considered to be a major environmental rule that exceeds federal law, then each of those rules would require the full regulatory impact analysis (RIA) 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 RIA for rules that are extraordinary in nature. While the proposed rules may have a broad impact, that impact is no greater than is necessary or appropriate to meet the requirements of the FCAA, and in fact creates no additional impacts since the proposed rules do not modify the federal emission guidelines in any substantive aspect, but merely provide for minor administrative changes as described elsewhere in this preamble. For these reasons, the proposed rules fall under the exception in Texas Government Code, §2001.0225(a), because they are required by, and do not exceed, 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 RIA 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" (Texas Government Code, §2001.035). The legislature specifically identified Texas Government Code, §2001.0225 as falling under this standard. As discussed in

this analysis and elsewhere in this preamble, the commission has substantially complied with the requirements of Texas Government Code, §2001.0225.

The proposed rules implement requirements of the FCAA. The emission guidelines being incorporated into state law are federal standards that are required by 42 USC, §7429, required to be included in permits under 42 USC, §7661a, proposed to be adopted with only minor administrative changes, and will not exceed any standard set by state or federal law. These rules are not an express requirement of state law. The proposed rules do not exceed a requirement of a delegation agreement or a contract between state and federal government, as the EPA will delegate implementation and enforcement of the emission guidelines to Texas if this rulemaking is adopted. The amendments were not developed solely under the general powers of the agency, but are authorized by specific sections of Texas Health and Safety Code, 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, including Texas Health and Safety Code, §§382.011, 382.012, and 382.017.

Therefore, this proposed rulemaking action is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b). Comments on the draft RIA determination may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS portion of this preamble.

#### TAKINGS IMPACT ASSESSMENT

Under Texas Government Code, §2007.002(5), taking means 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 §17 or §19, Article I, Texas Constitution; or a governmental action that 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 is the producing cause of a reduction of at least 25 percent 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.

The commission completed a takings impact analysis for the proposed rulemaking action under the Texas Government Code, §2007.043. The primary purpose of this proposed rulemaking action, as discussed elsewhere in this preamble, is to adopt emission guidelines for certain solid waste incineration units, as specified elsewhere in this preamble, mandated by 42 USC, §7429 and required to be included in operating permits by 42 USC, §7661a and facilitate implementation and enforcement of the emission guidelines by the state. The proposed rules will not create any additional burden on private real property. Under federal law, the affected industries will be required to comply with the emission guidelines regardless of whether the commission or the EPA is the agency responsible for implementation of the emission guidelines. The proposed rules will not affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of

the governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found that the proposal 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 conducted a consistency determination for the proposed rules in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §505.22, and found the proposed rulemaking is consistent with the applicable CMP goals and policies.

CMP goals applicable to the proposed rules are to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas. The CMP policy applicable to the proposed rules is the policy that commission rules comply with federal regulations in 40 CFR, to protect and enhance air quality in the coastal areas (31 TAC §501.32). These rules are consistent because the emission guidelines incorporated through this rulemaking implement state rules which are as strict as the minimum emission guidelines found in 40 CFR Part 60, Subparts BBBB, DDDD, and FFFF.

Promulgation and enforcement of these rules will not violate or exceed any standards identified in the applicable CMP goals and policies because the proposed rules are consistent with these CMP goals and policies and because these rules do not create or have a direct or significant adverse effect on any coastal natural resource areas.

Comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS portion of this preamble.

#### EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

Chapter 113 is an applicable requirement under 30 TAC Chapter 122, Federal Operating Permits Program. If the proposed rules are adopted, owners or operators subject to the federal operating permit program must, consistent with the revision process in Chapter 122, upon the effective date of the adopted rulemaking, revise their operating permit to include the new Chapter 113 requirements. Additionally, sources subject to the emission guidelines may become subject to the federal operating permit program.

#### ANNOUNCEMENT OF PUBLIC HEARING

The commission will hold a public hearing on this proposal and the FCAA, §111(d)/129 State Plan in Austin on January 5, 2009, at 2:00 p.m. in Building B, Room 201A, at the commission's central office. 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 is not permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes before the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Michael Parrish, Office of Legal Services, at (512) 239-2548. Requests should be made as far in advance as possible.

## SUBMITTAL OF COMMENTS

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.state.tx.us/rules/ecomments/>. File size restrictions may apply to comments submitted through the eComments system. All comments should reference Rule Project Number 2008-007-113-PR. The comment period closes January 7, 2009. Copies of the proposed rule documents can be obtained from the commission's Web site at [http://www.tceq.state.tx.us/nav/rules/propose\\_adopt.html](http://www.tceq.state.tx.us/nav/rules/propose_adopt.html). For further information, please contact Lisa Martin, Air Permits Division, (512) 239-1966.

## DIVISION 3. EMISSION GUIDELINES AND COMPLIANCE TIMES FOR SMALL MUNICIPAL WASTE COMBUSTION UNITS CONSTRUCTED ON OR BEFORE AUGUST 30, 1999

### 30 TAC §§113.2100 - 113.2174

#### STATUTORY AUTHORITY

The new sections are proposed under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act. The new sections are also proposed under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants; and §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under the Texas Clean Air Act. The new sections are also proposed under the Texas Water Code, §7.002, Enforcement Authority, which authorizes the commission to institute legal proceedings to compel compliance; §7.032, Injunctive Relief, which provides that injunctive relief may be sought by the executive director; and §7.302, Grounds for Revocation or Suspension of Permit, which provides authority to the commission to revoke or suspend any air quality permit.

The proposed new sections implement Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.051.

§113.2100. Definitions.

Terms used but not defined in this division are defined in the Federal Clean Air Act and in 40 Code of Federal Regulations Part 60, Subparts A and B.

(1) Administrator--The administrator of the United States Environmental Protection Agency or his/her authorized representative or the administrator of a state air pollution control agency.

(2) Air curtain incinerator--An incinerator that operates by forcefully projecting a curtain of air across an open chamber or pit in which combustion occurs. Incinerators of that type can be constructed above or below ground and with or without refractory walls and floor.

(3) Batch municipal waste combustion unit--A municipal waste combustion unit designed so it cannot combust municipal solid waste continuously 24 hours per day because the design does not allow waste to be fed to the unit or ash to be removed during combustion.

(4) Calendar quarter--Three consecutive months (nonoverlapping) beginning on: January 1, April 1, July 1, or October 1.

(5) Calendar year--365 (or 366 consecutive days in leap years) consecutive days starting on January 1 and ending on December 31.

(6) Chief facility operator--The person in direct charge and control of the operation of a municipal waste combustion unit. That person is responsible for daily onsite supervision, technical direction, management, and overall performance of the municipal waste combustion unit.

(7) Class I units--Small municipal waste combustion units subject to this division that are located at municipal waste combustion plants with an aggregate plant combustion capacity greater than 250 tons per day of municipal solid waste. See the definition in this section of "Municipal waste combustion plant capacity" for specification of which units at a plant site are included in the aggregate capacity calculation.

(8) Class II units--Small municipal combustion units subject to this division that are located at municipal waste combustion plants with aggregate plant combustion capacity less than or equal to 250 tons per day of municipal solid waste. See the definition in this section of "Municipal waste combustion plant capacity" for specification of which units at a plant site are included in the aggregate capacity calculation.

(9) Clean wood--Untreated wood or untreated wood products including clean untreated lumber, tree stumps (whole or chipped), and tree limbs (whole or chipped). Clean wood does not include two items:

(A) "Yard waste," which is defined elsewhere in this section.

(B) Construction, renovation, or demolition wastes (for example, railroad ties and telephone poles) that are exempt from the definition of "Municipal solid waste" in this section.

(10) Co-fired combustion unit--A unit that combusts municipal solid waste with nonmunicipal solid waste fuel (for example, coal, industrial process waste). To be considered a co-fired combustion unit, the unit must be subject to a federally enforceable permit that limits it to combusting a fuel feed stream which is 30 percent or less (by weight) municipal solid waste as measured each calendar quarter.

(11) Continuous burning--The continuous, semicontinuous, or batch feeding of municipal solid waste to dispose of the waste, produce energy, or provide heat to the combustion system in preparation for waste disposal or energy production. Continuous burning does not mean the use of municipal solid waste solely to

thermally protect the grate or hearth during the startup period when municipal solid waste is not fed to the grate or hearth.

(12) Continuous emission monitoring system--A monitoring system that continuously measures the emissions of a pollutant from a municipal waste combustion unit.

(13) Dioxins/furans--Tetra-through octachlorinated dibenzo-p-dioxins and dibenzofurans.

(14) Effective date of state plan approval--The effective date that the United States Environmental Protection Agency (EPA) approves the state plan. The *Federal Register* specifies the date in the notice that announces the EPA's approval of the state plan.

(15) Eight-hour block average--The average of all hourly emission concentrations or parameter levels when the municipal waste combustion unit operates and combusts municipal solid waste measured over any of three 8-hour periods of time:

(A) 12:00 midnight to 8:00 a.m.

(B) 8:00 a.m. to 4:00 p.m.

(C) 4:00 p.m. to 12:00 midnight.

(16) Federally enforceable--All limits and conditions the administrator can enforce (including the requirements of 40 Code of Federal Regulations (CFR) Parts 60, 61, and 63), requirements in a state's implementation plan, and any permit requirements established under 40 CFR §52.21 or under 40 CFR §51.18 and 40 CFR §51.24.

(17) First calendar half--The period that starts on January 1 and ends on June 30 in any year.

(18) Fluidized bed combustion unit--A unit where municipal waste is combusted in a fluidized bed of material. The fluidized bed material may remain in the primary combustion zone or may be carried out of the primary combustion zone and returned through a recirculation loop.

(19) Four-hour block average or 4-hour block average--The average of all hourly emission concentrations or parameter levels when the municipal waste combustion unit operates and combusts municipal solid waste measured over any of six 4-hour periods:

(A) 12:00 midnight to 4:00 a.m.

(B) 4:00 a.m. to 8:00 a.m.

(C) 8:00 a.m. to 12:00 noon.

(D) 12:00 noon to 4:00 p.m.

(E) 4:00 p.m. to 8:00 p.m.

(F) 8:00 p.m. to 12:00 midnight.

(20) Mass burn refractory municipal waste combustion unit--A field-erected municipal waste combustion unit that combusts municipal solid waste in a refractory wall furnace. Unless otherwise specified, that includes municipal waste combustion units with a cylindrical rotary refractory wall furnace.

(21) Mass burn rotary waterwall municipal waste combustion unit--A field-erected municipal waste combustion unit that combusts municipal solid waste in a cylindrical rotary waterwall furnace.

(22) Mass burn waterwall municipal waste combustion unit--A field-erected municipal waste combustion unit that combusts municipal solid waste in a waterwall furnace.

(23) Maximum demonstrated load of a municipal waste combustion unit--The highest 4-hour block arithmetic average municipal waste combustion unit load achieved during 4 consecutive

hours in the course of the most recent dioxins/furans stack test that demonstrates compliance with the applicable emission limit for dioxins/furans specified in this division.

(24) Maximum demonstrated temperature of the particulate matter control device--The highest 4-hour block arithmetic average flue gas temperature measured at the inlet of the particulate matter control device during 4 consecutive hours in the course of the most recent stack test for dioxins/furans emissions that demonstrates compliance with the limits specified in this division.

(25) Medical/infectious waste--Any waste meeting the definition of "medical/infectious waste" in 40 Code of Federal Regulations §60.51c.

(26) Mixed fuel-fired (pulverized coal/refuse-derived fuel) combustion unit--A combustion unit that combusts coal and refuse-derived fuel simultaneously, in which pulverized coal is introduced into an air stream that carries the coal to the combustion chamber of the unit where it is combusted in suspension. That includes both conventional pulverized coal and micropulverized coal.

(27) Modification or modified municipal waste combustion unit--A municipal waste combustion unit you have changed after June 6, 2001, and that meets one of two criteria:

(A) The cumulative cost of the changes over the life of the unit exceeds 50 percent of the original cost of building and installing the unit (not including the cost of land) updated to current costs.

(B) Any physical change in the municipal waste combustion unit or change in the method of operating it that increases the emission level of any air pollutant for which new source performance standards have been established under the Federal Clean Air Act, §111 or §129. Increases in the emission level of any air pollutant are determined when the municipal waste combustion unit operates at 100 percent of its physical load capability and are measured downstream of all air pollution control devices. Load restrictions based on permits or other nonphysical operational restrictions cannot be considered in the determination.

(28) Modular excess-air municipal waste combustion unit--A municipal waste combustion unit that combusts municipal solid waste, is not field-erected, and has multiple combustion chambers, all of which are designed to operate at conditions with combustion air amounts in excess of theoretical air requirements.

(29) Modular starved-air municipal waste combustion unit--A municipal waste combustion unit that combusts municipal solid waste, is not field-erected, and has multiple combustion chambers in which the primary combustion chamber is designed to operate at substoichiometric conditions.

(30) Municipal solid waste or municipal-type solid waste--Household, commercial/retail, or institutional waste. Household waste includes material discarded by residential dwellings, hotels, motels, and other similar permanent or temporary housing. Commercial/retail waste includes material discarded by stores, offices, restaurants, warehouses, nonmanufacturing activities at industrial facilities, and other similar establishments or facilities. Institutional waste includes materials discarded by schools, by hospitals (nonmedical), by nonmanufacturing activities at prisons and government facilities, and other similar establishments or facilities. Household, commercial/retail, and institutional waste does include yard waste and refuse-derived fuel. Household, commercial/retail, and institutional waste does not include used oil; sewage sludge; wood pallets; construction, renovation, and demolition wastes (which include railroad ties and telephone poles); clean wood; industrial process or manufacturing wastes; medical waste; or motor vehicles (including motor vehicle parts or vehicle fluff).



(31) Municipal waste combustion plant--One or more municipal waste combustion units at the same location as specified under Applicability of State Plans (40 Code of Federal Regulations §60.1550(a)).

(32) Municipal waste combustion plant capacity--The aggregate municipal waste combustion capacity of all municipal waste combustion units at the plant that are not subject to 40 Code of Federal Regulations Part 60, Subparts Ea, Eb, or AAAAA.

(33) Municipal waste combustion unit--Any setting or equipment that combusts solid, liquid, or gasified municipal solid waste including, but not limited to, field-erected combustion units (with or without heat recovery), modular combustion units (starved-air or excess-air), boilers (for example, steam generating units), furnaces (whether suspension-fired, grate-fired, mass-fired, air curtain incinerators, or fluidized bed-fired), and pyrolysis/combustion units. Two criteria further define municipal waste combustion units:

(A) Municipal waste combustion units do not include pyrolysis or combustion units located at a plastics or rubber recycling unit as specified under Applicability of State Plans (40 Code of Federal Regulations §60.1555(h) and (i)). Municipal waste combustion units do not include cement kilns that combust municipal solid waste. Municipal waste combustion units also do not include internal combustion engines, gas turbines, or other combustion devices that combust landfill gases collected by landfill gas collection systems.

(B) The boundaries of a municipal waste combustion unit are defined as follows. The municipal waste combustion unit includes, but is not limited to, the municipal solid waste fuel feed system, grate system, flue gas system, bottom ash system, and the combustion unit water system. The municipal waste combustion unit does not include air pollution control equipment, the stack, water treatment equipment, or the turbine-generator set. The municipal waste combustion unit boundary starts at the municipal solid waste pit or hopper and extends through three areas.

(i) The combustion unit flue gas system, which ends immediately after the heat recovery equipment or, if there is no heat recovery equipment, immediately after the combustion chamber.

(ii) The combustion unit bottom ash system, which ends at the truck loading station or similar equipment that transfers the ash to final disposal. It includes all ash handling systems connected to the bottom ash handling system.

(iii) The combustion unit water system, which starts at the feed water pump and ends at the piping that exits the steam drum or superheater.

(34) Particulate matter--Total particulate matter emitted from municipal waste combustion units as measured using United States Environmental Protection Agency Reference Method 5 in 40 Code of Federal Regulations Part 60, Appendix A and the procedures specified in §113.2142 of this title (relating to What test methods must I use to stack test?).

(35) Plastics or rubber recycling unit--An integrated processing unit for which plastics, rubber, or rubber tires are the only feed materials (incidental contaminants may be in the feed materials). The feed materials are processed and marketed to become input feed stock for chemical plants or petroleum refineries. The following three criteria further define a plastics or rubber recycling unit:

(A) Each calendar quarter, the combined weight of the feed stock that a plastics or rubber recycling unit produces must be more than 70 percent of the combined weight of the plastics, rubber, and rubber tires that recycling unit processes.

(B) The plastics, rubber, or rubber tires fed to the recycling unit may originate from separating or diverting plastics, rubber, or rubber tires from municipal or industrial solid waste. The feed materials may include manufacturing scraps, trimmings, and off-specification plastics, rubber, and rubber tire discards.

(C) The plastics, rubber, and rubber tires fed to the recycling unit may contain incidental contaminants (for example, paper labels on plastic bottles or metal rings on plastic bottle caps).

(36) Potential hydrogen chloride emissions--The level of emissions from a municipal waste combustion unit that would occur from combusting municipal solid waste without emission controls for acid gases.

(37) Potential mercury emissions--The level of emissions from a municipal waste combustion unit that would occur from combusting municipal solid waste without controls for mercury emissions.

(38) Potential sulfur dioxide emissions--The level of emissions from a municipal waste combustion unit that would occur from combusting municipal solid waste without emission controls for acid gases.

(39) Pyrolysis/combustion unit--A unit that produces gases, liquids, or solids by heating municipal solid waste. The gases, liquids, or solids produced are combusted and the emissions vented to the atmosphere.

(40) Reconstruction--Rebuilding a municipal waste combustion unit and meeting two criteria:

(A) The reconstruction begins after June 6, 2001.

(B) The cumulative cost of the construction over the life of the unit exceeds 50 percent of the original cost of building and installing the municipal waste combustion unit (not including land) updated to current costs (current dollars). To determine what systems are within the boundary of the municipal waste combustion unit used to calculate the costs, see the definition in this section of "Municipal waste combustion unit."

(41) Refractory unit or refractory wall furnace--A municipal waste combustion unit that has no energy recovery (such as through a waterwall) in the furnace of the municipal waste combustion unit.

(42) Refuse-derived fuel--A type of municipal solid waste produced by processing municipal solid waste through shredding and size classification. That includes all classes of refuse-derived fuel including two fuels:

(A) Low-density fluff refuse-derived fuel through densified refuse-derived fuel.

(B) Pelletized refuse-derived fuel.

(43) Same location--The same or contiguous properties under common ownership or control, including those separated only by a street, road, highway, or other public right-of-way. Common ownership or control includes properties that are owned, leased, or operated by the same entity, parent entity, subsidiary, subdivision, or any combination thereof. Entities may include a municipality, other governmental unit, or any quasi-governmental authority (for example, a public utility district or regional authority for waste disposal).

(44) Second calendar half--The period that starts on July 1 and ends on December 31 in any year.

(45) Shift supervisor--The person who is in direct charge and control of operating a municipal waste combustion unit and who is responsible for onsite supervision, technical direction, management,

and overall performance of the municipal waste combustion unit during an assigned shift.

(46) Spreader stoker, mixed fuel-fired (coal/refuse-derived fuel) combustion unit--A municipal waste combustion unit that combusts coal and refuse-derived fuel simultaneously, in which coal is introduced to the combustion zone by a mechanism that throws the fuel onto a grate from above. Combustion takes place both in suspension and on the grate.

(47) Standard conditions--When referring to units of measure, a temperature of 20 degrees Celsius and a pressure of 101.3 kilopascals.

(48) Startup period--The period when a municipal waste combustion unit begins the continuous combustion of municipal solid waste. It does not include any warmup period during which the municipal waste combustion unit combusts fossil fuel or other solid waste fuel but receives no municipal solid waste.

(49) State--Any of the 50 United States and the protectorates of the United States.

(50) State plan--A plan submitted pursuant to the Federal Clean Air Act, §111(d) and §129(b)(2) and 40 Code of Federal Regulations Part 60, Subpart B, that implements and enforces this division.

(51) Stoker (refuse-derived fuel) combustion unit--A steam generating unit that combusts refuse-derived fuel in a semisuspension combusting mode, using air-fed distributors.

(52) Total mass dioxins/furans or total mass--The total mass of tetra-through octachlorinated dibenzo-p-dioxins and dibenzofurans as determined using United States Environmental Protection Agency Reference Method 23 in 40 Code of Federal Regulations Part 60, Appendix A and the procedures specified in §113.2142 of this title (relating to What test methods must I use to stack test?).

(53) Twenty-four hour daily average or 24-hour daily average--Either the arithmetic mean or geometric mean (as specified) of all hourly emission concentrations when the municipal waste combustion unit operates and combusts municipal solid waste measured during the 24 hours between 12:00 midnight and the following midnight.

(54) Untreated lumber--Wood or wood products that have been cut or shaped and include wet, air-dried, and kiln-dried wood products. Untreated lumber does not include wood products that have been painted, pigment-stained, or pressure-treated by compounds such as chromate copper arsenate, pentachlorophenol, and creosote.

(55) Waterwall furnace--A municipal waste combustion unit that has energy (heat) recovery in the furnace (for example, radiant heat transfer section) of the combustion unit.

(56) Yard waste--Grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs. They come from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands. Yard waste does not include two items:

(A) Construction, renovation, and demolition wastes that are exempt from the definition of "Municipal solid waste" in this section.

(B) Clean wood that is exempt from the definition of "Municipal solid waste" in this section.

§113.2101. What are my requirements for meeting increments of progress and achieving final compliance?

(a) Class I units. If you plan to achieve compliance more than 1 year following the effective date of state plan approval and a permit

modification is not required, or more than 1 year following the date of issuance of a revised construction or operating permit if a permit modification is required, you must meet five increments of progress:

- (1) Submit a final control plan.
- (2) Submit a notification of retrofit contract award.
- (3) Initiate onsite construction.
- (4) Complete onsite construction.
- (5) Achieve final compliance.

(b) Class II units. If you plan to achieve compliance more than 1 year following the effective date of state plan approval and a permit modification is not required, or more than 1 year following the date of issuance of a revised construction or operating permit if a permit modification is required, you must meet two increments of progress:

- (1) Submit a final control plan.
- (2) Achieve final compliance.

§113.2102. When must I complete each increment of progress?

Table 1 in §113.2174 of this title (relating to Tables Relating to Division 3) specifies compliance dates for each of the increments of progress for Class I and II units. (See §113.2100 of this title (relating to Definitions) for definitions of classes.)

§113.2103. What must I include in the notifications of achievement of my increments of progress?

Your notification of achievement of increments of progress must include three items:

(1) Notification that the increment of progress has been achieved.

(2) Any items required to be submitted with the increment of progress (§113.2106 through §113.2110 of this title (relating to How do I comply with the increment of progress for submittal of a control plan? How do I comply with the increment of progress for awarding contracts? How do I comply with the increment of progress for initiating onsite construction? How do I comply with the increment of progress for completing onsite construction? and How do I comply with the increment of progress for achieving final compliance?)).

(3) The notification must be signed by the owner or operator of the municipal waste combustion unit.

§113.2104. When must I submit the notifications of achievement of increments of progress?

Notifications of the achievement of increments of progress must be postmarked no later than 10 days after the compliance date for the increment.

§113.2105. What if I do not meet an increment of progress?

If you fail to meet an increment of progress, you must submit a notification to the executive director postmarked within 10 business days after the specified date in Table 1 in §113.2174 of this title (relating to Tables Relating to Division 3) for achieving that increment of progress. The notification must inform the executive director that you did not meet the increment. You must include in the notification an explanation of why the increment of progress was not met and your plan for meeting the increment as expeditiously as possible. You must continue to submit reports on the first day of each subsequent month until the increment of progress is met.

§113.2106. How do I comply with the increment of progress for submittal of a control plan?

For your control plan increment of progress, you must complete two items:

(1) Submit the final control plan, including a description of the devices for air pollution control and process changes that you will use to comply with the emission limits and other requirements of this division.

(2) You must maintain a copy of the final control plan at the same location as the solid waste incineration unit.

§113.2107. How do I comply with the increment of progress for awarding contracts?

You must submit to the executive director a signed copy of the contracts awarded to initiate onsite construction, initiate onsite installation of emission control equipment, and incorporate process changes. Submit the copy of the contracts with the notification that the increment of progress has been achieved to the executive director. You do not need to include documents incorporated by reference or the attachments to the contracts.

§113.2108. How do I comply with the increment of progress for initiating onsite construction?

You must initiate onsite construction and installation of emission control equipment and initiate the process changes outlined in the final control plan.

§113.2109. How do I comply with the increment of progress for completing onsite construction?

You must complete onsite construction and installation of emission control equipment and complete process changes outlined in the final control plan.

§113.2110. How do I comply with the increment of progress for achieving final compliance?

For the final compliance increment of progress, you must complete two items:

(1) Complete all process changes and complete retrofit construction as specified in the final control plan.

(2) Connect the air pollution control equipment with the municipal waste combustion unit identified in the final control plan and complete process changes to the municipal waste combustion unit so that if the affected municipal waste combustion unit is brought online, all necessary process changes and air pollution control equipment are operating as designed.

§113.2111. What must I do if I close my municipal waste combustion unit and then restart my municipal waste combustion unit?

(a) If you close your municipal waste combustion unit but will reopen it prior to the final compliance date in your state plan, you must meet the increments of progress specified in §113.2101 of this title (relating to What are my requirements for meeting increments of progress and achieving final compliance?).

(b) If you close your municipal waste combustion unit but will restart it after your final compliance date, you must complete emission control retrofit and meet the emission limits and good combustion practices on the date your municipal waste combustion unit restarts operation.

§113.2112. What must I do if I plan to permanently close my municipal waste combustion unit and not restart it?

(a) If you plan to close your municipal waste combustion unit rather than comply with the state plan, you must submit a closure notification, including the date of closure, to the executive director by the date your final control plan is due.

(b) If the closure date is later than 1 year after the effective date of state plan approval, you must enter into a legally binding closure agreement with the executive director by the date your final control plan is due. The agreement must specify the date by which operation will cease.

§113.2113. What types of training must I do?

There are two types of required training:

(1) Training of operators of municipal waste combustion units using the United States Environmental Protection Agency or a state-approved training course.

(2) Training of plant personnel using a plant-specific training course.

§113.2114. Who must complete the operator training course? By when?

(a) Three types of employees must complete the United States Environmental Protection Agency (EPA) or state-approved operator training course:

(1) Chief facility operators.

(2) Shift supervisors.

(3) Control room operators.

(b) Those employees must complete the operator training course by the later of three dates:

(1) One year after the effective date of state plan approval.

(2) Six months after your municipal waste combustion unit starts up.

(3) The date before an employee assumes responsibilities that affect operation of the municipal waste combustion unit.

(c) The requirement in subsection (a) of this section does not apply to chief facility operators, shift supervisors, and control room operators who have obtained full certification from the American Society of Mechanical Engineers on or before the effective date of state plan approval.

(d) You may request that the EPA waive the requirement in subsection (a) of this section for chief facility operators, shift supervisors, and control room operators who have obtained provisional certification from the American Society of Mechanical Engineers on or before the effective date of state plan approval.

§113.2115. Who must complete the plant-specific training course?

All employees with responsibilities that affect how a municipal waste combustion unit operates must complete the plant-specific training course. Include at least six types of employees:

(1) Chief facility operators.

(2) Shift supervisors.

(3) Control room operators.

(4) Ash handlers.

(5) Maintenance personnel.

(6) Crane or load handlers.

§113.2116. What plant-specific training must I provide?

For plant-specific training, you must do four things:

(1) For training at a particular plant, develop a specific operating manual for that plant by the later of two dates:

(A) Six months after your municipal waste combustion unit starts up.

(B) One year after the effective date of state plan approval.

(2) Establish a program to review the plant-specific operating manual with people whose responsibilities affect the operation of your municipal waste combustion unit. Complete the initial review by the later of three dates:

(A) One year after the effective date of state plan approval.

(B) Six months after your municipal waste combustion unit starts up.

(C) The date before an employee assumes responsibilities that affect operation of the municipal waste combustion unit.

(3) Update your manual annually.

(4) Review your manual with staff annually.

§113.2117. What information must I include in the plant-specific operating manual?

You must include 11 items in the operating manual for your plant:

(1) A summary of all applicable requirements in this division.

(2) A description of the basic combustion principles that apply to municipal waste combustion units.

(3) Procedures for receiving, handling, and feeding municipal solid waste.

(4) Procedures to be followed during periods of startup, shutdown, and malfunction of the municipal waste combustion unit.

(5) Procedures for maintaining a proper level of combustion air supply.

(6) Procedures for operating the municipal waste combustion unit in compliance with the requirements contained in this division.

(7) Procedures for responding to periodic upset or off-specification conditions.

(8) Procedures for minimizing carryover of particulate matter.

(9) Procedures for handling ash.

(10) Procedures for monitoring emissions from the municipal waste combustion unit.

(11) Procedures for recordkeeping and reporting.

§113.2118. Where must I keep the plant-specific operating manual?

You must keep your operating manual in an easily accessible location at your plant. It must be available for review or inspection by all employees who must review it and by the executive director.

§113.2119. What types of operator certification must the chief facility operator and shift supervisor obtain and by when must they obtain it?

(a) Each chief facility operator and shift supervisor must obtain and keep a current provisional operator certification from the American Society of Mechanical Engineers (QRO - 1 - 1994) (incorporated by reference in 40 Code of Federal Regulations (CFR) §60.17(h)(1)) or a current provisional operator certification from your state certification program.

(b) Each chief facility operator and shift supervisor must obtain a provisional certification by the later of three dates:

(1) For Class I units, 12 months after the effective date of state plan approval. For Class II units, 18 months after the effective date of state plan approval.

(2) Six months after the municipal waste combustion unit starts up.

(3) Six months after they transfer to the municipal waste combustion unit or 6 months after they are hired to work at the municipal waste combustion unit.

(c) Each chief facility operator and shift supervisor must take one of three actions:

(1) Obtain a full certification from the American Society of Mechanical Engineers or a state certification program in your state.

(2) Schedule a full certification exam with the American Society of Mechanical Engineers (QRO - 1 - 1994) (incorporated by reference in 40 CFR §60.17(h)(1)).

(3) Schedule a full certification exam with your state certification program.

(d) The chief facility operator and shift supervisor must obtain the full certification or be scheduled to take the certification exam by the later of the following dates:

(1) For Class I units, 12 months after the effective date of state plan approval. For Class II units, 18 months after the effective date of state plan approval.

(2) Six months after the municipal waste combustion unit starts up.

(3) Six months after they transfer to the municipal waste combustion unit or 6 months after they are hired to work at the municipal waste combustion unit.

§113.2120. After the required date for operator certification, who may operate the municipal waste combustion unit?

After the required date for full or provisional certification, you must not operate your municipal waste combustion unit unless one of four employees is on duty:

(1) A fully certified chief facility operator.

(2) A provisionally certified chief facility operator who is scheduled to take the full certification exam.

(3) A fully certified shift supervisor.

(4) A provisionally certified shift supervisor who is scheduled to take the full certification exam.

§113.2121. What if all the certified operators must be temporarily offsite?

If the certified chief facility operator and certified shift supervisor both are unavailable, a provisionally certified control room operator at the municipal waste combustion unit may fulfill the certified operator requirement. Depending on the length of time that a certified chief facility operator and certified shift supervisor are away, you must meet one of three criteria:

(1) When the certified chief facility operator and certified shift supervisor are both offsite for 12 hours or less and no other certified operator is onsite, the provisionally certified control room operator may perform those duties without notice to, or approval by, the executive director.

(2) When the certified chief facility operator and certified shift supervisor are offsite for more than 12 hours, but for 2 weeks or

less, and no other certified operator is onsite, the provisionally certified control room operator may perform those duties without notice to, or approval by, the executive director. However, you must record the periods when the certified chief facility operator and certified shift supervisor are offsite and include the information in the annual report as specified under §113.2161(12) of this title (relating to What must I include in my annual report?).

(3) When the certified chief facility operator and certified shift supervisor are offsite for more than 2 weeks, and no other certified operator is onsite, the provisionally certified control room operator may perform those duties without prior notice to, or approval by, the executive director. However, you must take two actions:

(A) Notify the executive director in writing within 10 days after the end of the 2-week period. In the notice, state what caused the absence and what you are doing to ensure that a certified chief facility operator or certified shift supervisor is onsite.

(B) Submit a status report and corrective action summary to the executive director every 4 weeks following the initial notification. If the executive director notifies you that your status report or corrective action summary is disapproved, the municipal waste combustion unit may continue operation for 90 days, but then must cease operation. If corrective actions are taken in the 90-day period such that the executive director withdraws the disapproval, municipal waste combustion unit operation may continue.

§113.2122. What are the operating practice requirements for my municipal waste combustion unit?

(a) You must not operate your municipal waste combustion unit at loads greater than 110 percent of the maximum demonstrated load of the municipal waste combustion unit (4-hour block average), as specified in §113.2100 of this title (relating to Definitions).

(b) You must not operate your municipal waste combustion unit so that the temperature at the inlet of the particulate matter control device exceeds 17 degrees Celsius above the maximum demonstrated temperature of the particulate matter control device (4-hour block average), as specified in §113.2100 of this title.

(c) If your municipal waste combustion unit uses activated carbon to control dioxins/furans or mercury emissions, you must maintain an 8-hour block average carbon feed rate at or above the highest average level established during the most recent dioxins/furans or mercury test.

(d) If your municipal waste combustion unit uses activated carbon to control dioxins/furans or mercury emissions, you must evaluate total carbon usage for each calendar quarter. The total amount of carbon purchased and delivered to your municipal waste combustion plant must be at or above the required quarterly usage of carbon. At your option, you may choose to evaluate required quarterly carbon usage on a municipal waste combustion unit basis for each individual municipal waste combustion unit at your plant. Calculate the required quarterly usage of carbon using equation 4 or 5 in §113.2171(f) of this title (relating to What equations must I use?).

(e) Your municipal waste combustion unit is exempt from limits on load level, temperature at the inlet of the particulate matter control device, and carbon feed rate during any of five situations:

(1) During your annual tests for dioxins/furans.

(2) During your annual mercury tests (for carbon feed rate requirements only).

(3) During the 2 weeks preceding your annual tests for dioxins/furans.

(4) During the 2 weeks preceding your annual mercury tests (for carbon feed rate requirements only).

(5) Whenever the executive director permits you to do any of five activities:

(A) Evaluate system performance.

(B) Test new technology or control technologies.

(C) Perform diagnostic testing.

(D) Perform other activities to improve the performance of your municipal waste combustion unit.

(E) Perform other activities to advance the state of the art for emission controls for your municipal waste combustion unit.

§113.2123. What happens to the operating requirements during periods of startup, shutdown, and malfunction?

(a) The operating requirements of this division apply at all times except during periods of municipal waste combustion unit startup, shutdown, or malfunction.

(b) Each startup, shutdown, or malfunction must not last for longer than 3 hours.

§113.2124. What pollutants are regulated by this division?

Eleven pollutants, in four groupings, are regulated:

(1) Organics. Dioxins/furans.

(2) Metals.

(A) Cadmium.

(B) Lead.

(C) Mercury.

(D) Opacity.

(E) Particulate matter.

(3) Acid gases.

(A) Hydrogen chloride.

(B) Nitrogen oxides.

(C) Sulfur dioxide.

(4) Other.

(A) Carbon monoxide.

(B) Fugitive ash.

§113.2125. What emission limits must I meet? By when?

(a) After the date the initial stack test and continuous emission monitoring system evaluation are required or completed (whichever is earlier), you must meet the applicable emission limits specified in the four tables of this division:

(1) For Class I units, see Tables 2 and 3 in §113.2174 of this title (relating to Tables Relating to Division 3).

(2) For Class II units, see Table 4 in §113.2174 of this title.

(3) For carbon monoxide emission limits for both classes of units, see Table 5 in §113.2174 of this title.

(b) If your Class I municipal waste combustion unit began construction, reconstruction, or modification after June 26, 1987, then you must comply with the dioxins/furans and mercury emission limits specified in Table 2 in §113.2174 of this title as applicable by the later of the following two dates:

(1) One year after the effective date of state plan approval.

(2) One year after the issuance of a revised construction or operating permit, if a permit modification is required. Final compliance with the dioxins/furans limits must be achieved no later than December 6, 2005, even if the date 1 year after the issuance of a revised construction or operating permit is later than December 6, 2005.

§113.2126. What happens to the emission limits during periods of startup, shutdown, and malfunction?

(a) The emission limits of this division apply at all times except during periods of municipal waste combustion unit startup, shutdown, or malfunction.

(b) Each startup, shutdown, or malfunction must not last for longer than 3 hours.

(c) A maximum of 3 hours of test data can be dismissed from compliance calculations during periods of startup, shutdown, or malfunction.

(d) During startup, shutdown, or malfunction periods longer than 3 hours, emissions data cannot be discarded from compliance calculations and all provisions under 40 Code of Federal Regulations §60.11(d) apply.

§113.2127. What types of continuous emission monitoring must I perform?

To continuously monitor emissions, you must perform four tasks:

(1) Install continuous emission monitoring systems for certain gaseous pollutants.

(2) Make sure your continuous emission monitoring systems are operating correctly.

(3) Make sure you obtain the minimum amount of monitoring data.

(4) Install a continuous opacity monitoring system.

§113.2128. What continuous emission monitoring systems must I install for gaseous pollutants?

(a) You must install, calibrate, maintain, and operate continuous emission monitoring systems for oxygen (or carbon dioxide), sulfur dioxide, and carbon monoxide. If you operate a Class I municipal waste combustion unit, also install, calibrate, maintain, and operate a continuous emission monitoring system for nitrogen oxides. Install the continuous emission monitoring systems for sulfur dioxide, nitrogen oxides, and oxygen (or carbon dioxide) at the outlet of the air pollution control device.

(b) You must install, evaluate, and operate each continuous emission monitoring system according to the "Monitoring Requirements" in 40 Code of Federal Regulations (CFR) §60.13.

(c) You must monitor the oxygen (or carbon dioxide) concentration at each location where you monitor sulfur dioxide and carbon monoxide. Additionally, if you operate a Class I municipal waste combustion unit, you must also monitor the oxygen (or carbon dioxide) concentration at the location where you monitor nitrogen oxides.

(d) You may choose to monitor carbon dioxide instead of oxygen as a diluent gas. If you choose to monitor carbon dioxide, then an oxygen monitor is not required and you must follow the requirements in §113.2133 of this title (relating to What must I do if I choose to monitor carbon dioxide instead of oxygen as a diluent gas?).

(e) If you choose to demonstrate compliance by monitoring the percent reduction of sulfur dioxide, you must also install continuous emission monitoring systems for sulfur dioxide and oxygen (or carbon dioxide) at the inlet of the air pollution control device.

(f) If you prefer to use an alternative sulfur dioxide monitoring method, such as parametric monitoring, or cannot monitor emissions at the inlet of the air pollution control device to determine percent reduction, you can apply to the executive director for approval to use an alternative monitoring method under 40 CFR §60.13(i).

§113.2129. How are the data from the continuous emission monitoring systems used?

You must use data from the continuous emission monitoring systems for sulfur dioxide, nitrogen oxides, and carbon monoxide to demonstrate continuous compliance with the applicable emission limits specified in Tables 2, 3, 4, and 5 in §113.2174 of this title (relating to Tables Relating to Division 3). To demonstrate compliance for dioxins/furans, cadmium, lead, mercury, particulate matter, opacity, hydrogen chloride, and fugitive ash, see §113.2140 of this title (relating to How are the stack test data used?).

§113.2130. How do I make sure my continuous emission monitoring systems are operating correctly?

(a) Conduct initial, daily, quarterly, and annual evaluations of your continuous emission monitoring systems that measure oxygen (or carbon dioxide), sulfur dioxide, nitrogen oxides (Class I municipal waste combustion units only), and carbon monoxide.

(b) Complete your initial evaluation of the continuous emission monitoring systems within 180 days after your final compliance date.

(c) For initial and annual evaluations, collect data concurrently (or within 30 to 60 minutes) using your oxygen (or carbon dioxide) continuous emission monitoring system, your sulfur dioxide, nitrogen oxides, or carbon monoxide continuous emission monitoring systems, as appropriate, and the appropriate test methods specified in Table 6 in §113.2174 of this title (relating to Tables Relating to Division 3). Collect the data during each initial and annual evaluation of your continuous emission monitoring systems following the applicable performance specifications in 40 Code of Federal Regulations (CFR) Part 60, Appendix B. Table 7 in §113.2174 of this title shows the performance specifications that apply to each continuous emission monitoring system.

(d) Follow the quality assurance procedures in Procedure 1 of 40 CFR Part 60, Appendix F for each continuous emission monitoring system. The procedures include daily calibration drift and quarterly accuracy determinations.

§113.2131. Am I exempt from any 40 Code of Federal Regulations Part 60, Appendix B or Appendix F requirements to evaluate continuous emission monitoring systems?

Yes, the accuracy tests for your sulfur dioxide continuous emission monitoring system require you to also evaluate your oxygen (or carbon dioxide) continuous emission monitoring system. Therefore, your oxygen (or carbon dioxide) continuous emission monitoring system is exempt from two requirements:

(1) Section 2.3 of Performance Specification 3 in 40 Code of Federal Regulations Part 60, Appendix B (relative accuracy requirement).

(2) Section 5.1.1 of 40 Code of Federal Regulations Part 60, Appendix F (relative accuracy test audit).

§113.2132. What is my schedule for evaluating continuous emission monitoring systems?

(a) Conduct annual evaluations of your continuous emission monitoring systems no more than 13 months after the previous evaluation was conducted.

(b) Evaluate your continuous emission monitoring systems daily and quarterly as specified in 40 Code of Federal Regulations Part 60, Appendix F.

§113.2133. What must I do if I choose to monitor carbon dioxide instead of oxygen as a diluent gas?

You must establish the relationship between oxygen and carbon dioxide during the initial evaluation of your continuous emission monitoring systems. You may reestablish the relationship during annual evaluations. To establish the relationship use three procedures:

(1) Use United States Environmental Protection Agency (EPA) Reference Method 3A or 3B in 40 Code of Federal Regulations (CFR) Part 60, Appendix A to determine oxygen concentration at the location of your carbon dioxide monitor.

(2) Conduct at least three test runs for oxygen. Make sure each test run represents a 1-hour average and that sampling continues for at least 30 minutes in each hour.

(3) Use the fuel-factor equation in EPA Reference Method 3B in 40 CFR Part 60, Appendix A to determine the relationship between oxygen and carbon dioxide.

§113.2134. What is the minimum amount of monitoring data I must collect with my continuous emission monitoring systems and is the data collection requirement enforceable?

(a) Where continuous emission monitoring systems are required, obtain 1-hour arithmetic averages. Make sure the averages for sulfur dioxide, nitrogen oxides (Class I municipal waste combustion units only), and carbon monoxide are in parts per million by dry volume at 7 percent oxygen (or the equivalent carbon dioxide level). Use the 1-hour averages of oxygen (or carbon dioxide) data from your continuous emission monitoring system to determine the actual oxygen (or carbon dioxide) level and to calculate emissions at 7 percent oxygen (or the equivalent carbon dioxide level).

(b) Obtain at least two data points per hour in order to calculate a valid 1-hour arithmetic average. 40 Code of Federal Regulations §60.13(e)(2) requires your continuous emission monitoring systems to complete at least one cycle of operation (sampling, analyzing, and data recording) for each 15-minute period.

(c) Obtain valid 1-hour averages for 75 percent of the operating hours per day for 90 percent of the operating days per calendar quarter. An operating day is any day the unit combusts any municipal solid waste or refuse-derived fuel.

(d) If you do not obtain the minimum data required in subsections (a) through (c) of this section, you are in violation of the data collection requirement regardless of the emission level monitored, and you must notify the executive director according to §113.2161(5) of this title (relating to What must I include in my annual report?).

(e) If you do not obtain the minimum data required in subsections (a) through (c) of this section, you must still use all valid data from the continuous emission monitoring systems in calculating emission concentrations and percent reductions in accordance with §113.2135 of this title (relating to How do I convert my 1-hour arithmetic averages into appropriate averaging times and units?).

§113.2135. How do I convert my 1-hour arithmetic averages into appropriate averaging times and units?

(a) Use the equation in §113.2171(a) of this title (relating to What equations must I use?) to calculate emissions at 7 percent oxygen.

(b) Use United States Environmental Protection Agency (EPA) Reference Method 19 in 40 Code of Federal Regulations (CFR)

Part 60, Appendix A, §4.3, to calculate the daily geometric average concentrations of sulfur dioxide emissions. If you are monitoring the percent reduction of sulfur dioxide, use EPA Reference Method 19 in 40 CFR Part 60, Appendix A, §5.4, to determine the daily geometric average percent reduction of potential sulfur dioxide emissions.

(c) If you operate a Class I municipal waste combustion unit, use EPA Reference Method 19 in 40 CFR Part 60, Appendix A, §4.1, to calculate the daily arithmetic average for concentrations of nitrogen oxides.

(d) Use EPA Reference Method 19 in 40 CFR Part 60, Appendix A, §4.1, to calculate the 4-hour or 24-hour daily block averages (as applicable) for concentrations of carbon monoxide.

§113.2136. What is required for my continuous opacity monitoring system and how are the data used?

(a) Install, calibrate, maintain, and operate a continuous opacity monitoring system.

(b) Install, evaluate, and operate each continuous opacity monitoring system according to 40 Code of Federal Regulations (CFR) §60.13.

(c) Complete an initial evaluation of your continuous opacity monitoring system according to Performance Specification 1 in 40 CFR Part 60, Appendix B. Complete the evaluation by 180 days after your final compliance date.

(d) Complete each annual evaluation of your continuous opacity monitoring system no more than 13 months after the previous evaluation.

(e) Use tests conducted according to United States Environmental Protection Agency Reference Method 9 in 40 CFR Part 60, Appendix A, as specified in §113.2142 of this title (relating to What test methods must I use to stack test?), to determine compliance with the opacity limit in Table 2 or 4 in §113.2174 of this title (relating to Tables Relating to Division 3). The data obtained from your continuous opacity monitoring system are not used to determine compliance with the opacity limit.

§113.2137. What additional requirements must I meet for the operation of my continuous emission monitoring systems and continuous opacity monitoring system?

Use the required span values and applicable performance specifications in Table 8 in §113.2174 of this title (relating to Tables Relating to Division 3).

§113.2138. What must I do if any of my continuous emission monitoring systems are temporarily unavailable to meet the data collection requirements?

Refer to Table 8 in §113.2174 of this title (relating to Tables Relating to Division 3). It shows alternate methods for collecting data when systems malfunction or when repairs, calibration checks, or zero and span checks keep you from collecting the minimum amount of data.

§113.2139. What types of stack tests must I conduct?

Conduct initial and annual stack tests to measure the emission levels of dioxins/furans, cadmium, lead, mercury, particulate matter, opacity, hydrogen chloride, and fugitive ash.

§113.2140. How are the stack test data used?

You must use results of stack tests for dioxins/furans, cadmium, lead, mercury, particulate matter, opacity, hydrogen chloride, and fugitive ash to demonstrate compliance with the applicable emission limits in Tables 2 and 4 in §113.2174 of this title (relating to Tables Relating to

Division 3). To demonstrate compliance for carbon monoxide, nitrogen oxides, and sulfur dioxide, see §113.2129 of this title (relating to How are the data from the continuous emission monitoring systems used?).

§113.2141. What schedule must I follow for the stack testing?

(a) Conduct initial stack tests for the pollutants listed in §113.2139 of this title (relating to What types of stack tests must I conduct?) by 180 days after your final compliance date.

(b) Conduct annual stack tests for the same pollutants after the initial stack test. Conduct each annual stack test no later than 13 months after the previous stack test.

§113.2142. What test methods must I use to stack test?

(a) Follow Table 8 in §113.2174 of this title (relating to Tables Relating to Division 3) to establish the sampling location and to determine pollutant concentrations, number of traverse points, individual test methods, and other specific testing requirements for the different pollutants.

(b) Make sure that stack tests for all the pollutants consist of at least three test runs, as specified in 40 Code of Federal Regulations (CFR) §60.8. Use the average of the pollutant emission concentrations from the three test runs to determine compliance with the applicable emission limits in Tables 2 and 4 in §113.2174 of this title.

(c) Obtain an oxygen (or carbon dioxide) measurement at the same time as your pollutant measurements to determine diluent gas levels, as specified in §113.2128 of this title (relating to What continuous emission monitoring systems must I install for gaseous pollutants?).

(d) Use the equations in §113.2171(a) of this title (relating to What equations must I use?) to calculate emission levels at 7 percent oxygen (or an equivalent carbon dioxide basis), the percent reduction in potential hydrogen chloride emissions, and the reduction efficiency for mercury emissions. See the individual test methods in Table 6 in §113.2174 of this title for other required equations.

(e) You can apply to the executive director for approval under 40 CFR §60.8(b) to use a reference method with minor changes in methodology, use an equivalent method, use an alternative method the results of which the executive director has determined are adequate for demonstrating compliance, waive the requirement for a performance test because you have demonstrated by other means that you are in compliance, or use a shorter sampling time or smaller sampling volume.

§113.2143. May I conduct stack testing less often?

(a) You may test less often if you own or operate a Class II municipal waste combustion unit and if all stack tests for a given pollutant over 3 consecutive years show you comply with the emission limit. In that case, you are not required to conduct a stack test for that pollutant for the next 2 years. However, you must conduct another stack test within 36 months of the anniversary date of the third consecutive stack test that shows you comply with the emission limit. Thereafter, you must perform stack tests every 3rd year but no later than 36 months following the previous stack tests. If a stack test shows noncompliance with an emission limit, you must conduct annual stack tests for that pollutant until all stack tests over 3 consecutive years show compliance with the emission limit for that pollutant. The provision applies to all pollutants subject to stack testing requirements: dioxins/furans, cadmium, lead, mercury, particulate matter, opacity, hydrogen chloride, and fugitive ash.

(b) You can test less often for dioxins/furans emissions if you own or operate a municipal waste combustion plant that meets two conditions. First, you have multiple municipal waste combustion units on-site that are subject to this division. Second, all those municipal waste

combustion units have demonstrated levels of dioxins/furans emissions less than or equal to 15 nanograms per dry standard cubic meter (total mass) for Class I units, or 30 nanograms per dry standard cubic meter (total mass) for Class II units, for 2 consecutive years. In that case, you may choose to conduct annual stack tests on only one municipal waste combustion unit per year at your plant. The provision only applies to stack testing for dioxins/furans emissions.

(1) Conduct the stack test no more than 13 months following a stack test on any municipal waste combustion unit subject to this division at your plant. Each year, test a different municipal waste combustion unit subject to this division and test all municipal waste combustion units subject to this division in a sequence that you determine. Once you determine a testing sequence, it must not be changed without approval by the executive director.

(2) If each annual stack test shows levels of dioxins/furans emissions less than or equal to 15 nanograms per dry standard cubic meter (total mass) for Class I units, or 30 nanograms per dry standard cubic meter (total mass) for Class II units, you may continue stack tests on only one municipal waste combustion unit subject to this division per year.

(3) If any annual stack test indicates levels of dioxins/furans emissions greater than 15 nanograms per dry standard cubic meter (total mass) for Class I units, or 30 nanograms per dry standard cubic meter (total mass) for Class II units, conduct subsequent annual stack tests on all municipal waste combustion units subject to this division at your plant. You may return to testing one municipal waste combustion unit subject to this division per year if you can demonstrate dioxins/furans emissions levels less than or equal to 15 nanograms per dry standard cubic meter (total mass) for Class I units, or 30 nanograms per dry standard cubic meter (total mass) for Class II units, for all municipal waste combustion units at your plant subject to this division for 2 consecutive years.

§113.2144. May I deviate from the 13-month testing schedule if unforeseen circumstances arise?

You may not deviate from the 13-month testing schedules specified in §113.2141(b) and §113.2143(b)(1) of this title (relating to What schedule must I follow for the stack testing? and May I conduct stack testing less often?) unless you apply to the executive director for an alternative schedule, and the executive director approves your request for alternate scheduling prior to the date on which you would otherwise have been required to conduct the next stack test.

§113.2145. Must I meet other requirements for continuous monitoring?

You must also monitor three operating parameters:

- (1) Load level of each municipal waste combustion unit.
- (2) Temperature of flue gases at the inlet of your particulate matter air pollution control device.
- (3) Carbon feed rate if activated carbon is used to control dioxins/furans or mercury emissions.

§113.2146. How do I monitor the load of my municipal waste combustion unit?

(a) If your municipal waste combustion unit generates steam, you must install, calibrate, maintain, and operate a steam flowmeter or a feed water flowmeter and meet five requirements:

- (1) Continuously measure and record the measurements of steam (or feed water) in kilograms (or pounds) per hour.
- (2) Calculate your steam (or feed water) flow in 4-hour block averages.



(3) Calculate the steam (or feed water) flow rate using the method in "American Society of Mechanical Engineers Power Test Codes: Test Code for Steam Generating Units, Power Test Code 4.1 - 1964 (R1991)," section 4 (incorporated by reference in 40 Code of Federal Regulations (CFR) §60.17(h)(2)).

(4) Design, construct, install, calibrate, and use nozzles or orifices for flow rate measurements, using the recommendations in "American Society of Mechanical Engineers Interim Supplement 19.5 on Instruments and Apparatus: Application, Part II of Fluid Meters," 6th Edition (1971), chapter 4 (incorporated by reference in 40 CFR §60.17(h)(3)).

(5) Before each dioxins/furans stack test, or at least once a year, calibrate all signal conversion elements associated with steam (or feed water) flow measurements according to the manufacturer instructions.

(b) If your municipal waste combustion units do not generate steam, or, if your municipal waste combustion units have shared steam systems and steam load cannot be estimated per unit, you must determine, to the satisfaction of the executive director, one or more operating parameters that can be used to continuously estimate load level (for example, the feed rate of municipal solid waste or refuse-derived fuel). You must continuously monitor the selected parameters.

§113.2147. How do I monitor the temperature of flue gases at the inlet of my particulate matter control device?

You must install, calibrate, maintain, and operate a device to continuously measure the temperature of the flue gas stream at the inlet of each particulate matter control device.

§113.2148. How do I monitor the injection rate of activated carbon?

If your municipal waste combustion unit uses activated carbon to control dioxins/furans or mercury emissions, you must meet three requirements:

(1) Select a carbon injection system operating parameter that can be used to calculate carbon feed rate (for example, screw feeder speed).

(2) During each dioxins/furans and mercury stack test, determine the average carbon feed rate in kilograms (or pounds) per hour. Also, determine the average operating parameter level that correlates to the carbon feed rate. Establish a relationship between the operating parameter and the carbon feed rate in order to calculate the carbon feed rate based on the operating parameter level.

(3) Continuously monitor the selected operating parameter during all periods when the municipal waste combustion unit is operating and combusting waste and calculate the 8-hour block average carbon feed rate in kilograms (or pounds) per hour, based on the selected operating parameter. When calculating the 8-hour block average, do two things:

(A) Exclude hours when the municipal waste combustion unit is not operating.

(B) Include hours when the municipal waste combustion unit is operating but the carbon feed system is not working correctly.

§113.2149. What is the minimum amount of monitoring data I must collect with my continuous parameter monitoring systems and is the data collection requirement enforceable?

(a) Where continuous parameter monitoring systems are used, obtain 1-hour arithmetic averages for three parameters:

(1) Load level of the municipal waste combustion unit.

(2) Temperature of the flue gases at the inlet of your particulate matter control device.

(3) Carbon feed rate if activated carbon is used to control dioxins/furans or mercury emissions.

(b) Obtain at least two data points per hour in order to calculate a valid 1-hour arithmetic average.

(c) Obtain valid 1-hour averages for at least 75 percent of the operating hours per day for 90 percent of the operating days per calendar quarter. An operating day is any day the unit combusts any municipal solid waste or refuse-derived fuel.

(d) If you do not obtain the minimum data required in subsections (a) through (c) of this section, you are in violation of the data collection requirement, and you must notify the executive director according to §113.2161(5) of this title (relating to What must I include in my annual report?).

§113.2150. What records must I keep?

You must keep four types of records:

- (1) Operator training and certification.
- (2) Stack tests.
- (3) Continuously monitored pollutants and parameters.
- (4) Carbon feed rate.

§113.2151. Where must I keep my records and for how long?

(a) Keep all records onsite in paper copy or electronic format unless the executive director approves another format.

(b) Keep all records on each municipal waste combustion unit for at least 5 years.

(c) Make all records available for submittal to the executive director, or for onsite review by an inspector.

§113.2152. What records must I keep for operator training and certification?

You must keep records of six items:

(1) Records of provisional certifications. Include three items:

(A) For your municipal waste combustion plant, names of the chief facility operator, shift supervisors, and control room operators who are provisionally certified by the American Society of Mechanical Engineers or an equivalent state-approved certification program.

(B) Dates of the initial provisional certifications.

(C) Documentation showing current provisional certifications.

(2) Records of full certifications. Include three items:

(A) For your municipal waste combustion plant, names of the chief facility operator, shift supervisors, and control room operators who are fully certified by the American Society of Mechanical Engineers or an equivalent state-approved certification program.

(B) Dates of initial and renewal full certifications.

(C) Documentation showing current full certifications.

(3) Records showing completion of the operator training course. Include three items:

(A) For your municipal waste combustion plant, names of the chief facility operator, shift supervisors, and control room oper-

ators who have completed the United States Environmental Protection Agency or state municipal waste combustion operator training course.

(B) Dates of completion of the operator training course.

(C) Documentation showing completion of operator training course.

(4) Records of reviews for plant-specific operating manuals. Include three items:

(A) Names of persons who have reviewed the operating manual.

(B) Date of the initial review.

(C) Dates of subsequent annual reviews.

(5) Records of when a certified operator is temporarily off-site. Include two main items:

(A) If the certified chief facility operator and certified shift supervisor are offsite for more than 12 hours, but for 2 weeks or less, and no other certified operator is onsite, record the dates that the certified chief facility operator and certified shift supervisor were offsite.

(B) When all certified chief facility operators and certified shift supervisors are offsite for more than 2 weeks and no other certified operator is onsite, keep records of four items:

(i) Your notice that all certified persons are offsite.

(ii) The conditions that cause those people to be off-site.

(iii) The corrective actions you are taking to ensure a certified chief facility operator or certified shift supervisor is onsite.

(iv) Copies of the written reports submitted every 4 weeks that summarize the actions taken to ensure that a certified chief facility operator or certified shift supervisor will be onsite.

(6) Records of calendar dates. Include the calendar date on each record.

§113.2153. What records must I keep for stack tests?

For stack tests required under §113.2139 of this title (relating to What types of stack tests must I conduct?), you must keep records of four items:

(1) The results of the stack tests for eight pollutants or parameters recorded in the appropriate units of measure specified in Table 2 or 4 in §113.2174 of this title (relating to Tables Relating to Division 3):

(A) Dioxins/furans.

(B) Cadmium.

(C) Lead.

(D) Mercury.

(E) Opacity.

(F) Particulate matter.

(G) Hydrogen chloride.

(H) Fugitive ash.

(2) Test reports including supporting calculations that document the results of all stack tests.

(3) The maximum demonstrated load of your municipal waste combustion units and maximum temperature at the inlet of your

particulate matter control device during all stack tests for dioxins/furans emissions.

(4) The calendar date of each record.

§113.2154. What records must I keep for continuously monitored pollutants or parameters?

You must keep records of eight items.

(1) Records of monitoring data. Document six parameters measured using continuous monitoring systems:

(A) All 6-minute average levels of opacity.

(B) All 1-hour average concentrations of sulfur dioxide emissions.

(C) For Class I municipal waste combustion units only, all 1-hour average concentrations of nitrogen oxides emissions.

(D) All 1-hour average concentrations of carbon monoxide emissions.

(E) All 1-hour average load levels of your municipal waste combustion unit.

(F) All 1-hour average flue gas temperatures at the inlet of the particulate matter control device.

(2) Records of average concentrations and percent reductions. Document five parameters:

(A) All 24-hour daily block geometric average concentrations of sulfur dioxide emissions or average percent reductions of sulfur dioxide emissions.

(B) For Class I municipal waste combustion units only, all 24-hour daily arithmetic average concentrations of nitrogen oxides emissions.

(C) All 4-hour block or 24-hour daily block arithmetic average concentrations of carbon monoxide emissions.

(D) All 4-hour block arithmetic average load levels of your municipal waste combustion unit.

(E) All 4-hour block arithmetic average flue gas temperatures at the inlet of the particulate matter control device.

(3) Records of exceedances. Document three items:

(A) Calendar dates whenever any of the five pollutant or parameter levels recorded in paragraph (2) of this section or the opacity level recorded in paragraph (1)(A) of this section did not meet the emission limits or operating levels specified in this division.

(B) Reasons you exceeded the applicable emission limits or operating levels.

(C) Corrective actions you took, or are taking, to meet the emission limits or operating levels.

(4) Records of minimum data. Document three items:

(A) Calendar dates for which you did not collect the minimum amount of data required under §113.2134 and §113.2149 of this title (relating to What is the minimum amount of monitoring data I must collect with my continuous emission monitoring systems and is the data collection requirement enforceable? and What is the minimum amount of data I must collect with my continuous parameter monitoring systems and is the data collection requirement enforceable?). Record those dates for five types of pollutants and parameters:

(i) Sulfur dioxide emissions.

(ii) For Class I municipal waste combustion units only, nitrogen oxides emissions.

(iii) Carbon monoxide emissions.

(iv) Load levels of your municipal waste combustion unit.

(v) Temperatures of the flue gases at the inlet of the particulate matter control device.

(B) Reasons you did not collect the minimum data.

(C) Corrective actions you took or are taking to obtain the required amount of data.

(5) Records of exclusions. Document each time you have excluded data from your calculation of averages for any of the following five pollutants or parameters and the reasons the data were excluded:

(A) Sulfur dioxide emissions.

(B) For Class I municipal waste combustion units only, nitrogen oxides emissions.

(C) Carbon monoxide emissions.

(D) Load levels of your municipal waste combustion unit.

(E) Temperatures of the flue gases at the inlet of the particulate matter control device.

(6) Records of drift and accuracy. Document the results of your daily drift tests and quarterly accuracy determinations according to Procedure 1 of 40 Code of Federal Regulations Part 60, Appendix F. Keep those records for the sulfur dioxide, nitrogen oxides (Class I municipal waste combustion units only), and carbon monoxide continuous emissions monitoring systems.

(7) Records of the relationship between oxygen and carbon dioxide. If you choose to monitor carbon dioxide instead of oxygen as a diluent gas, document the relationship between oxygen and carbon dioxide, as specified in §113.2133 of this title (relating to What must I do if I choose to monitor carbon dioxide instead of oxygen as a diluent gas?).

(8) Records of calendar dates. Include the calendar date on each record.

§113.2155. What records must I keep for municipal waste combustion units that use activated carbon?

For municipal waste combustion units that use activated carbon to control dioxins/furans or mercury emissions, you must keep records of five items:

(1) Records of average carbon feed rate. Document five items:

(A) Average carbon feed rate in kilograms (or pounds) per hour during all stack tests for dioxins/furans and mercury emissions. Include supporting calculations in the records.

(B) For the operating parameter chosen to monitor carbon feed rate, average operating level during all stack tests for dioxins/furans and mercury emissions. Include supporting data that document the relationship between the operating parameter and the carbon feed rate.

(C) All 8-hour block average carbon feed rates in kilograms (or pounds) per hour calculated from the monitored operating parameter.

(D) Total carbon purchased and delivered to the municipal waste combustion plant for each calendar quarter. If you choose to evaluate total carbon purchased and delivered on a municipal waste combustion unit basis, record the total carbon purchased and delivered for each individual municipal waste combustion unit at your plant. Include supporting documentation.

(E) Required quarterly usage of carbon for the municipal waste combustion plant, calculated using equation 4 or 5 in §113.2171(f) of this title (relating to What equations must I use?). If you choose to evaluate required quarterly usage for carbon on a municipal waste combustion unit basis, record the required quarterly usage for each municipal waste combustion unit at your plant. Include supporting calculations.

(2) Records of low carbon feed rates. Document three items:

(A) The calendar dates when the average carbon feed rate over an 8-hour block was less than the average carbon feed rates determined during the most recent stack test for dioxins/furans or mercury emissions (whichever has a higher feed rate).

(B) Reasons for the low carbon feed rates.

(C) Corrective actions you took or are taking to meet the 8-hour average carbon feed rate requirement.

(3) Records of minimum carbon feed rate data. Document three items:

(A) Calendar dates for which you did not collect the minimum amount of carbon feed rate data required under §113.2149 of this title (relating to What is the minimum amount of monitoring data I must collect with my continuous parameter monitoring systems and is the data collection requirement enforceable?).

(B) Reasons you did not collect the minimum data.

(C) Corrective actions you took or are taking to get the required amount of data.

(4) Records of exclusions. Document each time you have excluded data from your calculation of average carbon feed rates and the reasons the data were excluded.

(5) Records of calendar dates. Include the calendar date on each record.

§113.2156. What reports must I submit and in what form?

(a) Submit an initial report and annual reports, plus semiannual reports for any emission or parameter level that does not meet the limits specified in this division.

(b) Submit all reports on paper, postmarked on or before the submittal dates in §§113.2158, 113.2160, and 113.2163 of this title (relating to When must I submit the initial report?, When must I submit the annual report?, and If a semiannual report is required, when must I submit it?). If the executive director agrees, you may submit electronic reports, as specified in Chapter 19 of this title (relating to Electronic Reporting).

(c) Keep a copy of all reports required by §§113.2159, 113.2161, and 113.2164 of this title (relating to What must I include in my initial report?, What must I include in my annual report?, and What must I include in the semiannual out-of-compliance reports?) onsite for 5 years.

§113.2157. What are the appropriate units of measurement for reporting my data?

See Tables 2, 3, 4, and 5 in §113.2174 of this title (relating to Tables Relating to Division 3) for appropriate units of measurement.

§113.2158. When must I submit the initial report?

As specified in 40 Code of Federal Regulations §60.7(c), submit your initial report by 180 days after your final compliance date.

§113.2159. What must I include in my initial report?

You must include seven items:

(1) The emission levels measured on the date of the initial evaluation of your continuous emission monitoring systems for all of the following five pollutants or parameters as recorded in accordance with §113.2154(2) of this title (relating to What records must I keep for continuously monitored pollutants or parameters?).

(A) The 24-hour daily geometric average concentration of sulfur dioxide emissions or the 24-hour daily geometric percent reduction of sulfur dioxide emissions.

(B) For Class I municipal waste combustion units only, the 24-hour daily arithmetic average concentration of nitrogen oxides emissions.

(C) The 4-hour block or 24-hour daily arithmetic average concentration of carbon monoxide emissions.

(D) The 4-hour block arithmetic average load level of your municipal waste combustion unit.

(E) The 4-hour block arithmetic average flue gas temperature at the inlet of the particulate matter control device.

(2) The results of the initial stack tests for eight pollutants or parameters (use appropriate units as specified in Table 2 or 4 in §113.2174 of this title (relating to Tables Relating to Division 3)):

(A) Dioxins/furans.

(B) Cadmium.

(C) Lead.

(D) Mercury.

(E) Opacity.

(F) Particulate matter.

(G) Hydrogen chloride.

(H) Fugitive ash.

(3) The test report that documents the initial stack tests including supporting calculations.

(4) The initial performance evaluation of your continuous emissions monitoring systems. Use the applicable performance specifications in 40 Code of Federal Regulations Part 60, Appendix B in conducting the evaluation.

(5) The maximum demonstrated load of your municipal waste combustion unit and the maximum demonstrated temperature of the flue gases at the inlet of the particulate matter control device. Use values established during your initial stack test for dioxins/furans emissions and include supporting calculations.

(6) If your municipal waste combustion unit uses activated carbon to control dioxins/furans or mercury emissions, the average carbon feed rates that you recorded during the initial stack tests for dioxins/furans and mercury emissions. Include supporting calculations as specified in §113.2155(1)(A) and (B) of this title (relating to What records must I keep for municipal waste combustion units that use activated carbon?).

(7) If you choose to monitor carbon dioxide instead of oxygen as a diluent gas, documentation of the relationship between oxygen

and carbon dioxide, as specified in §113.2133 of this title (relating to What must I do if I choose to monitor carbon dioxide instead of oxygen as a diluent gas?).

§113.2160. When must I submit the annual report?

Submit the annual report no later than February 1 of each year that follows the calendar year in which you collected the data. If you have an operating permit for any unit under Title V of the Federal Clean Air Act, the permit may require you to submit semiannual reports. Title 40 Code of Federal Regulations Part 70 contains program requirements for permits.

§113.2161. What must I include in my annual report?

Summarize data collected for all pollutants and parameters regulated under this division. Your summary must include twelve items:

(1) The results of the annual stack test, using appropriate units, for eight pollutants, as recorded under §113.2153(1) of this title (relating to What records must I keep for stack tests?):

(A) Dioxins/furans.

(B) Cadmium.

(C) Lead.

(D) Mercury.

(E) Opacity.

(F) Particulate matter.

(G) Hydrogen chloride.

(H) Fugitive ash.

(2) A list of the highest average levels recorded, in the appropriate units. List those values for five pollutants or parameters:

(A) Sulfur dioxide emissions.

(B) For Class I municipal waste combustion units only, nitrogen oxides emissions.

(C) Carbon monoxide emissions.

(D) Load level of the municipal waste combustion unit.

(E) Temperature of the flue gases at the inlet of the particulate matter air pollution control device (4-hour block average).

(3) The highest 6-minute opacity level measured. Base the value on all 6-minute average opacity levels recorded by your continuous opacity monitoring system (§113.2154(1)(A) of this title (relating to What records must I keep for continuously monitored pollutants or parameters?)).

(4) For municipal waste combustion units that use activated carbon for controlling dioxins/furans or mercury emissions, include four records:

(A) The average carbon feed rates recorded during the most recent dioxins/furans and mercury stack tests.

(B) The lowest 8-hour block average carbon feed rate recorded during the year.

(C) The total carbon purchased and delivered to the municipal waste combustion plant for each calendar quarter. If you choose to evaluate total carbon purchased and delivered on a municipal waste combustion unit basis, record the total carbon purchased and delivered for each individual municipal waste combustion unit at your plant.

(D) The required quarterly carbon usage of your municipal waste combustion plant calculated using equation 4 or 5 in

§113.2171(f) of this title (relating to What equations must I use?). If you choose to evaluate required quarterly usage for carbon on a municipal waste combustion unit basis, record the required quarterly usage for each municipal waste combustion unit at your plant.

(5) The total number of days that you did not obtain the minimum number of hours of data for six pollutants or parameters. Include the reasons you did not obtain the data and corrective actions that you have taken to obtain the data in the future. Include data on:

(A) Sulfur dioxide emissions.

(B) For Class I municipal waste combustion units only, nitrogen oxides emissions.

(C) Carbon monoxide emissions.

(D) Load level of the municipal waste combustion unit.

(E) Temperature of the flue gases at the inlet of the particulate matter air pollution control device.

(F) Carbon feed rate.

(6) The number of hours you have excluded data from the calculation of average levels (include the reasons for excluding it). Include data for six pollutants or parameters:

(A) Sulfur dioxide emissions.

(B) For Class I municipal waste combustion units only, nitrogen oxides emissions.

(C) Carbon monoxide emissions.

(D) Load level of the municipal waste combustion unit.

(E) Temperature of the flue gases at the inlet of the particulate matter air pollution control device.

(F) Carbon feed rate.

(7) A notice of your intent to begin a reduced stack testing schedule for dioxins/furans emissions during the following calendar year if you are eligible for alternative scheduling (§113.2143(a) or (b) of this title (relating to May I conduct stack testing less often?)).

(8) A notice of your intent to begin a reduced stack testing schedule for other pollutants during the following calendar year if you are eligible for alternative scheduling (§113.2143(a) of this title).

(9) A summary of any emission or parameter level that did not meet the limits specified in this division.

(10) A summary of the data in paragraphs (1) through (4) of this section from the year preceding the reporting year which gives the executive director a summary of the performance of the municipal waste combustion unit over a 2-year period.

(11) If you choose to monitor carbon dioxide instead of oxygen as a diluent gas, documentation of the relationship between oxygen and carbon dioxide, as specified in §113.2133 of this title (relating to What must I do if I choose to monitor carbon dioxide instead of oxygen as a diluent gas?).

(12) Documentation of periods when all certified chief facility operators and certified shift supervisors are offsite for more than 12 hours.

§113.2162. What must I do if I am out of compliance with the requirements of this division?

You must submit a semiannual report on any recorded emission or parameter level that does not meet the requirements specified in this division.

§113.2163. If a semiannual report is required, when must I submit it?

(a) For data collected during the first half of a calendar year, submit your semiannual report by August 1 of that year.

(b) For data you collected during the second half of the calendar year, submit your semiannual report by February 1 of the following year.

§113.2164. What must I include in the semiannual out-of-compliance reports?

You must include three items in the semiannual report:

(1) For any of the following six pollutants or parameters that exceeded the limits specified in this division, include the calendar date they exceeded the limits, the averaged and recorded data for that date, the reasons for exceeding the limits, and your corrective actions:

(A) Concentration or percent reduction of sulfur dioxide emissions.

(B) For Class I municipal waste combustion units only, concentration of nitrogen oxides emissions.

(C) Concentration of carbon monoxide emissions.

(D) Load level of your municipal waste combustion unit.

(E) Temperature of the flue gases at the inlet of your particulate matter air pollution control device.

(F) Average 6-minute opacity level. The data obtained from your continuous opacity monitoring system are not used to determine compliance with the limit on opacity emissions.

(2) If the results of your annual stack tests (as recorded in §113.2153(1) of this title (relating to What records must I keep for stack tests?)) show emissions above the limits specified in Table 2 or 4 in §113.2174 of this title (relating to Tables Relating to Division 3) as applicable for dioxins/furans, cadmium, lead, mercury, particulate matter, opacity, hydrogen chloride, and fugitive ash, include a copy of the test report that documents the emission levels and your corrective actions.

(3) For municipal waste combustion units that apply activated carbon to control dioxins/furans or mercury emissions, include two items:

(A) Documentation of all dates when the 8-hour block average carbon feed rate (calculated from the carbon injection system operating parameter) is less than the highest carbon feed rate established during the most recent mercury and dioxins/furans stack test (as specified in §113.2155(1)(A) of this title (relating to What records must I keep for municipal waste combustion units that use activated carbon?)). Include four items:

(i) Eight-hour average carbon feed rate.

(ii) Reasons for occurrences of low carbon feed rates.

(iii) The corrective actions you have taken to meet the carbon feed rate requirement.

(iv) The calendar date.

(B) Documentation of each quarter when total carbon purchased and delivered to the municipal waste combustion plant is less than the total required quarterly usage of carbon. If you choose to evaluate total carbon purchased and delivered on a municipal waste combustion unit basis, record the total carbon purchased and delivered for each individual municipal waste combustion unit at your plant. Include five items:

- plant.
- (i) Amount of carbon purchased and delivered to the
  - (ii) Required quarterly usage of carbon.
  - (iii) Reasons for not meeting the required quarterly usage of carbon.
  - (iv) The corrective actions you have taken to meet the required quarterly usage of carbon.
  - (v) The calendar date.

§113.2165. Can reporting dates be changed?

- (a) If the executive director agrees, you may change the semi-annual or annual reporting dates.
- (b) See 40 Code of Federal Regulations §60.19(c) for procedures to seek approval to change your reporting date.

§113.2166. What is an air curtain incinerator?

An air curtain incinerator operates by forcefully projecting a curtain of air across an open chamber or open pit in which combustion occurs. Incinerators of that type can be constructed above or below ground and with or without refractory walls and floor.

§113.2167. What is yard waste?

Yard waste is grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs. They come from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands. Yard waste does not include two items:

- (1) Construction, renovation, and demolition wastes that are exempt from the definition of "Municipal solid waste" in §113.2100 of this title (relating to Definitions).
- (2) Clean wood that is exempt from the definition of "Municipal solid waste" in §113.2100 of this title.

§113.2168. What are the emission limits for air curtain incinerators that burn 100 percent yard waste?

If your air curtain incinerator combusts 100 percent yard waste, you must only meet the emission limits in this section.

- (1) By 180 days after your final compliance date, you must meet two limits:
  - (A) The opacity limit is 10 percent (6-minute average) for air curtain incinerators that can combust at least 35 tons per day of municipal solid waste and no more than 250 tons per day of municipal solid waste.
  - (B) The opacity limit is 35 percent (6-minute average) during the startup period that is within the first 30 minutes of operation.
- (2) Except during malfunctions, the requirements of this division apply at all times. Each malfunction must not exceed 3 hours.

§113.2169. How must I monitor opacity for air curtain incinerators that burn 100 percent yard waste?

- (a) Use United States Environmental Protection Agency Reference Method 9 in 40 Code of Federal Regulations (CFR) Part 60, Appendix A to determine compliance with the opacity limit.
- (b) Conduct an initial test for opacity as specified in 40 CFR §60.8.
- (c) After the initial test for opacity, conduct annual tests no more than 13 calendar months following the date of your previous test.

§113.2170. What are the recordkeeping and reporting requirements for air curtain incinerators that burn 100 percent yard waste?

- (a) Provide a notice of construction that includes four items:

- (1) Your intent to construct the air curtain incinerator.
- (2) Your planned initial startup date.
- (3) Types of fuels you plan to combust in your air curtain incinerator.

(4) The capacity of your incinerator, including supporting capacity calculations, as specified in §113.2171(d) and (e) of this title (relating to What equations must I use?).

(b) Keep records of results of all opacity tests onsite in either paper copy or electronic format unless the executive director approves another format.

- (c) Keep all records for each incinerator for at least 5 years.
- (d) Make all records available for submittal to the executive director or for onsite review by an inspector.
- (e) Submit the results (each 6-minute average) of the opacity tests by February 1 of the year following the year of the opacity emission test.

(f) Submit reports as a paper copy on or before the applicable submittal date. If the executive director agrees, you may submit reports on electronic media.

(g) If the executive director agrees, you may change the annual reporting dates (see 40 Code of Federal Regulations §60.19(c)).

(h) Keep a copy of all reports onsite for a period of 5 years.

§113.2171. What equations must I use?

(a) Concentration correction to 7 percent oxygen. Correct any pollutant concentration to 7 percent oxygen using equation 1 of this section:  
Figure: 30 TAC §113.2171(a)

(b) Percent reduction in potential mercury emissions. Calculate the percent reduction in potential mercury emissions (%P<sub>Hg</sub>) using equation 2 of this section:  
Figure: 30 TAC §113.2171(b)

(c) Percent reduction in potential hydrogen chloride emissions. Calculate the percent reduction in potential hydrogen chloride emissions (%P<sub>HCl</sub>) using equation 3 of this section:  
Figure: 30 TAC §113.2171(c)

(d) Capacity of a municipal waste combustion unit. For a municipal waste combustion unit that can operate continuously for 24-hour periods, calculate the municipal waste combustion unit capacity based on 24 hours of operation at the maximum charge rate. To determine the maximum charge rate, use one of two methods:

(1) For municipal waste combustion units with a design based on heat input capacity, calculate the maximum charging rate based on the maximum heat input capacity and one of two heating values:

(A) If your municipal waste combustion unit combusts refuse-derived fuel, use a heating value of 12,800 kilojoules per kilogram (5,500 British thermal units per pound).

(B) If your municipal waste combustion unit combusts municipal solid waste, use a heating value of 10,500 kilojoules per kilogram (4,500 British thermal units per pound).

(2) For municipal waste combustion units with a design not based on heat input capacity, use the maximum designed charging rate.

(e) Capacity of a batch municipal waste combustion unit. Calculate the capacity of a batch municipal waste combustion unit as the maximum design amount of municipal solid waste it can charge per

batch multiplied by the maximum number of batches it can process in 24 hours. Calculate the maximum number of batches by dividing 24 by the number of hours needed to process one batch. Retain fractional batches in the calculation. For example, if one batch requires 16 hours, the municipal waste combustion unit can combust 24/16, or 1.5 batches, in 24 hours.

(f) Quarterly carbon usage. If you use activated carbon to comply with the dioxins/furans or mercury limits, calculate the required quarterly usage of carbon using equation 4 of this section for plant basis or equation 5 of this section for unit basis:

(1) Plant basis.

Figure: 30 TAC §113.2171(f)(1)

(2) Unit basis.

Figure: 30 TAC §113.2171(f)(2)

§113.2172. Does this subpart require me to obtain an operating permit under Title V of the Federal Clean Air Act?

Yes. If you are subject to this division on the effective date of state plan approval or any time thereafter, you are required to apply for and obtain a Title V operating permit.

§113.2173. When must I submit a Title V permit application for my existing small municipal waste combustion unit?

(a) You must submit a complete Title V permit application within 12 months of when your source first becomes subject to a Title V permitting program. See 40 Code of Federal Regulations (CFR) §70.3(a) and (b) and §70.5(a)(1). As provided in the Federal Clean Air Act, §503(c), permitting authorities may establish permit application deadlines earlier than the 12-month deadline.

(b) If your existing small municipal waste combustion unit is not subject to an earlier permit application deadline, a complete Title V permit application must be submitted not later than the date 36 months after promulgation of 40 CFR Part 60, Subpart BBBB (December 6, 2003), or by the effective date of the applicable state, tribal, or federal operating permits program, whichever is later. For any existing small municipal waste combustion unit not subject to an earlier application deadline, this final application deadline applies regardless of when the federal plan is effective, or when the relevant state or tribal Federal Clean Air Act, §111(d)/129 plan is approved by the United States Environmental Protection Agency and becomes effective. See the Federal Clean Air Act, §§129(e), 503(c), 503(d), and 502(a).

(c) A "complete" Title V permit application is one that has been determined or deemed complete by the relevant permitting authority under the Federal Clean Air Act, §503(d) and 40 CFR §70.5(a)(2). You must submit a complete permit application by the relevant application deadline in order to operate after this date in compliance with federal law. See the Federal Clean Air Act, §503(d) and §502(a); 40 CFR §70.7(b).

§113.2174. Tables Relating to Division 3.

(a) Table 1 of this subsection specifies the compliance schedules and increments of progress for Division 3 of this subchapter.  
Figure: 30 TAC §113.2174(a)

(b) Table 2 of this subsection specifies the Class I emission limits for existing small municipal waste combustion units for Division 3 of this subchapter.  
Figure: 30 TAC §113.2174(b)

(c) Table 3 of this subsection specifies the Class I nitrogen oxides emission limits for existing small municipal waste combustion units for Division 3 of this subchapter.  
Figure: 30 TAC §113.2174(c)

(d) Table 4 of this subsection specifies the Class II emission limits for existing small municipal waste combustion units for Division 3 of this subchapter.

Figure: 30 TAC §113.2174(d)

(e) Table 5 of this subsection specifies the carbon monoxide emission limits for existing small municipal waste combustion units for Division 3 of this subchapter.

Figure: 30 TAC §113.2174(e)

(f) Table 6 of this subsection specifies the requirements for validating continuous emission monitoring systems for Division 3 of this subchapter.

Figure: 30 TAC §113.2174(f)

(g) Table 7 of this subsection specifies the requirements for continuous emission monitoring systems for Division 3 of this subchapter.

Figure: 30 TAC §113.2174(g)

(h) Table 8 of this subsection specifies the requirements for stack tests for Division 3 of this subchapter.

Figure: 30 TAC §113.2174(h)

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

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Texas Commission on Environmental Quality

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For further information, please call: (512) 239-2548



#### DIVISION 4. EMISSIONS GUIDELINES AND COMPLIANCE TIMES FOR COMMERCIAL AND INDUSTRIAL SOLID WASTE INCINERATION UNITS THAT COMMENCED CONSTRUCTION ON OR BEFORE NOVEMBER 30, 1999

##### 30 TAC §§113.2200 - 113.2261

##### STATUTORY AUTHORITY

The new sections are proposed under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act. The new sections are also proposed under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to

prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants; and §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under the Texas Clean Air Act. The new sections are also proposed under the Texas Water Code, §7.002, Enforcement Authority, which authorizes the commission to institute legal proceedings to compel compliance; §7.032, Injunctive Relief, which provides that injunctive relief may be sought by the executive director; and §7.302, Grounds for Revocation or Suspension of Permit, which provides authority to the commission to revoke or suspend any air quality permit.

The proposed new sections implement Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.051.

§113.2200. Definitions.

Terms used but not defined in this division are defined in the Federal Clean Air Act and 40 Code of Federal Regulations Part 60, Subparts A and B.

(1) Administrator--The administrator of the United States Environmental Protection Agency or his/her authorized representative or administrator of a state air pollution control agency.

(2) Agricultural waste--Vegetative agricultural materials such as nut and grain hulls and chaff (e.g., almond, walnut, peanut, rice, and wheat), bagasse, orchard prunings, corn stalks, coffee bean hulls and grounds, and other vegetative waste materials generated as a result of agricultural operations.

(3) Air curtain incinerator--An incinerator that operates by forcefully projecting a curtain of air across an open chamber or pit in which combustion occurs. Incinerators of this type can be constructed above or below ground and with or without refractory walls and floor. (Air curtain incinerators are not to be confused with conventional combustion devices with enclosed fireboxes and controlled air technology such as mass burn, modular, and fluidized bed combustors.)

(4) Auxiliary fuel--Natural gas, liquified petroleum gas, fuel oil, or diesel fuel.

(5) Bag leak detection system--An instrument that is capable of monitoring particulate matter loadings in the exhaust of a fabric filter (i.e., baghouse) in order to detect bag failures. A bag leak detection system includes, but is not limited to, an instrument that operates on triboelectric, light scattering, light transmittance, or other principle to monitor relative particulate matter loadings.

(6) Calendar quarter--Three consecutive months (nonoverlapping) beginning on: January 1, April 1, July 1, or October 1.

(7) Calendar year--365 consecutive days starting on January 1 and ending on December 31.

(8) Chemotherapeutic waste--Waste material resulting from the production or use of antineoplastic agents used for the purpose of stopping or reversing the growth of malignant cells.

(9) Clean lumber--Wood or wood products that have been cut or shaped and include wet, air-dried, and kiln-dried wood products. Clean lumber does not include wood products that have been painted, pigment-stained, or pressure-treated by compounds such as chromate copper arsenate, pentachlorophenol, and creosote.

(10) Commercial and industrial solid waste incineration (CISWI) unit--Any combustion device that combusts commercial and industrial waste, as defined in this division. The boundaries of a CISWI unit are defined as, but not limited to, the commercial or industrial solid waste fuel feed system, grate system, flue gas system, and bottom ash. The CISWI unit does not include air pollution control equipment or the stack. The CISWI unit boundary starts at the commercial and industrial solid waste hopper (if applicable) and extends through two areas:

(A) The combustion unit flue gas system, which ends immediately after the last combustion chamber.

(B) The combustion unit bottom ash system, which ends at the truck loading station or similar equipment that transfers the ash to final disposal. It includes all ash handling systems connected to the bottom ash handling system.

(11) Commercial and industrial waste--Solid waste combusted in an enclosed device using controlled flame combustion without energy recovery that is a distinct operating unit of any commercial or industrial facility (including field-erected, modular, and custom built incineration units operating with starved or excess air), or solid waste combusted in an air curtain incinerator without energy recovery that is a distinct operating unit of any commercial or industrial facility.

(12) Contained gaseous material--Gases that are in a container when that container is combusted.

(13) Cyclonic barrel burner--A combustion device for waste materials that is attached to a 55 gallon, open-head drum. The device consists of a lid, which fits onto and encloses the drum, and a blower that forces combustion air into the drum in a cyclonic manner to enhance the mixing of waste material and air.

(14) Deviation--Any instance in which an affected source subject to this division, or an owner or operator of such a source:

(A) Fails to meet any requirement or obligation established by this division, including but not limited to any emission limitation, operating limit, or operator qualification and accessibility requirements;

(B) Fails to meet any term or condition that is adopted to implement an applicable requirement in this division and that is included in the operating permit for any affected source required to obtain such a permit; or

(C) Fails to meet any emission limitation, operating limit, or operator qualification and accessibility requirement in this division during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by this division.

(15) Dioxins/furans--Tetra-through octachlorinated dibenzo-p-dioxins and dibenzofurans.

(16) Discard--For purposes of this division, only, burned in an incineration unit without energy recovery.

(17) Drum reclamation unit--A unit that burns residues out of drums (e.g., 55 gallon drums) so that the drums can be reused.

(18) Energy recovery--The process of recovering thermal energy from combustion for useful purposes such as steam generation or process heating.

(19) Fabric filter--An add-on air pollution control device used to capture particulate matter by filtering gas streams through filter media, also known as a baghouse.



(20) Low-level radioactive waste--Waste material which contains radioactive nuclides emitting primarily beta or gamma radiation, or both, in concentrations or quantities that exceed applicable federal or state standards for unrestricted release. Low-level radioactive waste is not high-level radioactive waste, spent nuclear fuel, or by-product material as defined by the Atomic Energy Act of 1954 (42 United States Code, §2014(e)(2)).

(21) Malfunction--Any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused, in part, by poor maintenance or careless operation are not malfunctions.

(22) Modification or modified commercial and industrial solid waste incineration (CISWI) unit--A CISWI unit you have changed later than June 1, 2001, and that meets one of two criteria:

(A) The cumulative cost of the changes over the life of the unit exceeds 50 percent of the original cost of building and installing the CISWI unit (not including the cost of land) updated to current costs (current dollars). To determine what systems are within the boundary of the CISWI unit used to calculate these costs, see the definition of CISWI unit.

(B) Any physical change in the CISWI unit or change in the method of operating it that increases the amount of any air pollutant emitted for which the Federal Clean Air Act, §111 or §129 has established standards.

(23) Part reclamation unit--A unit that burns coatings off parts (e.g., tools, equipment) so that the parts can be reconditioned and reused.

(24) Particulate matter--Total particulate matter emitted from commercial and industrial solid waste incineration units as measured by Method 5 or Method 29 of 40 Code of Federal Regulations Part 60, Appendix A.

(25) Pathological waste--Waste material consisting of only human or animal remains, anatomical parts, and/or tissue, the bags/containers used to collect and transport the waste material, and animal bedding (if applicable).

(26) Rack reclamation unit--A unit that burns the coatings off racks used to hold small items for application of a coating. The unit burns the coating overspray off the rack so the rack can be reused.

(27) Reconstruction--Rebuilding a commercial and industrial solid waste incineration (CISWI) unit and meeting two criteria:

(A) The reconstruction begins on or after June 1, 2001.

(B) The cumulative cost of the construction over the life of the incineration unit exceeds 50 percent of the original cost of building and installing the CISWI unit (not including land) updated to current costs (current dollars). To determine what systems are within the boundary of the CISWI unit used to calculate these costs, see the definition of CISWI unit.

(28) Refuse-derived fuel--A type of municipal solid waste produced by processing municipal solid waste through shredding and size classification. This includes all classes of refuse-derived fuel including two fuels:

(A) Low-density fluff refuse-derived fuel through densified refuse-derived fuel.

(B) Pelletized refuse-derived fuel.

(29) Shutdown--The period of time after all waste has been combusted in the primary chamber.

(30) Solid waste--Any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under the Federal Water Pollution Control Act, §402, as amended (33 United States Code (USC), §1342), or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended (42 USC, §2014). For purposes of this division, only, solid waste does not include the waste burned in the fifteen types of units described in 40 Code of Federal Regulations §60.2555.

(31) Standard conditions--When referring to units of measure, a temperature of 68 degrees Fahrenheit (20 degrees Celsius) and a pressure of 1 atmosphere (101.3 kilopascals).

(32) Startup period--The period of time between the activation of the system and the first charge to the unit.

(33) Wet scrubber--An add-on air pollution control device that utilizes an aqueous or alkaline scrubbing liquor to collect particulate matter (including nonvolatile metals and condensed organics) and/or to absorb and neutralize acid gases.

(34) Wood waste--Untreated wood and untreated wood products, including tree stumps (whole or chipped), trees, tree limbs (whole or chipped), bark, sawdust, chips, scraps, slabs, millings, and shavings. Wood waste does not include:

(A) Grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands.

(B) Construction, renovation, or demolition wastes.

(C) Clean lumber.

§113.2201. What are my requirements for meeting increments of progress and achieving final compliance?

If you plan to achieve compliance more than 1 year following the effective date of state plan approval, you must meet the two increments of progress specified in paragraphs (1) and (2) of this section.

(1) Submit a final control plan.

(2) Achieve final compliance.

§113.2202. When must I complete each increment of progress?

Table 1 in §113.2261 of this title (relating to Tables Relating to Division 4) specifies compliance dates for each of the increments of progress.

§113.2203. What must I include in the notifications of achievement of increments of progress?

Your notification of achievement of increments of progress must include the three items specified in paragraphs (1) through (3) of this section.

(1) Notification that the increment of progress has been achieved.

(2) Any items required to be submitted with each increment of progress.

(3) Signature of the owner or operator of the commercial and industrial solid waste incineration unit.

§113.2204. When must I submit the notifications of achievement of increments of progress?

Notifications for achieving increments of progress must be postmarked no later than 10 business days after the compliance date for the increment.

§113.2205. What if I do not meet an increment of progress?

If you fail to meet an increment of progress, you must submit a notification to the executive director postmarked within 10 business days after the date for that increment of progress in Table 1 in §113.2261 of this title (relating to Tables Relating to Division 4). You must inform the executive director that you did not meet the increment, and you must continue to submit reports each subsequent calendar month until the increment of progress is met.

§113.2206. How do I comply with the increment of progress for submittal of a control plan?

For your control plan increment of progress, you must satisfy the two requirements specified in paragraphs (1) and (2) of this section.

(1) Submit the final control plan that includes the five items described in subparagraphs (A) through (E) of this paragraph.

(A) A description of the devices for air pollution control and process changes that you will use to comply with the emission limitations and other requirements of this division.

(B) The type(s) of waste to be burned.

(C) The maximum design waste burning capacity.

(D) The anticipated maximum charge rate.

(E) If applicable, the petition for site-specific operating limits under §113.2222 of this title (relating to What if I do not use a wet scrubber to comply with the emission limitations?).

(2) Maintain an onsite copy of the final control plan.

§113.2207. How do I comply with the increment of progress for achieving final compliance?

For the final compliance increment of progress, you must complete all process changes and retrofit construction of control devices, as specified in the final control plan, so that, if the affected commercial and industrial solid waste incineration unit is brought online, all necessary process changes and air pollution control devices would operate as designed.

§113.2208. What must I do if I close my commercial and industrial solid waste incineration unit and then restart it?

(a) If you close your commercial and industrial solid waste incineration (CISWI) unit but will restart it prior to the final compliance date in your state plan, you must meet the increments of progress specified in §113.2201 of this title (relating to What are my requirements for meeting increments of progress and achieving final compliance?).

(b) If you close your CISWI unit but will restart it after your final compliance date, you must complete emission control retrofits and meet the emission limitations and operating limits on the date your unit restarts operation.

§113.2209. What must I do if I plan to permanently close my commercial and industrial solid waste incineration unit and not restart it?

If you plan to close your commercial and industrial solid waste incineration unit rather than comply with the state plan, submit a closure notification, including the date of closure, to the executive director by the date your final control plan is due.

§113.2210. What is a waste management plan?

A waste management plan is a written plan that identifies both the feasibility and the methods used to reduce or separate certain components

of solid waste from the waste stream in order to reduce or eliminate toxic emissions from incinerated waste.

§113.2211. When must I submit my waste management plan?

You must submit a waste management plan no later than the date specified in Table 1 in §113.2261 of this title (relating to Tables Relating to Division 4) for submittal of the final control plan.

§113.2212. What should I include in my waste management plan?

A waste management plan must include consideration of the reduction or separation of waste-stream elements such as paper, cardboard, plastics, glass, batteries, or metals; or the use of recyclable materials. The plan must identify any additional waste management measures, and the source must implement those measures considered practical and feasible, based on the effectiveness of waste management measures already in place, the costs of additional measures, the emissions reductions expected to be achieved, and any other environmental or energy impacts they might have.

§113.2213. What are the operator training and qualification requirements?

(a) No commercial and industrial solid waste incineration (CISWI) unit can be operated unless a fully trained and qualified CISWI unit operator is accessible, either at the facility or can be at the facility within 1 hour. The trained and qualified CISWI unit operator may operate the CISWI unit directly or be the direct supervisor of one or more other plant personnel who operate the unit. If all qualified CISWI unit operators are temporarily not accessible, you must follow the procedures in §113.2219 of this title (relating to What if all the qualified operators are temporarily not accessible?).

(b) Operator training and qualification must be obtained through a state-approved program or by completing the requirements included in subsection (c) of this section.

(c) Training must be obtained by completing an incinerator operator training course that includes, at a minimum, the three elements described in paragraphs (1) through (3) of this subsection.

(1) Training on the eleven subjects listed in subparagraphs (A) through (K) of this paragraph.

(A) Environmental concerns, including types of emissions.

(B) Basic combustion principles, including products of combustion.

(C) Operation of the specific type of incinerator to be used by the operator, including proper startup, waste charging, and shutdown procedures.

(D) Combustion controls and monitoring.

(E) Operation of air pollution control equipment and factors affecting performance (if applicable).

(F) Inspection and maintenance of the incinerator and air pollution control devices.

(G) Actions to correct malfunctions or conditions that may lead to malfunction.

(H) Bottom and fly ash characteristics and handling procedures.

(I) Applicable federal, state, and local regulations, including Occupational Safety and Health Administration workplace standards.

(J) Pollution prevention.

(K) Waste management practices.

(2) An examination designed and administered by the instructor.

(3) Written material covering the training course topics that can serve as reference material following completion of the course.

§113.2214. When must the operator training course be completed?

The operator training course must be completed by the later of the three dates specified in paragraphs (1) through (3) of this section.

(1) The final compliance date (Increment 2).

(2) Six months after commercial and industrial solid waste incineration (CISWI) unit startup.

(3) Six months after an employee assumes responsibility for operating the CISWI unit or assumes responsibility for supervising the operation of the CISWI unit.

§113.2215. How do I obtain my operator qualification?

(a) You must obtain operator qualification by completing a training course that satisfies the criteria under §113.2213(b) of this title (relating to What are the operator training and qualification requirements?).

(b) Qualification is valid from the date on which the training course is completed and the operator successfully passes the examination required under §113.2213(c)(2) of this title.

§113.2216. How do I maintain my operator qualification?

To maintain qualification, you must complete an annual review or refresher course covering, at a minimum, the five topics described in paragraphs (1) through (5) of this section.

(1) Update of regulations.

(2) Incinerator operation, including startup and shutdown procedures, waste charging, and ash handling.

(3) Inspection and maintenance.

(4) Responses to malfunctions or conditions that may lead to malfunction.

(5) Discussion of operating problems encountered by attendees.

§113.2217. How do I renew my lapsed operator qualification?

You must renew a lapsed operator qualification by one of the two methods specified in paragraphs (1) and (2) of this section.

(1) For a lapse of less than 3 years, you must complete a standard annual refresher course described in §113.2216 of this title (relating to How do I maintain my operator qualification?).

(2) For a lapse of 3 years or more, you must repeat the initial qualification requirements in §113.2215(a) of this title (relating to How do I obtain my operator qualification?).

§113.2218. What site-specific documentation is required?

(a) Documentation must be available at the facility and readily accessible for all commercial and industrial solid waste incineration (CISWI) unit operators that addresses the ten topics described in paragraphs (1) through (10) of this subsection. You must maintain this information and the training records required by subsection (c) of this section in a manner that they can be readily accessed and are suitable for inspection upon request.

(1) Summary of the applicable standards under this division.

(2) Procedures for receiving, handling, and charging waste.

(3) Incinerator startup, shutdown, and malfunction procedures.

(4) Procedures for maintaining proper combustion air supply levels.

(5) Procedures for operating the incinerator and associated air pollution control systems within the standards established under this division.

(6) Monitoring procedures for demonstrating compliance with the incinerator operating limits.

(7) Reporting and recordkeeping procedures.

(8) The waste management plan required under §§113.2210 through 113.2212 of this title (relating to What is a waste management plan? When must I submit my waste management plan? and What should I include in my waste management plan?).

(9) Procedures for handling ash.

(10) A list of the wastes burned during the performance test.

(b) You must establish a program for reviewing the information listed in subsection (a) of this section with each incinerator operator.

(1) The initial review of the information listed in subsection (a) of this section must be conducted by the later of the three dates specified in subparagraphs (A) through (C) of this paragraph.

(A) The final compliance date (Increment 2).

(B) Six months after CISWI unit startup.

(C) Six months after being assigned to operate the CISWI unit.

(2) Subsequent annual reviews of the information listed in subsection (a) of this section must be conducted no later than 12 months following the previous review.

(c) You must also maintain the information specified in paragraphs (1) through (3) of this subsection.

(1) Records showing the names of CISWI unit operators who have completed review of the information in subsection (a) of this section as required by subsection (b) of this section, including the date of the initial review and all subsequent annual reviews.

(2) Records showing the names of the CISWI operators who have completed the operator training requirements under §113.2213 of this title (relating to What are the operator training and qualification requirements?), met the criteria for qualification under §113.2215 of this title (relating to How do I obtain my operator qualification?), and maintained or renewed their qualification under §113.2216 or §113.2217 of this title (relating to How do I maintain my operator qualification? or How do I renew my lapsed operator qualification?). Records must include documentation of training, the dates of the initial refresher training, and the dates of their qualification and all subsequent renewals of such qualifications.

(3) For each qualified operator, the phone and/or pager number at which they can be reached during operating hours.

§113.2219. What if all the qualified operators are temporarily not accessible?

If all qualified operators are temporarily not accessible (i.e., not at the facility and not able to be at the facility within 1 hour), you must meet

one of the two criteria specified in paragraphs (1) and (2) of this section, depending on the length of time that a qualified operator is not accessible.

(1) When all qualified operators are not accessible for more than 8 hours, but less than 2 weeks, the commercial and industrial solid waste incineration (CISWI) unit may be operated by other plant personnel familiar with the operation of the CISWI unit who have completed a review of the information specified in §113.2218(a) of this title (relating to What site-specific documentation is required?) within the past 12 months. However, you must record the period when all qualified operators were not accessible and include this deviation in the annual report as specified under §113.2240 of this title (relating to What information must I include in my annual report?).

(2) When all qualified operators are not accessible for 2 weeks or more, you must take the two actions that are described in subparagraphs (A) and (B) of this paragraph.

(A) Notify the executive director of this deviation in writing within 10 days after the end of the 2-week period. In the notice, state what caused this deviation, what you are doing to ensure that a qualified operator is accessible, and when you anticipate that a qualified operator will be accessible.

(B) Submit a status report to the executive director every 4 weeks outlining what you are doing to ensure that a qualified operator is accessible, stating when you anticipate that a qualified operator will be accessible, and requesting approval from the executive director to continue operation of the CISWI unit. You must submit the first status report 4 weeks after you notify the executive director of the deviation under subparagraph (A) of this paragraph. If the executive director notifies you that your request to continue operation of the CISWI unit is disapproved, the CISWI unit may continue operation for 90 days, then must cease operation. Operation of the unit may resume if you meet the two requirements in clauses (i) and (ii) of this subparagraph.

(i) A qualified operator is accessible as required under §113.2213(a) of this title (relating to What are the operator training and qualification requirements?).

(ii) You notify the executive director that a qualified operator is accessible and that you are resuming operation.

*§113.2220. What emission limitations must I meet and by when?*

You must meet the emission limitations specified in Table 2 in §113.2261 of this title (relating to Tables Relating to Division 4) on the date the initial performance test is required or completed (whichever is earlier).

*§113.2221. What operating limits must I meet and by when?*

(a) If you use a wet scrubber to comply with the emission limitations, you must establish operating limits for four operating parameters (as specified in Table 3 in §113.2261 of this title (relating to Tables Relating to Division 4)) as described in paragraphs (1) through (4) of this subsection during the initial performance test.

(1) Maximum charge rate, calculated using one of the two different procedures in subparagraph (A) or (B) of this paragraph, as appropriate.

(A) For continuous and intermittent units, maximum charge rate is 110 percent of the average charge rate measured during the most recent performance test demonstrating compliance with all applicable emission limitations.

(B) For batch units, maximum charge rate is 110 percent of the daily charge rate measured during the most recent perfor-

mance test demonstrating compliance with all applicable emission limitations.

(2) Minimum pressure drop across the wet scrubber, which is calculated as 90 percent of the average pressure drop across the wet scrubber measured during the most recent performance test demonstrating compliance with the particulate matter emission limitations; or minimum amperage to the wet scrubber, which is calculated as 90 percent of the average amperage to the wet scrubber measured during the most recent performance test demonstrating compliance with the particulate matter emission limitations.

(3) Minimum scrubber liquor flow rate, which is calculated as 90 percent of the average liquor flow rate at the inlet to the wet scrubber measured during the most recent performance test demonstrating compliance with all applicable emission limitations.

(4) Minimum scrubber liquor pH, which is calculated as 90 percent of the average liquor pH at the inlet to the wet scrubber measured during the most recent performance test demonstrating compliance with the hydrogen chloride emission limitation.

(b) You must meet the operating limits established during the initial performance test on the date the initial performance test is required or completed (whichever is earlier).

(c) If you use a fabric filter to comply with the emission limitations, you must operate each fabric filter system such that the bag leak detection system alarm does not sound more than 5 percent of the operating time during a 6-month period. In calculating this operating time percentage, if inspection of the fabric filter demonstrates that no corrective action is required, no alarm time is counted. If corrective action is required, each alarm shall be counted as a minimum of 1 hour. If you take longer than 1 hour to initiate corrective action, the alarm time shall be counted as the actual amount of time taken by you to initiate corrective action.

*§113.2222. What if I do not use a wet scrubber to comply with the emission limitations?*

If you use an air pollution control device other than a wet scrubber, or limit emissions in some other manner, to comply with the emission limitations under §113.2220 of this title (relating to What emission limitations must I meet and by when?), you must petition the executive director for specific operating limits to be established during the initial performance test and continuously monitored thereafter. You must not conduct the initial performance test until after the petition has been approved by the executive director. Your petition must include the five items listed in paragraphs (1) through (5) of this section.

(1) Identification of the specific parameters you propose to use as additional operating limits.

(2) A discussion of the relationship between these parameters and emissions of regulated pollutants, identifying how emissions of regulated pollutants change with changes in these parameters, and how limits on these parameters will serve to limit emissions of regulated pollutants.

(3) A discussion of how you will establish the upper and/or lower values for these parameters which will establish the operating limits on these parameters.

(4) A discussion identifying the methods you will use to measure and the instruments you will use to monitor these parameters, as well as the relative accuracy and precision of these methods and instruments.

(5) A discussion identifying the frequency and methods for recalibrating the instruments you will use for monitoring these parameters.

§113.2223. What happens during periods of startup, shutdown, and malfunction?

(a) The emission limitations and operating limits apply at all times except during commercial and industrial solid waste incineration unit startups, shutdowns, or malfunctions.

(b) Each malfunction must last no longer than 3 hours.

§113.2224. How do I conduct the initial and annual performance test?

(a) All performance tests must consist of a minimum of three test runs conducted under conditions representative of normal operations.

(b) You must document that the waste burned during the performance test is representative of the waste burned under normal operating conditions by maintaining a log of the quantity of waste burned (as required in §113.2234(2)(A) of this title (relating to What records must I keep?)) and the types of waste burned during the performance test.

(c) All performance tests must be conducted using the minimum run duration specified in Table 2 in §113.2261 of this title (relating to Tables Relating to Division 4).

(d) Method 1 of 40 Code of Federal Regulations (CFR) Part 60, Appendix A must be used to select the sampling location and number of traverse points.

(e) Method 3A or 3B of 40 CFR Part 60, Appendix A must be used for gas composition analysis, including measurement of oxygen concentration. Method 3A or 3B of 40 CFR Part 60, Appendix A must be used simultaneously with each method.

(f) All pollutant concentrations, except for opacity, must be adjusted to 7 percent oxygen using equation 1 of this subsection: Figure: 30 TAC §113.2224(f)

(g) You must determine dioxins/furans toxic equivalency by following the procedures in paragraphs (1) through (3) of this subsection.

(1) Measure the concentration of each dioxin/furan tetra-through octa-congener emitted using United States Environmental Protection Agency Method 23 in 40 CFR Part 60, Appendix A.

(2) For each dioxin/furan congener measured in accordance with paragraph (1) of this subsection, multiply the congener concentration by its corresponding toxic equivalency factor specified in Table 4 in §113.2261 of this title.

(3) Sum the products calculated in accordance with paragraph (2) of this subsection to obtain the total concentration of dioxins/furans emitted in terms of toxic equivalency.

§113.2225. How are the performance test data used?

You use results of performance tests to demonstrate compliance with the emission limitations in Table 2 in §113.2261 of this title (relating to Tables Relating to Division 4).

§113.2226. How do I demonstrate initial compliance with the emission limitations and establish the operating limits?

You must conduct an initial performance test, as required under 40 Code of Federal Regulations §60.8, to determine compliance with the emission limitations in Table 2 in §113.2261 of this title (relating to Tables Relating to Division 4) and to establish operating limits using the procedure in §113.2221 or §113.2222 of this title (relating to What operating limits must I meet and by when? or What if I do not use a wet scrubber to comply with the emission limitations?). The initial performance test must be conducted using the test methods listed in Table 2

in §113.2261 of this title and the procedures in §113.2224 of this title (relating to How do I conduct the initial and annual performance test?).

§113.2227. By what date must I conduct the initial performance test?

The initial performance test must be conducted no later than 180 days after the deadline for your final compliance date. Your final compliance date is specified in Table 1 in §113.2261 of this title (relating to Tables Relating to Division 4).

§113.2228. How do I demonstrate continuous compliance with the emission limitations and the operating limits?

(a) You must conduct an annual performance test for particulate matter, hydrogen chloride, and opacity for each commercial and industrial solid waste incineration unit as required under 40 Code of Federal Regulations §60.8 to determine compliance with the emission limitations. The annual performance test must be conducted using the test methods listed in Table 2 in §113.2261 of this title (relating to Tables Relating to Division 4) and the procedures in §113.2224 of this title (relating to How do I conduct the initial and annual performance test?).

(b) You must continuously monitor the operating parameters specified in §113.2221 of this title (relating to What operating limits must I meet and by when?) or established under §113.2222 of this title (relating to What if I do not use a wet scrubber to comply with the emission limitations?). Operation above the established maximum or below the established minimum operating limits constitutes a deviation from the established operating limits. Three-hour rolling average values are used to determine compliance (except for baghouse leak detection system alarms) unless a different averaging period is established under §113.2222 of this title. Operating limits do not apply during performance tests.

(c) You must only burn the same types of waste used to establish operating limits during the performance test.

§113.2229. By what date must I conduct the annual performance test?

You must conduct annual performance tests for particulate matter, hydrogen chloride, and opacity within 12 months following the initial performance test. Conduct subsequent annual performance tests within 12 months following the previous one.

§113.2230. May I conduct performance testing less often?

(a) You can test less often for a given pollutant if you have test data for at least 3 years, and all performance tests for the pollutant (particulate matter, hydrogen chloride, or opacity) over 3 consecutive years show that you comply with the emission limitation. In this case, you do not have to conduct a performance test for that pollutant for the next 2 years. You must conduct a performance test during the third year and no more than 36 months following the previous performance test.

(b) If your commercial and industrial solid waste incineration unit continues to meet the emission limitation for particulate matter, hydrogen chloride, or opacity, you may choose to conduct performance tests for these pollutants every third year, but each test must be within 36 months of the previous performance test.

(c) If a performance test shows a deviation from an emission limitation for particulate matter, hydrogen chloride, or opacity, you must conduct annual performance tests for that pollutant until all performance tests over a 3-year period show compliance.

§113.2231. May I conduct a repeat performance test to establish new operating limits?

(a) Yes. You may conduct a repeat performance test at any time to establish new values for the operating limits. The executive director may request a repeat performance test at any time.

(b) You must repeat the performance test if your feed stream is different than the feed streams used during any performance test used to demonstrate compliance.

§113.2232. What monitoring equipment must I install and what parameters must I monitor?

(a) If you are using a wet scrubber to comply with the emission limitation under §113.2220 of this title (relating to What emission limitations must I meet and by when?), you must install, calibrate (to manufacturers' specifications), maintain, and operate devices (or establish methods) for monitoring the value of the operating parameters used to determine compliance with the operating limits listed in Table 3 in §113.2261 of this title (relating to Tables Relating to Division 4). These devices (or methods) must measure and record the values for these operating parameters at the frequencies indicated in Table 3 in §113.2261 of this title at all times except as specified in §113.2233(a) of this title (relating to Is there a minimum amount of monitoring data I must obtain?).

(b) If you use a fabric filter to comply with the requirements of this division, you must install, calibrate, maintain, and continuously operate a bag leak detection system as specified in paragraphs (1) through (8) of this subsection.

(1) You must install and operate a bag leak detection system for each exhaust stack of the fabric filter.

(2) Each bag leak detection system must be installed, operated, calibrated, and maintained in a manner consistent with the manufacturer's written specifications and recommendations.

(3) The bag leak detection system must be certified by the manufacturer to be capable of detecting particulate matter emissions at concentrations of 10 milligrams per actual cubic meter or less.

(4) The bag leak detection system sensor must provide output of relative or absolute particulate matter loadings.

(5) The bag leak detection system must be equipped with a device to continuously record the output signal from the sensor.

(6) The bag leak detection system must be equipped with an alarm system that will sound automatically when an increase in relative particulate matter emissions over a preset level is detected. The alarm must be located where it is easily heard by plant operating personnel.

(7) For positive pressure fabric filter systems, a bag leak detection system must be installed in each baghouse compartment or cell. For negative pressure or induced air fabric filters, the bag leak detector must be installed downstream of the fabric filter.

(8) Where multiple detectors are required, the system's instrumentation and alarm may be shared among detectors.

(c) If you are using something other than a wet scrubber to comply with the emission limitations under §113.2220 of this title, you must install, calibrate (to the manufacturers' specifications), maintain, and operate the equipment necessary to monitor compliance with the site-specific operating limits established using the procedures in §113.2222 of this title (relating to What if I do not use a wet scrubber to comply with the emission limitations?).

§113.2233. Is there a minimum amount of monitoring data I must obtain?

(a) Except for monitoring malfunctions, associated repairs, and required quality assurance or quality control activities (including, as applicable, calibration checks and required zero and span adjustments of the monitoring system), you must conduct all monitoring at

all times the commercial and industrial solid waste incineration unit is operating.

(b) Do not use data recorded during monitoring malfunctions, associated repairs, and required quality assurance or quality control activities for meeting the requirements of this division, including data averages and calculations. You must use all the data collected during all other periods in assessing compliance with the operating limits.

§113.2234. What records must I keep?

You must maintain the 13 items (as applicable) as specified in paragraphs (1) through (13) of this section for a period of at least 5 years:

(1) Calendar date of each record.

(2) Records of the data described in subparagraphs (A) through (F) of this paragraph:

(A) The commercial and industrial solid waste incineration (CISWI) unit charge dates, times, weights, and hourly charge rates.

(B) Liquor flow rate to the wet scrubber inlet every 15 minutes of operation, as applicable.

(C) Pressure drop across the wet scrubber system every 15 minutes of operation or amperage to the wet scrubber every 15 minutes of operation, as applicable.

(D) Liquor pH as introduced to the wet scrubber every 15 minutes of operation, as applicable.

(E) For affected CISWI units that establish operating limits for controls other than wet scrubbers under §113.2222 of this title (relating to What if I do not use a wet scrubber to comply with the emission limitations?), you must maintain data collected for all operating parameters used to determine compliance with the operating limits.

(F) If a fabric filter is used to comply with the emission limitations, you must record the date, time, and duration of each alarm and the time corrective action was initiated and completed, and a brief description of the cause of the alarm and the corrective action taken. You must also record the percent of operating time during each 6-month period that the alarm sounds, calculated as specified in §113.2221(c) of this title (relating to What operating limits must I meet and by when?).

(3) Identification of calendar dates and times for which monitoring systems used to monitor operating limits were inoperative, inactive, malfunctioning, or out of control (except for downtime associated with zero and span and other routine calibration checks). Identify the operating parameters not measured, the duration, reasons for not obtaining the data, and a description of corrective actions taken.

(4) Identification of calendar dates, times, and durations of malfunctions, and a description of the malfunction and the corrective action taken.

(5) Identification of calendar dates and times for which data show a deviation from the operating limits in Table 3 in §113.2261 of this title (relating to Tables Relating to Division 4) or a deviation from other operating limits established under §113.2222 of this title with a description of the deviations, reasons for such deviations, and a description of corrective actions taken.

(6) The results of the initial, annual, and any subsequent performance tests conducted to determine compliance with the emission limits and/or to establish operating limits, as applicable. Retain a copy of the complete test report including calculations.

(7) Records showing the names of CISWI unit operators who have completed review of the information in §113.2218(a) of this

title (relating to What site-specific documentation is required?) as required by §113.2218(b) of this title, including the date of the initial review and all subsequent annual reviews.

(8) Records showing the names of the CISWI operators who have completed the operator training requirements under §113.2213 of this title (relating to What are the operator training and qualification requirements?), met the criteria for qualification under §113.2215 of this title (relating to How do I obtain my operator qualification?), and maintained or renewed their qualification under §113.2216 or §113.2217 of this title (relating to How do I maintain my operator qualification? or How do I renew my lapsed operator qualification?). Records must include documentation of training, the dates of the initial and refresher training, and the dates of their qualification and all subsequent renewals of such qualifications.

(9) For each qualified operator, the phone and/or pager number at which they can be reached during operating hours.

(10) Records of calibration of any monitoring devices as required under §113.2232 of this title (relating to What monitoring equipment must I install and what parameters must I monitor?).

(11) Equipment vendor specifications and related operation and maintenance requirements for the incinerator, emission controls, and monitoring equipment.

(12) The information listed in §113.2218(a) of this title.

(13) On a daily basis, keep a log of the quantity of waste burned and the types of waste burned (always required).

§113.2235. *Where and in what format must I keep my records?*

All records must be available onsite in either paper copy or computer-readable format that can be printed upon request, unless an alternative format is approved by the executive director.

§113.2236. *What reports must I submit?*

See Table 5 in §113.2261 of this title (relating to Tables Relating to Division 4) for a summary of the reporting requirements.

§113.2237. *When must I submit my waste management plan?*

You must submit the waste management plan no later than the date specified in Table 1 in §113.2261 of this title (relating to Tables Relating to Division 4) for submittal of the final control plan.

§113.2238. *What information must I submit following my initial performance test?*

You must submit the information specified in paragraphs (1) through (3) of this section no later than 60 days following the initial performance test. All reports must be signed by the facilities manager.

(1) The complete test report for the initial performance test results obtained under §113.2226 of this title (relating to How do I demonstrate initial compliance with the emission limitations and establish the operating limits?), as applicable.

(2) The values for the site-specific operating limits established in §113.2221 or §113.2222 of this title (relating to What operating limits must I meet and by when? or What if I do not use a web scrubber to comply with the emission limitations?).

(3) If you are using a fabric filter to comply with the emission limitations, documentation that a bag leak detection system has been installed and is being operated, calibrated, and maintained as required by §113.2232(b) of this title (relating to What monitoring equipment must I install and what parameters must I monitor?).

§113.2239. *When must I submit my annual report?*

You must submit an annual report no later than 12 months following the submittal of the information in §113.2238 of this title (relating to What information must I submit following my initial performance test?). You must submit subsequent reports no more than 12 months following the previous report. (If the unit is subject to permitting requirements under Title V of the Federal Clean Air Act, you may be required by the permit to submit these reports more frequently.)

§113.2240. *What information must I include in my annual report?*

The annual report required under §113.2239 of this title (relating to When must I submit my annual report?) must include the ten items listed in paragraphs (1) through (10) of this section. If you have a deviation from the operating limits or the emission limitations, you must also submit deviation reports as specified in §§113.2241, 113.2242, and 113.2243 of this title (relating to What else must I report if I have a deviation from the operating limits or the emission limitations?, What must I include in the deviation report?, and What else must I report if I have a deviation from the requirement to have a qualified operator accessible?).

(1) Company name and address.

(2) Statement by a responsible official, with that official's name, title, and signature, certifying the accuracy of the content of the report.

(3) Date of report and beginning and ending dates of the reporting period.

(4) The values for the operating limits established pursuant to §113.2221 or §113.2222 of this title (relating to What operating limits must I meet and by when? or What if I do not use a wet scrubber to comply with the emission limitations?).

(5) If no deviation from any emission limitation or operating limit that applies to you has been reported, a statement that there was no deviation from the emission limitations or operating limits during the reporting period, and that no monitoring system used to determine compliance with the operating limits was inoperative, inactive, malfunctioning, or out of control.

(6) The highest recorded 3-hour average and the lowest recorded 3-hour average, as applicable, for each operating parameter recorded for the calendar year being reported.

(7) Information recorded under §113.2234(2)(F) and (3) through (5) of this title (relating to What records must I keep?) for the calendar year being reported.

(8) If a performance test was conducted during the reporting period, the results of that test.

(9) If you met the requirements of §113.2230(a) or (b) of this title (relating to May I conduct performance testing less often?), and did not conduct a performance test during the reporting period, you must state that you met the requirements of §113.2230(a) or (b) of this title, and, therefore, you were not required to conduct a performance test during the reporting period.

(10) Documentation of periods when all qualified commercial and industrial solid waste incineration unit operators were unavailable for more than 8 hours, but less than 2 weeks.

§113.2241. *What else must I report if I have a deviation from the operating limits or the emission limitations?*

(a) You must submit a deviation report if any recorded 3-hour average parameter level is above the maximum operating limit or below the minimum operating limit established under this division, if the bag leak detection system alarm sounds for more than 5 percent of the

operating time for the 6-month reporting period, or if a performance test was conducted that deviated from any emission limitation.

(b) The deviation report must be submitted by August 1 of that year for data collected during the first half of the calendar year (January 1 to June 30), and by February 1 of the following year for data you collected during the second half of the calendar year (July 1 to December 31).

§113.2242. What must I include in the deviation report?

In each report required under §113.2241 of this title (relating to What else must I report if I have a deviation from the operating limits or the emission limitations?), for any pollutant or parameter that deviated from the emission limitations or operating limits specified in this division, include the six items described in paragraphs (1) through (6) of this section.

(1) The calendar dates and times your unit deviated from the emission limitations or operating limit requirements.

(2) The averaged and recorded data for those dates.

(3) Duration and causes of each deviation from the emission limitations or operating limits and your corrective actions.

(4) A copy of the operating limit monitoring data during each deviation and any test report that documents the emission levels.

(5) The dates, times, number, duration, and causes for monitoring downtime incidents (other than downtime associated with zero, span, and other routine calibration checks).

(6) Whether each deviation occurred during a period of startup, shutdown, or malfunction, or during another period.

§113.2243. What else must I report if I have a deviation from the requirement to have a qualified operator accessible?

(a) If all qualified operators are not accessible for 2 weeks or more, you must take the two actions in paragraphs (1) and (2) of this subsection.

(1) Submit a notification of the deviation within 10 days after the end of the 2-week period that includes the three items in subparagraphs (A) through (C) of this paragraph.

(A) A statement of what caused the deviation.

(B) A description of what you are doing to ensure that a qualified operator is accessible.

(C) The date when you anticipate that a qualified operator will be available.

(2) Submit a status report to the executive director every 4 weeks that includes the three items in subparagraphs (A) through (C) of this paragraph.

(A) A description of what you are doing to ensure that a qualified operator is accessible.

(B) The date when you anticipate that a qualified operator will be accessible.

(C) Request approval from the executive director to continue operation of the commercial and industrial solid waste incineration unit.

(b) If your unit was shut down by the executive director, under the provisions of §113.2219(2)(B) of this title (relating to What if all the qualified operators are temporarily not accessible?), due to a failure to provide an accessible qualified operator, you must notify the executive director that you are resuming operation once a qualified operator is accessible.

§113.2244. Are there any other notifications or reports that I must submit?

Yes. You must submit notifications as provided by 40 Code of Federal Regulations §60.7.

§113.2245. In what form can I submit my reports?

Submit initial, annual, and deviation reports electronically or in paper format, postmarked on or before the submittal due dates.

§113.2246. Can reporting dates be changed?

If the executive director agrees, you may change the semiannual or annual reporting dates. See 40 Code of Federal Regulations §60.19(c) for procedures to seek approval to change your reporting date.

§113.2247. Am I required to apply for and obtain a Title V operating permit for my unit?

Yes. Each commercial and industrial solid waste incineration unit must operate pursuant to a permit issued under §129(e) and Title V of the Federal Clean Air Act by the later of the two dates in paragraphs (1) and (2) of this section.

(1) Thirty-six months after December 1, 2000.

(2) The effective date of the Title V permit program to which your unit is subject. If your unit is subject to Title V as a result of some triggering requirement(s) other than this division (for example, being a major source), then your unit may be required to apply for and obtain a Title V permit prior to the deadlines noted in this section. If more than one requirement triggers the requirement to apply for a Title V permit, the 12-month time frame for filing a Title V application is triggered by the requirement which first causes the source to be subject to Title V.

§113.2248. What is an air curtain incinerator?

(a) An air curtain incinerator operates by forcefully projecting a curtain of air across an open chamber or open pit in which combustion occurs. Incinerators of this type can be constructed above or below ground and with or without refractory walls and floor. (Air curtain incinerators are not to be confused with conventional combustion devices with enclosed fireboxes and controlled air technology such as mass burn, modular, and fluidized bed combustors.)

(b) Air curtain incinerators that burn only the materials listed in paragraphs (1) through (3) of this subsection are only required to meet the requirements under "Air Curtain Incinerators" (this section and §§113.2249 through 113.2260 of this title (relating to What are my requirements for meeting increments of progress and achieving final compliance?, When must I complete each increment of progress?, What must I include in the notifications of achievement of increments of progress?, When must I submit the notifications of achievement of increments of progress?, What if I do not meet an increment of progress?, How do I comply with the increment of progress for submittal of a control plan?, How do I comply with the increment of progress for achieving final compliance?, What must I do if I close my air curtain incinerator and then restart it?, What must I do if I plan to permanently close my air curtain incinerator and not restart it?, What are the emission limitations for air curtain incinerators?, How must I monitor opacity for air curtain incinerators?, and What are the recordkeeping and reporting requirements for air curtain incinerators?)). In addition, air curtain incinerators must meet the requirements of §113.2247 of this title (relating to Am I required to apply for and obtain a Title V operating permit for my unit?).

(1) 100 percent wood waste.

(2) 100 percent clean lumber.



(3) 100 percent mixture of only wood waste, clean lumber, and/or yard waste.

§113.2249. What are my requirements for meeting increments of progress and achieving final compliance?

If you plan to achieve compliance more than 1 year following the effective date of state plan approval, you must meet the two increments of progress specified in paragraphs (1) and (2) of this section.

(1) Submit a final control plan.

(2) Achieve final compliance.

§113.2250. When must I complete each increment of progress?

Table 1 in §113.2261 of this title (relating to Tables Relating to Division 4) specifies compliance dates for each of the increments of progress.

§113.2251. What must I include in the notifications of achievement of increments of progress?

Your notification of achievement of increments of progress must include the three items described in paragraphs (1) through (3) of this section.

(1) Notification that the increment of progress has been achieved.

(2) Any items required to be submitted with each increment of progress (see §113.2254 of this title (relating to How do I comply with the increment of progress for submittal of a control plan?)).

(3) Signature of the owner or operator of the incinerator.

§113.2252. When must I submit the notifications of achievement of increments of progress?

Notifications for achieving increments of progress must be postmarked no later than 10 business days after the compliance date for the increment.

§113.2253. What if I do not meet an increment of progress?

If you fail to meet an increment of progress, you must submit a notification to the executive director postmarked within 10 business days after the date for that increment of progress in Table 1 in §113.2261 of this title (relating to Tables Relating to Division 4). You must inform the executive director that you did not meet the increment, and you must continue to submit reports each subsequent calendar month until the increment of progress is met.

§113.2254. How do I comply with the increment of progress for submittal of a control plan?

For your control plan increment of progress, you must satisfy the two requirements specified in paragraphs (1) and (2) of this section.

(1) Submit the final control plan, including a description of any devices for air pollution control and any process changes that you will use to comply with the emission limitations and other requirements of this division.

(2) Maintain an onsite copy of the final control plan.

§113.2255. How do I comply with the increment of progress for achieving final compliance?

For the final compliance increment of progress, you must complete all process changes and retrofit construction of control devices, as specified in the final control plan, so that, if the affected incinerator is brought online, all necessary process changes and air pollution control devices would operate as designed.

§113.2256. What must I do if I close my air curtain incinerator and then restart it?

(a) If you close your incinerator but will reopen it prior to the final compliance date in your state plan, you must meet the increments of progress specified in §113.2249 of this title (relating to What are my requirements for meeting increments of progress and achieving final compliance?).

(b) If you close your incinerator but will restart it after your final compliance date, you must complete emission control retrofits and meet the emission limitations on the date your incinerator restarts operation.

§113.2257. What must I do if I plan to permanently close my air curtain incinerator and not restart it?

If you plan to close your incinerator rather than comply with the state plan, submit a closure notification, including the date of closure, to the executive director by the date your final control plan is due.

§113.2258. What are the emission limitations for air curtain incinerators?

(a) After the date the initial stack test is required or completed (whichever is earlier), you must meet the limitations in paragraphs (1) and (2) of this subsection.

(1) The opacity limitation is 10 percent (6-minute average), except as described in paragraph (2) of this subsection.

(2) The opacity limitation is 35 percent (6-minute average) during the startup period that is within the first 30 minutes of operation.

(b) Except during malfunctions, the requirements of this division apply at all times, and each malfunction must not exceed 3 hours.

§113.2259. How must I monitor opacity for air curtain incinerators?

(a) Use Method 9 of 40 Code of Federal Regulations (CFR) Part 60, Appendix A to determine compliance with the opacity limitation.

(b) Conduct an initial test for opacity as specified in 40 CFR §60.8 no later than 180 days after your final compliance date.

(c) After the initial test for opacity, conduct annual tests no more than 12 calendar months following the date of your previous test.

§113.2260. What are the recordkeeping and reporting requirements for air curtain incinerators?

(a) Keep records of results of all initial and annual opacity tests onsite in either paper copy or electronic format, unless the executive director approves another format, for at least 5 years.

(b) Make all records available for submittal to the executive director or for an inspector's onsite review.

(c) Submit an initial report no later than 60 days following the initial opacity test that includes the information specified in paragraphs (1) and (2) of this subsection.

(1) The types of materials you plan to combust in your air curtain incinerator.

(2) The results (each 6-minute average) of the initial opacity tests.

(d) Submit annual opacity test results within 12 months following the previous report.

(e) Submit initial and annual opacity test reports as electronic or paper copy on or before the applicable submittal date and keep a copy onsite for a period of 5 years.

§113.2261. Tables Relating to Division 4.

(a) Table 1 specifies the increments of progress and compliance schedules for Division 4 of this subchapter.

Figure: 30 TAC §113.2261(a)

(b) Table 2 of this subsection specifies the emission limitations for Division 4 of this subchapter.

Figure: 30 TAC §113.2261(b)

(c) Table 3 of this subsection specifies operating limits for wet scrubbers for Division 4 of this subchapter.

Figure: 30 TAC §113.2261(c)

(d) Table 4 of this subsection specifies the toxic equivalency factors for Division 4 of this subchapter.

Figure: 30 TAC §113.2261(d)

(e) Table 5 of this subsection is a summary of reporting requirements for Division 4 of this subchapter.

Figure: 30 TAC §113.2261(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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Texas Commission on Environmental Quality

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For further information, please call: (512) 239-2548



## DIVISION 5. EMISSION GUIDELINES AND COMPLIANCE TIMES FOR OTHER SOLID WASTE INCINERATION UNITS THAT COMMENCED CONSTRUCTION ON OR BEFORE DECEMBER 9, 2004

### 30 TAC §§113.2300 - 113.2357

#### STATUTORY AUTHORITY

The new sections are proposed under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act. The new sections are also proposed under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants; and §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to adopt rules as

necessary to comply with changes in federal law or regulations applicable to permits issued under the Texas Clean Air Act. The new sections are also proposed under the Texas Water Code, §7.002, Enforcement Authority, which authorizes the commission to institute legal proceedings to compel compliance; §7.032, Injunctive Relief, which provides that injunctive relief may be sought by the executive director; and §7.302, Grounds for Revocation or Suspension of Permit, which provides authority to the commission to revoke or suspend any air quality permit.

The proposed new sections implement Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.051.

#### §113.2300. Definitions.

Terms used but not defined in this division are defined in the Federal Clean Air Act and 40 Code of Federal Regulations Part 60, Subpart A (General Provisions).

#### (1) Administrator--As follows:

(A) For approved and effective state §111(d)/129 plans, the director of the state air pollution control agency, or his or her delegatee;

(B) For federal §111(d)/129 plans, the administrator of the United States Environmental Protection Agency (EPA), an employee of the EPA, the director of the state air pollution control agency, or employee of the state air pollution control agency to whom the authority has been delegated by the administrator of the EPA to perform the specified task; and

(C) For New Source Performance Standards in 40 Code of Federal Regulations Part 60, the administrator of the EPA, an employee of the EPA, the director of the state air pollution control agency, or employee of the state air pollution control agency to whom the authority has been delegated by the administrator of the EPA to perform the specified task.

(2) Air curtain incinerator--An incineration unit operating by forcefully projecting a curtain of air across an open, integrated combustion chamber (fire box) or open pit or trench (trench burner) in which combustion occurs. For the purpose of this division, air curtain incinerators include both firebox and trench burner units.

(3) Auxiliary fuel--Natural gas, liquified petroleum gas, fuel oil, or diesel fuel.

(4) Batch other solid waste incineration (OSWI) unit--An OSWI unit that is designed such that neither waste charging nor ash removal can occur during combustion.

(5) Calendar quarter--Three consecutive months (nonoverlapping) beginning on: January 1, April 1, July 1, or October 1.

(6) Calendar year--365 consecutive days starting on January 1 and ending on December 31.

(7) Chemotherapeutic waste--Waste material resulting from the production or use of anti-neoplastic agents used for the purpose of stopping or reversing the growth of malignant cells.

(8) Class II municipal solid waste landfill--A landfill that meets four criteria:

(A) Accepts, for incineration or disposal, less than 20 tons per day of municipal solid waste or other solid wastes based on an annual average;

(B) Is located on a site where there is no evidence of groundwater pollution caused or contributed to by the landfill;

(C) Is not connected by road to a Class I municipal solid waste landfill, as defined by Alaska regulatory code 18 AAC 60.300(c) or, if connected by road, is located more than 50 miles from a Class I municipal solid waste landfill; and

(D) Serves a community that meets one of two criteria:

(i) Experiences for at least 3 months each year, an interruption in access to surface transportation, preventing access to a Class I municipal solid waste landfill; or

(ii) Has no practicable waste management alternative, with a landfill located in an area that annually receives 25 inches or less of precipitation.

(9) Class III municipal solid waste landfill--A landfill that is not connected by road to a Class I municipal solid waste landfill, as defined by Alaska regulatory code 18 AAC 60.300(c) or, if connected by road, is located more than 50 miles from a Class I municipal solid waste landfill, and that accepts, for disposal, either of the following two criteria:

(A) Ash from incinerated municipal waste in quantities less than one ton per day on an annual average, which ash must be free of food scraps that might attract animals; or

(B) Less than five tons per day of municipal solid waste, based on an annual average, and is not located in a place that meets either of the following criteria:

(i) Where public access is restricted, including restrictions on the right to move to the place and reside there; or

(ii) That is provided by an employer and that is populated totally by persons who are required to reside there as a condition of employment and who do not consider the place to be their permanent residence.

(10) Clean lumber--Wood or wood products that have been cut or shaped and include wet, air-dried, and kiln-dried wood products. Clean lumber does not include wood products that have been painted, pigment-stained, or pressure-treated by compounds such as chromate copper arsenate, pentachlorophenol, and creosote, or manufactured wood products that contain adhesives or resins (e.g., plywood, particle board, flake board, and oriented strand board).

(11) Collected from--The transfer of material from the site at which the material is generated to a separate site where the material is burned.

(12) Contained gaseous material--Gases that are in a container when that container is combusted.

(13) Continuous emission monitoring system or CEMS--A monitoring system for continuously measuring and recording the emissions of a pollutant from an other solid waste incineration unit.

(14) Continuous other solid waste incineration (OSWI) unit--An OSWI unit that is designed to allow waste charging and ash removal during combustion.

(15) Deviation--Any instance in which a unit that meets the requirements in 40 Code of Federal Regulations (CFR) §60.2991, or an owner or operator of such a source:

(A) Fails to meet any requirement or obligation established by this division, including but not limited to any emission limitation, operating limit, or operator qualification and accessibility requirements;

(B) Fails to meet any term or condition that is adopted to implement an applicable requirement in this division and that is included in the operating permit for any unit that meets requirements in 40 CFR §60.2991 and is required to obtain such a permit; or

(C) Fails to meet any emission limitation, operating limit, or operator qualification and accessibility requirement in this division during startup, shutdown, or malfunction, regardless of whether or not such failure is allowed by this division.

(16) Dioxins/furans--Tetra-through octachlorinated dibenzo-p-dioxins and dibenzofurans.

(17) Energy recovery--The process of recovering thermal energy from combustion for useful purposes such as steam generation or process heating.

(18) United States Environmental Protection Agency or EPA--The administrator of the EPA or employee of the EPA that is delegated the authority to perform the specified task.

(19) Institutional facility--A land-based facility owned and/or operated by an organization having a governmental, educational, civic, or religious purpose such as a school, hospital, prison, military installation, church, or other similar establishment or facility.

(20) Institutional waste--Solid waste (as defined in this division) that is combusted at any institutional facility using controlled flame combustion in an enclosed, distinct operating unit: whose design does not provide for energy recovery (as defined in this division); operated without energy recovery (as defined in this division); or operated with only waste heat recovery (as defined in this division). Institutional waste also means solid waste (as defined in this division) combusted on site in an air curtain incinerator that is a distinct operating unit of any institutional facility.

(21) Institutional waste incineration unit--Any combustion unit that combusts institutional waste (as defined in this division) and is a distinct operating unit of the institutional facility that generated the waste. Institutional waste incineration units include field-erected, modular, cyclonic burn barrel, and custom built incineration units operating with starved or excess air, and any air curtain incinerator that is a distinct operating unit of the institutional facility that generated the institutional waste (except those air curtain incinerators listed in 40 Code of Federal Regulations §60.2994(b)).

(22) Intermittent other solid waste incineration (OSWI) unit--An OSWI unit that is designed to allow waste charging, but not ash removal, during combustion.

(23) Low-level radioactive waste--Waste material that contains radioactive nuclides emitting primarily beta or gamma radiation, or both, in concentrations or quantities that exceed applicable federal or state standards for unrestricted release. Low-level radioactive waste is not high-level radioactive waste, spent nuclear fuel, or byproduct material as defined by the Atomic Energy Act of 1954 (42 United States Code 2014(e)(2)).

(24) Malfunction--Any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused, in part, by poor maintenance or careless operation are not malfunctions.

(25) Metropolitan Statistical Area--Any areas listed as metropolitan statistical areas in Office of Management and Budget Bulletin No. 05 - 02 entitled "Update of Statistical Area Definitions and Guidance on Their Uses" dated February 22, 2005 (available on the Web at <http://www.whitehouse.gov/omb/bulletins/>).

(26) Modification or modified unit--An incineration unit you have changed on or after June 16, 2006, and that meets one of two criteria:

(A) The cumulative cost of the changes over the life of the unit exceeds 50 percent of the original cost of building and installing the unit (not including the cost of land) updated to current costs (current dollars). For an other solid waste incineration (OSWI) unit, to determine what systems are within the boundary of the unit used to calculate these costs, see the definition of OSWI unit.

(B) Any physical change in the OSWI unit or change in the method of operating it that increases the amount of any air pollutant emitted for which the Federal Clean Air Act, §129 or §111 has established standards.

(27) Municipal solid waste--Refuse (and refuse-derived fuel) collected from the general public and from residential, commercial, institutional, and industrial sources consisting of paper, wood, yard wastes, food wastes, plastics, leather, rubber, and other combustible materials and non-combustible materials such as metal, glass, and rock, provided that:

(A) The term does not include industrial process wastes or medical wastes that are segregated from such other wastes; and

(B) an incineration unit shall not be considered to be combusting municipal solid waste for purposes of this division if it combusts a fuel feed stream, 30 percent or less of the weight of which is comprised, in aggregate, of municipal solid waste, as determined by 40 Code of Federal Regulations §60.2993(b).

(28) Municipal waste combustion unit--For the purpose of this division, any setting or equipment that combusts municipal solid waste (as defined in this division) including, but not limited to, field-erected, modular, cyclonic burn barrel, and custom built incineration units (with or without energy recovery) operating with starved or excess air, boilers, furnaces, pyrolysis/combustion units, and air curtain incinerators (except those air curtain incinerators listed in 40 Code of Federal Regulations §60.2994(b)).

(29) Other solid waste incineration (OSWI) unit--Either a very small municipal waste combustion unit or an institutional waste incineration unit, as defined in this division. Unit types listed in 40 Code of Federal Regulations §60.2993 as being excluded from the division are not OSWI units subject to this division. While not all OSWI units will include all of the following components, an OSWI unit includes, but is not limited to, the municipal or institutional solid waste feed system, grate system, flue gas system, waste heat recovery equipment, if any, and bottom ash system. The OSWI unit does not include air pollution control equipment or the stack. The OSWI unit boundary starts at the municipal or institutional waste hopper (if applicable) and extends through two areas:

(A) The combustion unit flue gas system, which ends immediately after the last combustion chamber or after the waste heat recovery equipment, if any; and

(B) The combustion unit bottom ash system, which ends at the truck loading station or similar equipment that transfers the ash to final disposal. The OSWI unit includes all ash handling systems connected to the bottom ash handling system.

(30) Particulate matter--Total particulate matter emitted from other solid waste incineration units as measured by Method 5 or Method 29 of 40 Code of Federal Regulations Part 60, Appendix A.

(31) Pathological waste--Waste material consisting of only human or animal remains, anatomical parts, and/or tissue, the bags/con-

tainers used to collect and transport the waste material, and animal bedding (if applicable).

(32) Reconstruction--Rebuilding an incineration unit and meeting two criteria:

(A) The reconstruction begins on or after June 16, 2006.

(B) The cumulative cost of the construction over the life of the incineration unit exceeds 50 percent of the original cost of building and installing the unit (not including land) updated to current costs (current dollars). For an other solid waste incineration (OSWI) unit, to determine what systems are within the boundary of the unit used to calculate these costs, see the definition of OSWI unit.

(33) Refuse-derived fuel--A type of municipal solid waste produced by processing municipal solid waste through shredding and size classification. This includes all classes of refuse-derived fuel including two fuels:

(A) Low-density fluff refuse-derived fuel through densified refuse-derived fuel; and

(B) Pelletized refuse-derived fuel.

(34) Shutdown--The period of time after all waste has been combusted in the primary chamber. For continuous other solid waste incineration (OSWI), shutdown shall commence no less than 2 hours after the last charge to the incinerator. For intermittent OSWI, shutdown shall commence no less than 4 hours after the last charge to the incinerator. For batch OSWI, shutdown shall commence no less than 5 hours after the high-air phase of combustion has been completed.

(35) Solid waste--Any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permits under the Federal Water Pollution Control Act, §402 as amended (33 United States Code (USC), §1342), or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended (42 USC, §2014).

(36) Standard conditions--When referring to units of measure, a temperature of 68 degrees Fahrenheit (20 degrees Celsius) and a pressure of 1 atmosphere (101.3 kilopascals).

(37) Startup period--The period of time between the activation of the system and the first charge to the other solid waste incineration (OSWI) unit. For batch OSWI, startup means the period of time between activation of the system and ignition of the waste.

(38) Very small municipal waste combustion unit--Any municipal waste combustion unit that has the capacity to combust less than 35 tons per day of municipal solid waste or refuse-derived fuel, as determined by the calculations in §113.2356 of this title (relating to What equations must I use?).

(39) Waste heat recovery--The process of recovering heat from the combustion flue gases outside of the combustion firebox by convective heat transfer only.

(40) Wet scrubber--An add-on air pollution control device that utilizes an aqueous or alkaline scrubbing liquor to collect particulate matter (including nonvaporous metals and condensed organics) and/or to absorb and neutralize acid gases.

(41) Wood waste--Untreated wood and untreated wood products, including tree stumps (whole or chipped), trees, tree limbs

(whole or chipped), bark, sawdust, chips, scraps, slabs, millings, and shavings. Wood waste does not include:

(A) Grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands.

(B) Construction, renovation, or demolition wastes.

(C) Clean lumber.

(D) Treated wood and treated wood products, including wood products that have been painted, pigment-stained, or pressure treated by compounds such as chromate copper arsenate, pentachlorophenol, and creosote, or manufactured wood products that contain adhesives or resins (e.g., plywood, particle board, flake board, and oriented strand board).

(42) Yard waste--Grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs. Yard waste comes from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands. Yard waste does not include two items:

(A) Construction, renovation, and demolition wastes.

(B) Clean lumber.

§113.2301. When must I comply?

Table 1 in §113.2357 of this title (relating to Tables Relating to Division 5) specifies the final compliance date. You must submit a notification to the executive director stating whether final compliance has been achieved, postmarked within 10 business days after the final compliance date in Table 1 in §113.2357 of this title.

§113.2302. What must I do if I close my other solid waste incineration unit and then restart it?

(a) If you close your other solid waste incineration (OSWI) unit but will reopen it prior to the final compliance date in your state plan, you must meet the final compliance date specified in Table 1 in §113.2357 of this title (relating to Tables Relating to Division 5).

(b) If you close your OSWI unit but will restart it after your final compliance date, you must complete emission control retrofit and meet the emission limitations on the date your OSWI unit restarts operation. You must conduct your initial performance test within 30 days of restarting your OSWI unit.

§113.2303. What must I do if I plan to permanently close my other solid waste incineration unit and not restart it?

You must close the unit before the final compliance date specified in Table 1 in §113.2357 of this title (relating to Tables Relating to Division 5).

§113.2304. What is a waste management plan?

A waste management plan is a written plan that identifies both the feasibility and the methods used to reduce or separate certain components of solid waste from the waste stream in order to reduce or eliminate toxic emissions from incinerated waste.

§113.2305. When must I submit my waste management plan?

You must submit a waste management plan no later than 60 days following the initial performance test as specified in Table 5 in §113.2357 of this title (relating to Tables Relating to Division 5). Section 113.2321 of this title (relating to By what date must I conduct the initial performance test?) specifies the date by which you are required to conduct your performance test.

§113.2306. What should I include in my waste management plan?

A waste management plan must include consideration of the reduction or separation of waste-stream elements such as paper, cardboard, plastics, glass, batteries, or metals; or the use of recyclable materials. The plan must identify any additional waste management measures and implement those measures the source considers practical and feasible, considering the effectiveness of waste management measures already in place, the costs of additional measures, the emissions reductions expected to be achieved, and any other environmental or energy impacts they might have.

§113.2307. What are the operator training and qualification requirements?

(a) No other solid waste incineration (OSWI) unit can be operated unless a fully trained and qualified OSWI unit operator is accessible, either at the facility or can be at the facility within 1 hour. The trained and qualified OSWI unit operator may operate the OSWI unit directly or be the direct supervisor of one or more other plant personnel who operate the unit. If all qualified OSWI unit operators are temporarily not accessible, you must follow the procedures in §113.2313 of this title (relating to What if all the qualified operators are temporarily not accessible?).

(b) Operator training and qualification must be obtained through a state-approved program or by completing the requirements included in subsection (c) of this section.

(c) Training must be obtained by completing an incinerator operator training course that includes, at a minimum, the three elements described in paragraphs (1) through (3) of this subsection.

(1) Training on the 13 subjects listed in subparagraphs (A) through (M) of this paragraph.

(A) Environmental concerns, including types of emissions.

(B) Basic combustion principles, including products of combustion.

(C) Operation of the specific type of incinerator to be used by the operator, including proper startup, waste charging, and shutdown procedures.

(D) Combustion controls and monitoring.

(E) Operation of air pollution control equipment and factors affecting performance (if applicable).

(F) Inspection and maintenance of the incinerator and air pollution control devices.

(G) Methods to monitor pollutants (including monitoring of incinerator and control device operating parameters) and monitoring equipment calibration procedures, where applicable.

(H) Actions to correct malfunctions or conditions that may lead to malfunction.

(I) Bottom and fly ash characteristics and handling procedures.

(J) Applicable federal, state, and local regulations, including Occupational Safety and Health Administration workplace standards.

(K) Pollution prevention.

(L) Waste management practices.

(M) Recordkeeping requirements.

(2) An examination designed and administered by the instructor.

(3) Written material covering the training course topics that may serve as reference material following completion of the course.

§113.2308. When must the operator training course be completed?

The operator training course must be completed by the latest of the three dates specified in paragraphs (1) through (3) of this section.

(1) The final compliance date specified in Table 1 in §113.2357 of this title (relating to Tables Relating to Division 5).

(2) Six months after your other solid waste incineration (OSWI) unit startup.

(3) Six months after an employee assumes responsibility for operating the OSWI unit or assumes responsibility for supervising the operation of the OSWI unit.

§113.2309. How do I obtain my operator qualification?

(a) You must obtain operator qualification by completing a training course that satisfies the criteria under §113.2307(c) of this title (relating to What are the operator training and qualification requirements?).

(b) Qualification is valid from the date on which the training course is completed and the operator successfully passes the examination required under §113.2307(c)(2) of this title.

§113.2310. How do I maintain my operator qualification?

To maintain qualification, you must complete an annual review or refresher course covering, at a minimum, the five topics described in paragraphs (1) through (5) of this section.

(1) Update of regulations.

(2) Incinerator operation, including startup and shutdown procedures, waste charging, and ash handling.

(3) Inspection and maintenance.

(4) Responses to malfunctions or conditions that may lead to malfunction.

(5) Discussion of operating problems encountered by attendees.

§113.2311. How do I renew my lapsed operator qualification?

You must renew a lapsed operator qualification by one of the two methods specified in paragraphs (1) and (2) of this section.

(1) For a lapse of less than 3 years, you must complete a standard annual refresher course described in §113.2310 of this title (relating to How do I maintain my operator qualification?).

(2) For a lapse of 3 years or more, you must repeat the initial qualification requirements in §113.2309(a) of this title (relating to How do I obtain my operator qualification?).

§113.2312. What site-specific documentation is required?

(a) Documentation must be available at the facility and readily accessible for all other solid waste incineration (OSWI) unit operators that addresses the nine topics described in paragraphs (1) through (9) of this subsection. You must maintain this information and the training records required by subsection (c) of this section in a manner that they can be readily accessed and are suitable for inspection upon request.

(1) Summary of the applicable standards under this division.

(2) Procedures for receiving, handling, and charging waste.

(3) Incinerator startup, shutdown, and malfunction procedures.

(4) Procedures for maintaining proper combustion air supply levels.

(5) Procedures for operating the incinerator and associated air pollution control systems within the standards established under this division.

(6) Monitoring procedures for demonstrating compliance with the operating limits established under this division.

(7) Reporting and recordkeeping procedures.

(8) The waste management plan required under §§113.2304 through 113.2306 of this title (relating to What is a waste management plan? When must I submit my waste management plan? and What should I include in my waste management plan?).

(9) Procedures for handling ash.

(b) You must establish a program for reviewing the information listed in subsection (a) of this section with each incinerator operator.

(1) The initial review of the information listed in subsection (a) of this section must be conducted by the latest of three dates specified in subparagraphs (A) through (C) of this paragraph.

(A) The final compliance date specified in Table 1 in §113.2357 of this title (relating to Tables Relating to Division 5).

(B) Six months after your OSWI unit startup.

(C) Six months after an employee assumes responsibility for operating the OSWI unit or assumes responsibility for supervising the operation of the OSWI unit.

(2) Subsequent annual reviews of the information listed in subsection (a) of this section must be conducted not later than 12 months following the previous review.

(c) You must also maintain the information specified in paragraphs (1) through (3) of this subsection.

(1) Records showing the names of OSWI unit operators who have completed review of the information in subsection (a) of this section as required by subsection (b) of this section, including the date of the initial review and all subsequent annual reviews.

(2) Records showing the names of the OSWI unit operators who have completed the operator training requirements under §113.2307 of this title (relating to What are the operator training and qualification requirements?), met the criteria for qualification under §113.2309 of this title (relating to How do I obtain my operator qualification?), and maintained or renewed their qualification under §113.2310 or §113.2311 of this title (relating to How do I maintain my operator qualification? or How do I renew my lapsed operator qualification?). Records must include documentation of training, the dates of the initial and refresher training, and the dates of their qualification and all subsequent renewals of such qualifications.

(3) For each qualified operator, the phone and/or pager number at which they can be reached during operating hours.

§113.2313. What if all the qualified operators are temporarily not accessible?

If all qualified operators are temporarily not accessible (i.e., not at the facility and not able to be at the facility within 1 hour), you must meet one of the three criteria specified in paragraphs (1) through (3) of this section, depending on the length of time that a qualified operator is not accessible.

(1) When all qualified operators are not accessible for 12 hours or less, the other solid waste incineration (OSWI) unit may be operated by other plant personnel familiar with the operation of the OSWI unit who have completed review of the information specified in §113.2312(a) of this title (relating to What site-specific documentation is required?) within the past 12 months. You do not need to notify the executive director or include this as a deviation in your annual report.

(2) When all qualified operators are not accessible for more than 12 hours, but less than 2 weeks, the OSWI unit may be operated by other plant personnel familiar with the operation of the OSWI unit who have completed a review of the information specified in §113.2312(a) of this title within the past 12 months. However, you must record the period when all qualified operators were not accessible and include this deviation in the annual report as specified under §113.2338 of this title (relating to What information must I include in my annual report?).

(3) When all qualified operators are not accessible for 2 weeks or more, you must take the two actions that are described in subparagraphs (A) and (B) of this paragraph.

(A) Notify the executive director of this deviation in writing within 10 days after the end of the 2-week period. In the notice, state what caused this deviation, what you are doing to ensure that a qualified operator is accessible, and when you anticipate that a qualified operator will be accessible.

(B) Submit a status report to the executive director every 4 weeks outlining what you are doing to ensure that a qualified operator is accessible, stating when you anticipate that a qualified operator will be accessible, and requesting approval from the executive director to continue operation of the OSWI unit. You must submit the first status report 4 weeks after you notify the executive director of the deviation under subparagraph (A) of this paragraph. If the executive director notifies you that your request to continue operation of the OSWI unit is disapproved, the OSWI unit may continue operation for 90 days, then must cease operation. Operation of the unit may resume if you meet the two requirements in clauses (i) and (ii) of this subparagraph.

(i) A qualified operator is accessible as required under §113.2307(a) of this title (relating to What are the operator training and qualification requirements?)

(ii) You notify the executive director that a qualified operator is accessible and that you are resuming operation.

§113.2314. *What emission limitations must I meet and by when?*

You must meet the emission limitations specified in Table 2 in §113.2357 of this title (relating to Tables Relating to Division 5) on the date the initial performance test is required or completed (whichever is earlier). Section 113.2321 of this title (relating to By what date must I conduct the initial performance test?) specifies the date by which you are required to conduct your performance test.

§113.2315. *What operating limits must I meet and by when?*

(a) If you use a wet scrubber to comply with the emission limitations, you must establish operating limits for four operating parameters (as specified in Table 3 in §113.2357 of this title (relating to Tables Relating to Division 5)) as described in paragraphs (1) through (4) of this subsection during the initial performance test.

(1) Maximum charge rate, calculated using one of the two different procedures in subparagraph (A) or (B) of this paragraph, as appropriate.

(A) For continuous and intermittent units, maximum charge rate is the average charge rate measured during the most

recent performance test demonstrating compliance with all applicable emission limitations.

(B) For batch units, maximum charge rate is the charge rate measured during the most recent performance test demonstrating compliance with all applicable emission limitations.

(2) Minimum pressure drop across the wet scrubber, which is calculated as the average pressure drop across the wet scrubber measured during the most recent performance test demonstrating compliance with the particulate matter emission limitations; or minimum amperage to the wet scrubber, which is calculated as the average amperage to the wet scrubber measured during the most recent performance test demonstrating compliance with the particulate matter emission limitations.

(3) Minimum scrubber liquor flow rate, which is calculated as the average liquor flow rate at the inlet to the wet scrubber measured during the most recent performance test demonstrating compliance with all applicable emission limitations.

(4) Minimum scrubber liquor pH, which is calculated as the average liquor pH at the inlet to the wet scrubber measured during the most recent performance test demonstrating compliance with the hydrogen chloride and sulfur dioxide emission limitations.

(b) You must meet the operating limits established during the initial performance test beginning on the date 180 days after your final compliance date in Table 1 in §113.2357 of this title.

§113.2316. *What if I do not use a wet scrubber to comply with the emission limitations?*

If you use an air pollution control device other than a wet scrubber or limit emissions in some other manner to comply with the emission limitations under §113.2314 of this title (relating to What emission limitations must I meet and by when?), you must petition the United States Environmental Protection Agency (EPA) for specific operating limits, the values of which are to be established during the initial performance test and then continuously monitored thereafter. You must not conduct the initial performance test until after the petition has been approved by the EPA. Your petition must include the five items listed in paragraphs (1) through (5) of this section.

(1) Identification of the specific parameters you propose to use as operating limits.

(2) A discussion of the relationship between these parameters and emissions of regulated pollutants, identifying how emissions of regulated pollutants change with changes in these parameters, and how limits on these parameters will serve to limit emissions of regulated pollutants.

(3) A discussion of how you will establish the upper and/or lower values for these parameters that will establish the operating limits on these parameters.

(4) A discussion identifying the methods you will use to measure and the instruments you will use to monitor these parameters, as well as the relative accuracy and precision of these methods and instruments.

(5) A discussion identifying the frequency and methods for recalibrating the instruments you will use for monitoring these parameters.

§113.2317. *What happens during periods of startup, shutdown, and malfunction?*

The emission limitations and operating limits apply at all times except during other solid waste incineration unit startups, shutdowns, or malfunctions, which should last no longer than 3 hours.

§113.2318. How do I conduct the initial and annual performance test?

(a) All performance tests must consist of a minimum of three test runs conducted under conditions representative of normal operations.

(b) All performance tests must be conducted using the methods in Table 2 in §113.2357 of this title (relating to Tables Relating to Division 5).

(c) All performance tests must be conducted using the minimum run duration specified in Table 2 in §113.2357 of this title.

(d) Method 1 of 40 Code of Federal Regulations (CFR) Part 60, Appendix A must be used to select the sampling location and number of traverse points.

(e) Method 3A or 3B of 40 CFR Part 60, Appendix A must be used for gas composition analysis, including measurement of oxygen concentration. Method 3A or 3B of 40 CFR Part 60, Appendix A must be used simultaneously with each method.

(f) All pollutant concentrations, except for opacity, must be adjusted to 7 percent oxygen using equation 1 in §113.2356 of this title (relating to What equations must I use?).

(g) Method 26A of 40 CFR Part 60, Appendix A must be used for hydrogen chloride concentration analysis, with the additional requirements specified in paragraphs (1) through (3) of this subsection.

(1) The probe and filter must be conditioned prior to sampling using the procedure described in subparagraphs (A) through (C) of this paragraph.

(A) Assemble the sampling train(s) and conduct a conditioning run by collecting between 14 liters per minute (0.5 cubic feet per minute) and 30 liters per minute (1.0 cubic feet per minute) of gas over a 1-hour period. Follow the sampling procedures outlined in section 8.1.5 of Method 26A of 40 CFR Part 60, Appendix A. For the conditioning run, water can be used as the impinger solution.

(B) Remove the impingers from the sampling train and replace with a fresh impinger train for the sampling run, leaving the probe and filter (and cyclone, if used) in position. Do not recover the filter or rinse the probe before the first run. Thoroughly rinse the impingers used in the preconditioning run with deionized water and discard these rinses.

(C) The probe and filter assembly are conditioned by the stack gas and are not recovered or cleaned until the end of testing.

(2) For the duration of sampling, a temperature around the probe and filter (and cyclone, if used) between 120 degrees Celsius (248 degrees Fahrenheit) and 134 degrees Celsius (273 degrees Fahrenheit) must be maintained.

(3) If water droplets are present in the sample gas stream, the requirements specified in subparagraphs (A) and (B) of this paragraph must be met.

(A) The cyclone described in section 6.1.4 of Method 26A of 40 CFR Part 60, Appendix A must be used.

(B) The post-test moisture removal procedure described in section 8.1.6 of Method 26A of 40 CFR Part 60, Appendix A must be used.

§113.2319. How are the performance test data used?

You use results of performance tests to demonstrate compliance with the emission limitations in Table 2 in §113.2357 of this title (relating to Tables Relating to Division 5).

§113.2320. How do I demonstrate initial compliance with the emission limitations and establish the operating limits?

You must conduct an initial performance test, as required under 40 Code of Federal Regulations §60.8, to determine compliance with the emission limitations in Table 2 in §113.2357 of this title (relating to Tables Relating to Division 5) and to establish operating limits using the procedure in §113.2315 or §113.2316 of this title (relating to What operating limits must I meet and by when? or What if I do not use a wet scrubber to comply with the emission limitations?). The initial performance test must be conducted using the test methods listed in Table 2 in §113.2357 of this title and the procedures in §113.2318 of this title (relating to How do I conduct the initial and annual performance test?).

§113.2321. By what date must I conduct the initial performance test?

The initial performance test must be conducted no later than 180 days after your final compliance date. Your final compliance date is specified in Table 1 in §113.2357 of this title (relating to Tables Relating to Division 5).

§113.2322. How do I demonstrate continuous compliance with the emission limitations and the operating limits?

(a) You must conduct an annual performance test for all of the pollutants in Table 2 in §113.2357 of this title (relating to Tables Relating to Division 5) for each other solid waste incineration unit to determine compliance with the emission limitations. The annual performance test must be conducted using the test methods listed in Table 2 in §113.2357 of this title and the procedures in §113.2318 of this title (relating to How do I conduct the initial and annual performance test?).

(b) You must continuously monitor carbon monoxide emissions to determine compliance with the carbon monoxide emissions limitation. Twelve-hour rolling average values are used to determine compliance. A 12-hour rolling average value above the carbon monoxide emission limit in Table 2 in §113.2357 of this title constitutes a deviation from the emission limitation.

(c) You must continuously monitor the operating parameters specified in §113.2315 of this title (relating to What operating limits must I meet and by when?) or established under §113.2316 of this title (relating to What if I do not use a wet scrubber to comply with the emission limitations?). Three-hour rolling average values are used to determine compliance with the operating limits unless a different averaging period is established under §113.2316 of this title. A 3-hour rolling average value (unless a different averaging period is established under §113.2316 of this title) above the established maximum or below the established minimum operating limits constitutes a deviation from the established operating limits. Operating limits do not apply during performance tests.

§113.2323. By what date must I conduct the annual performance test?

You must conduct annual performance tests within 12 months following the initial performance test. Conduct subsequent annual performance tests within 12 months following the previous one.

§113.2324. May I conduct performance testing less often?

(a) You can test less often for a given pollutant if you have test data for at least three consecutive annual tests, and all performance tests for the pollutant over that period show that you comply with the emission limitation. In this case, you do not have to conduct a performance test for that pollutant for the next 2 years. You must conduct a performance test during the 3rd year and no more than 36 months following the previous performance test.

(b) If your other solid waste incineration unit continues to meet the emission limitation for the pollutant, you may choose to conduct



performance tests for that pollutant every 3rd year, but each test must be within 36 months of the previous performance test.

(c) If a performance test shows a deviation from an emission limitation for any pollutant, you must conduct annual performance tests for that pollutant until three consecutive annual performance tests for that pollutant all show compliance.

§113.2325. May I conduct a repeat performance test to establish new operating limits?

Yes, you may conduct a repeat performance test at any time to establish new values for the operating limits. The executive director may request a repeat performance test at any time.

§113.2326. What continuous emission monitoring systems must I install?

(a) You must install, calibrate, maintain, and operate continuous emission monitoring systems for carbon monoxide and for oxygen. You must monitor the oxygen concentration at each location where you monitor carbon monoxide.

(b) You must install, evaluate, and operate each continuous emission monitoring system according to the "Monitoring Requirements" in 40 Code of Federal Regulations §60.13.

§113.2327. How do I make sure my continuous emission monitoring systems are operating correctly?

(a) Conduct initial, daily, quarterly, and annual evaluations of your continuous emission monitoring systems that measure carbon monoxide and oxygen.

(b) Complete your initial evaluation of the continuous emission monitoring systems within 180 days after your final compliance date in Table 1 in §113.2357 of this title (relating to Tables Relating to Division 5).

(c) For initial and annual evaluations, collect data concurrently (or within 30 to 60 minutes) using your carbon monoxide and oxygen continuous emission monitoring systems. To validate carbon monoxide concentration levels, use United States Environmental Protection Agency (EPA) Method 10, 10A, or 10B of 40 Code of Federal Regulations (CFR) Part 60, Appendix A. Use EPA Method 3 or 3A of 40 CFR Part 60, Appendix A to measure oxygen. Collect the data during each initial and annual evaluation of your continuous emission monitoring systems following the applicable performance specifications in 40 CFR Part 60, Appendix B. Table 4 in §113.2357 of this title shows the required span values and performance specifications that apply to each continuous emission monitoring system.

(d) Follow the quality assurance procedures in Procedure 1 of 40 CFR Part 60, Appendix F for each continuous emission monitoring system. The procedures include daily calibration drift and quarterly accuracy determinations.

§113.2328. What is my schedule for evaluating continuous emission monitoring systems?

(a) Conduct annual evaluations of your continuous emission monitoring systems no more than 12 months after the previous evaluation was conducted.

(b) Evaluate your continuous emission monitoring systems daily and quarterly as specified in 40 Code of Federal Regulations Part 60, Appendix F.

§113.2329. What is the minimum amount of monitoring data I must collect with my continuous emission monitoring systems, and is the data collection requirement enforceable?

(a) Where continuous emission monitoring systems are required, obtain 1-hour arithmetic averages. Make sure the averages for carbon monoxide are in parts per million by dry volume at 7 percent

oxygen. Use the 1-hour averages of oxygen data from your continuous emission monitoring system to determine the actual oxygen level and to calculate emissions at 7 percent oxygen.

(b) Obtain at least two data points per hour in order to calculate a valid 1-hour arithmetic average. Title 40 Code of Federal Regulations §60.13(e)(2) requires your continuous emission monitoring systems to complete at least one cycle of operation (sampling, analyzing, and data recording) for each 15-minute period.

(c) Obtain valid 1-hour averages for at least 75 percent of the operating hours per day for at least 90 percent of the operating days per calendar quarter. An operating day is any day the unit combusts any municipal or institutional solid waste.

(d) If you do not obtain the minimum data required in subsections (a) through (c) of this section, you have deviated from the data collection requirement regardless of the emission level monitored.

(e) If you do not obtain the minimum data required in subsections (a) through (c) of this section, you must still use all valid data from the continuous emission monitoring systems in calculating emission concentrations.

(f) If continuous emission monitoring systems are temporarily unavailable to meet the data collection requirements, refer to Table 4 in §113.2357 of this title (relating to Tables Relating to Division 5). It shows alternate methods for collecting data when systems malfunction or when repairs, calibration checks, or zero and span checks keep you from collecting the minimum amount of data.

§113.2330. How do I convert my 1-hour arithmetic averages into the appropriate averaging times and units?

(a) Use equation 1 in §113.2356 of this title (relating to What equations must I use?) to calculate emissions at 7 percent oxygen.

(b) Use equation 2 in §113.2356 of this title to calculate the 12-hour rolling averages for concentrations of carbon monoxide.

§113.2331. What operating parameter monitoring equipment must I install, and what operating parameters must I monitor?

(a) If you are using a wet scrubber to comply with the emission limitations under §113.2314 of this title (relating to What emission limitations must I meet and by when?), you must install, calibrate (to manufacturers' specifications), maintain, and operate devices (or establish methods) for monitoring the value of the operating parameters used to determine compliance with the operating limits listed in Table 3 in §113.2357 of this title (relating to Tables Relating to Division 5). These devices (or methods) must measure and record the values for these operating parameters at the frequencies indicated in Table 3 in §113.2357 of this title at all times.

(b) You must install, calibrate (to manufacturers' specifications), maintain, and operate a device or method for measuring the use of any stack that could be used to bypass the control device. The measurement must include the date, time, and duration of the use of the bypass stack.

(c) If you are using a method or air pollution control device other than a wet scrubber to comply with the emission limitations under §113.2314 of this title, you must install, calibrate (to the manufacturers' specifications), maintain, and operate the equipment necessary to monitor compliance with the site-specific operating limits established using the procedures in §113.2316 of this title (relating to What if I do not use a wet scrubber to comply with the emission limitations?).

§113.2332. Is there a minimum amount of operating parameter monitoring data I must obtain?

(a) Except for monitor malfunctions, associated repairs, and required quality assurance or quality control activities (including, as

applicable, calibration checks and required zero and span adjustments of the monitoring system), you must conduct all monitoring at all times the other solid waste incineration unit is operating.

(b) You must obtain valid monitoring data for at least 75 percent of the operating hours per day for at least 90 percent of the operating days per calendar quarter. An operating day is any day the unit combusts any municipal or institutional solid waste.

(c) If you do not obtain the minimum data required in subsections (a) and (b) of this section, you have deviated from the data collection requirement regardless of the operating parameter level monitored.

(d) Do not use data recorded during monitor malfunctions, associated repairs, and required quality assurance or quality control activities for meeting the requirements of this division, including data averages and calculations. You must use all the data collected during all other periods in assessing compliance with the operating limits.

§113.2333. What records must I keep?

You must maintain the 14 items (as applicable) as specified in paragraphs (1) through (14) of this section for a period of at least 5 years.

(1) Calendar date of each record.

(2) Records of the data described in subparagraphs (A) through (H) of this paragraph.

(A) The other solid waste incineration (OSWI) unit charge dates, times, weights, and hourly charge rates.

(B) Liquor flow rate to the wet scrubber inlet every 15 minutes of operation, as applicable.

(C) Pressure drop across the wet scrubber system every 15 minutes of operation or amperage to the wet scrubber every 15 minutes of operation, as applicable.

(D) Liquor pH as introduced to the wet scrubber every 15 minutes of operation, as applicable.

(E) For OSWI units that establish operating limits for controls other than wet scrubbers under §113.2316 of this title (relating to What if I do not use a wet scrubber to comply with the emission limitations?), you must maintain data collected for all operating parameters used to determine compliance with the operating limits.

(F) All 1-hour average concentrations of carbon monoxide emissions.

(G) All 12-hour rolling average values of carbon monoxide emissions and all 3-hour rolling average values of continuously monitored operating parameters.

(H) Records of the dates, times, and durations of any bypass of the control device.

(3) Identification of calendar dates and times for which continuous emission monitoring systems or monitoring systems used to monitor operating limits were inoperative, inactive, malfunctioning, or out of control (except for downtime associated with zero and span and other routine calibration checks). Identify the pollutant emissions or operating parameters not measured, the duration, reasons for not obtaining the data, and a description of corrective actions taken.

(4) Identification of calendar dates, times, and durations of malfunctions, and a description of the malfunction and the corrective action taken.

(5) Identification of calendar dates and times for which monitoring data show a deviation from the carbon monoxide emissions limit in Table 2 in §113.2357 of this title (relating to Tables Relating to Division 5) or a deviation from the operating limits in Table 3

in §113.2357 of this title or a deviation from other operating limits established under §113.2316 of this title with a description of the deviations, reasons for such deviations, and a description of corrective actions taken.

(6) Calendar dates when continuous monitoring systems did not collect the minimum amount of data required under §113.2329 and §113.2332 of this title (relating to What is the minimum amount of monitoring data I must collect with my continuous emission monitoring systems, and is the data collection requirement enforceable? and Is there a minimum amount of operating parameter monitoring data I must obtain?).

(7) For carbon monoxide continuous emissions monitoring systems, document the results of your daily drift tests and quarterly accuracy determinations according to Procedure 1 of 40 Code of Federal Regulations Part 60, Appendix F.

(8) Records of the calibration of any monitoring devices required under §113.2331 of this title (relating to What operating parameter monitoring equipment must I install, and what operating parameters must I monitor?).

(9) The results of the initial, annual, and any subsequent performance tests conducted to determine compliance with the emission limits and/or to establish operating limits, as applicable. Retain a copy of the complete test report including calculations and a description of the types of waste burned during the test.

(10) Records showing the names of OSWI unit operators who have completed review of the information in §113.2312(a) of this title (relating to What site-specific documentation is required?) as required by §113.2312(b) of this title, including the date of the initial review and all subsequent annual reviews.

(11) Records showing the names of the OSWI unit operators who have completed the operator training requirements under §113.2307 of this title (relating to What are the operator training and qualification requirements?), met the criteria for qualification under §113.2309 of this title (relating to How do I obtain my operator qualification?), and maintained or renewed their qualification under §113.2310 or §113.2311 of this title (relating to How do I maintain my operator qualification? or How do I renew my lapsed operator qualification?). Records must include documentation of training, the dates of the initial and refresher training, and the dates of their qualification and all subsequent renewals of such qualifications.

(12) For each qualified operator, the phone and/or pager number at which they can be reached during operating hours.

(13) Equipment vendor specifications and related operation and maintenance requirements for the incinerator, emission controls, and monitoring equipment.

(14) The information listed in §113.2312(a) of this title.

§113.2334. Where and in what format must I keep my records?

(a) You must keep each record for a period of at least five years; on site for at least 2 years. You may keep the records off site for the remaining 3 years.

(b) All records must be available in either paper copy or computer-readable format that can be printed upon request, unless an alternative format is approved by the executive director.

§113.2335. What reports must I submit?

See Table 5 in §113.2357 of this title (relating to Tables Relating to Division 5) for a summary of the reporting requirements.

§113.2336. What information must I submit following my initial performance test?

You must submit the information specified in paragraphs (1) through (3) of this section no later than 60 days following the initial performance test. All reports must be signed by the facilities manager.

(1) The complete test report for the initial performance test results obtained under §113.2320 of this title (relating to How do I demonstrate initial compliance with the emission limitations and establish the operating limits?), as applicable.

(2) The values for the site-specific operating limits established in §113.2315 or §113.2316 of this title (relating to What operating limits must I meet and by when? or What if I do not use a wet scrubber to comply with the emission limitations?).

(3) The waste management plan, as specified in §§113.2304 through 113.2306 of this title (relating to What is a waste management plan? When must I submit my waste management plan? and What should I include in my waste management plan?).

§113.2337. When must I submit my annual report?

You must submit an annual report no later than 12 months following the submission of the information in §113.2336 of this title (relating to What information must I submit following my initial performance test?). You must submit subsequent reports no more than 12 months following the previous report.

§113.2338. What information must I include in my annual report?

The annual report required under §113.2337 of this title (relating to When must I submit my annual report?) must include the ten items listed in paragraphs (1) through (10) of this section. If you have a deviation from the operating limits or the emission limitations, you must also submit deviation reports as specified in §§113.2339 through 113.2341 of this title (relating to What else must I report if I have a deviation from the operating limits or the emission limitations?, What must I include in the deviation report?, and What else must I report if I have a deviation from the requirement to have a qualified operator accessible?).

(1) Company name and address.

(2) Statement by the owner or operator, with the name, title, and signature, certifying the truth, accuracy, and completeness of the report. Such certifications must also comply with the requirements of 40 Code of Federal Regulations §70.5(d).

(3) Date of report and beginning and ending dates of the reporting period.

(4) The values for the operating limits established pursuant to §113.2315 or §113.2316 of this title (relating to What operating limits must I meet and by when? or What if I do not use a wet scrubber to comply with the emission limitations?).

(5) If no deviation from any emission limitation or operating limit that applies to you has been reported, a statement that there was no deviation from the emission limitations or operating limits during the reporting period, and that no monitoring system used to determine compliance with the emission limitations or operating limits was inoperative, inactive, malfunctioning, or out of control.

(6) The highest recorded 12-hour average and the lowest recorded 12-hour average, as applicable, for carbon monoxide emissions and the highest recorded 3-hour average and the lowest recorded 3-hour average, as applicable, for each operating parameter recorded for the calendar year being reported.

(7) Information recorded under §113.2333(2)(F) and (3) through (5) of this title (relating to What records must I keep?) for the calendar year being reported.

(8) If a performance test was conducted during the reporting period, the results of that test.

(9) If you met the requirements of §113.2324(a) or (b) of this title (relating to May I conduct performance testing less often?), and did not conduct a performance test during the reporting period, you must state that you met the requirements of §113.2324(a) or (b) of this title, and, therefore, you were not required to conduct a performance test during the reporting period.

(10) Documentation of periods when all qualified other solid waste incineration unit operators were unavailable for more than 12 hours, but less than 2 weeks.

§113.2339. What else must I report if I have a deviation from the operating limits or the emission limitations?

(a) You must submit a deviation report if any recorded 3-hour average parameter level is above the maximum operating limit or below the minimum operating limit established under this division, if any recorded 12-hour average carbon monoxide emission rate is above the emission limitation, if the control device was bypassed, or if a performance test was conducted that showed a deviation from any emission limitation.

(b) The deviation report must be submitted by August 1 of that year for data collected during the first half of the calendar year (January 1 to June 30), and by February 1 of the following year for data you collected during the second half of the calendar year (July 1 to December 31).

§113.2340. What must I include in the deviation report?

In each report required under §113.2339 of this title (relating to What else must I report if I have a deviation from the operating limits or the emission limitations?), for any pollutant or operating parameter that deviated from the emission limitations or operating limits specified in this division, include the seven items described in paragraphs (1) through (7) of this section.

(1) The calendar dates and times your unit deviated from the emission limitations or operating limit requirements.

(2) The averaged and recorded data for those dates.

(3) Durations and causes of each deviation from the emission limitations or operating limits and your corrective actions.

(4) A copy of the operating limit monitoring data during each deviation and any test report that documents the emission levels.

(5) The dates, times, number, duration, and causes for monitor downtime incidents (other than downtime associated with zero, span, and other routine calibration checks).

(6) Whether each deviation occurred during a period of startup, shutdown, or malfunction, or during another period.

(7) The dates, times, and durations of any bypass of the control device.

§113.2341. What else must I report if I have a deviation from the requirement to have a qualified operator accessible?

(a) If all qualified operators are not accessible for 2 weeks or more, you must take the two actions in paragraphs (1) and (2) of this subsection.

(1) Submit a notification of the deviation within 10 days after the end of the 2-week period that includes the three items in subparagraphs (A) through (C) of this paragraph.

(A) A statement of what caused the deviation.

(B) A description of what you are doing to ensure that a qualified operator is accessible.

(C) The date when you anticipate that a qualified operator will be available.

(2) Submit a status report to the executive director every 4 weeks that includes the three items in subparagraphs (A) through (C) of this paragraph.

(A) A description of what you are doing to ensure that a qualified operator is accessible.

(B) The date when you anticipate that a qualified operator will be accessible.

(C) Request approval from the executive director to continue operation of the other solid waste incineration unit.

(b) If your unit was shut down by the executive director, under the provisions of §113.2313(3)(B) of this title (relating to What if all the qualified operators are temporarily not accessible?), due to a failure to provide an accessible qualified operator, you must notify the executive director that you are resuming operation once a qualified operator is accessible.

§113.2342. Are there any other notifications or reports that I must submit?

Yes, you must submit notifications as provided by 40 Code of Federal Regulations §60.7.

§113.2343. In what form can I submit my reports?

Submit initial, annual, and deviation reports electronically or in paper format, postmarked on or before the submittal due dates.

§113.2344. Can reporting dates be changed?

If the executive director agrees, you may change the semiannual or annual reporting dates. See 40 Code of Federal Regulations §60.19(c) for procedures to seek approval to change your reporting date.

§113.2345. Am I required to apply for and obtain a Title V operating permit for my unit?

Yes, if you are subject to an applicable United States Environmental Protection Agency-approved and effective Federal Clean Air Act, §111(d)/129 state or tribal plan or an applicable and effective federal plan, you are required to apply for and obtain a Title V operating permit unless you meet the relevant requirements for an exemption specified in 40 Code of Federal Regulations §60.2993.

§113.2346. When must I submit a Title V permit application for my existing unit?

(a) If your existing unit is not subject to an earlier permit application deadline, a complete Title V permit application must be submitted on or before the earlier of the dates specified in paragraphs (1) through (3) of this subsection. (See the Federal Clean Air Act, §§129(e), 503(c), 503(d), and 502(a) and 40 Code of Federal Regulations (CFR) §70.5(a)(1)(i).)

(1) 12 months after the effective date of any applicable United States Environmental Protection Agency (EPA)-approved Federal Clean Air Act, §111(d)/129 state or tribal plan.

(2) 12 months after the effective date of any applicable federal plan.

(3) December 16, 2008.

(b) For any existing unit not subject to an earlier permit application deadline, the application deadline of 36 months after the promulgation of 40 CFR Part 60, Subpart FFFF, applies regardless of whether

or when any applicable federal plan is effective, or whether or when any applicable Federal Clean Air Act, §111(d)/129 state or tribal plan is approved by the EPA and becomes effective.

(c) If your existing unit is subject to Title V as a result of some triggering requirement(s) other than those specified in subsection (a) or (b) of this section (for example, a unit may be a major source or part of a major source), then your unit may be required to apply for a Title V permit prior to the deadlines specified in subsections (a) and (b). If more than one requirement triggers a source's obligation to apply for a Title V permit, the 12-month timeframe for filing a Title V permit application is triggered by the requirement which first causes the source to be subject to Title V. (See the Federal Clean Air Act, §503(c) and 40 CFR §70.3(a) and (b) and §70.5(a)(1)(i).)

(d) A "complete" Title V permit application is one that has been determined or deemed complete by the relevant permitting authority under the Federal Clean Air Act, §503(d) and 40 CFR §70.5(a)(2). You must submit a complete permit application by the relevant application deadline in order to operate after this date in compliance with federal law. (See the Federal Clean Air Act, §503(d) and §502(a) and 40 CFR §70.7(b).)

§113.2347. What are the requirements for temporary-use incinerators and air curtain incinerators used in disaster recovery?

Your incinerator or air curtain incinerator is excluded from the requirements of this division if it is used on a temporary basis to combust debris from a disaster or emergency such as a tornado, hurricane, flood, ice storm, high winds, or act of bioterrorism. To qualify for this exclusion, the incinerator or air curtain incinerator must be used to combust debris in an area declared a State of Emergency by a local or state government, or the President, under the authority of the Stafford Act, has declared that an emergency or a major disaster exists in the area, and you must follow the requirements specified in paragraphs (1) through (3) of this section.

(1) If the incinerator or air curtain incinerator is used during a period that begins on the date the unit started operation and lasts 8 weeks or less within the boundaries of the same emergency or disaster declaration area, then it is excluded from the requirements of this division. You do not need to notify the executive director of its use or meet the emission limitations or other requirements of this division.

(2) If the incinerator or air curtain incinerator will be used during a period that begins on the date the unit started operation and lasts more than 8 weeks within the boundaries of the same emergency or disaster declaration area, you must notify the executive director that the temporary-use incinerator or air curtain incinerator will be used for more than 8 weeks and request permission to continue to operate the unit as specified in subparagraphs (A) and (B) of this paragraph.

(A) The notification must be submitted in writing by the date 8 weeks after you start operation of the temporary-use incinerator or air curtain incinerator within the boundaries of the current emergency or disaster declaration area.

(B) The notification must contain the date the incinerator or air curtain incinerator started operation within the boundaries of the current emergency or disaster declaration area, identification of the disaster or emergency for which the incinerator or air curtain incinerator is being used, a description of the types of materials being burned in the incinerator or air curtain incinerator, a brief description of the size and design of the unit (for example, an air curtain incinerator or a modular starved-air incinerator), the reasons the incinerator or air curtain incinerator must be operated for more than 8 weeks, and the amount of time for which you request permission to operate including the date you expect to cease operation of the unit.

(3) If you submitted the notification containing the information in paragraph (2)(B) of this section by the date specified in paragraph (2)(A) of this section, you may continue to operate the incinerator or air curtain incinerator for another 8 weeks, which is a total of 16 weeks from the date the unit started operation within the boundaries of the current emergency or disaster declaration area. You do not have to meet the emission limitations or other requirements of this division during this period.

(A) At the end of 16 weeks from the date the incinerator or air curtain incinerator started operation within the boundaries of the current emergency or disaster declaration area, you must cease operation of the unit or comply with all requirements of this division, unless the executive director has approved in writing your request to continue operation.

(B) If the executive director has approved in writing your request to continue operation, then you may continue to operate the incinerator or air curtain incinerator within the boundaries of the current emergency or disaster declaration area until the date specified in the approval, and you do not need to comply with any other requirements of this division during the approved time period.

§113.2348. What is an air curtain incinerator?

(a) An air curtain incinerator operates by forcefully projecting a curtain of air across an open, integrated combustion chamber (fire box) or open pit or trench (trench burner) in which combustion occurs. For the purpose of this division only, air curtain incinerators include both firebox and trench burner units.

(b) Air curtain incinerators that burn only the materials listed in paragraphs (1) through (4) of this subsection are required to meet only the requirements in this section and §§113.2349 through 113.2355 of this title (relating to When must I comply if my air curtain incinerator burns only wood waste, clean lumber, and yard waste?, What must I do if I close my air curtain incinerator that burns only wood waste, clean lumber, and yard waste and then restart it?, What must I do if I plan to permanently close my air curtain incinerator that burns only wood waste, clean lumber, and yard waste and not restart it?, What are the emission limitations for air curtain incinerators that burn only wood waste, clean lumber, and yard waste?, How must I monitor opacity for air curtain incinerators that burn only wood waste, clean lumber, and yard waste?, What are the recordkeeping and reporting requirements for air curtain incinerators that burn only wood waste, clean lumber, and yard waste?, and Am I required to apply for and obtain a Title V operating permit for my air curtain incinerator that burns only wood waste, clean lumber, and yard waste?) and are exempt from all other requirements of this division.

(1) 100 percent wood waste.

(2) 100 percent clean lumber.

(3) 100 percent yard waste.

(4) 100 percent mixture of only wood waste, clean lumber, and/or yard waste.

§113.2349. When must I comply if my air curtain incinerator burns only wood waste, clean lumber, and yard waste?

Table 1 in §113.2357 of this title (relating to Tables Relating to Division 5) specifies the final compliance date. You must submit a notification to the executive director postmarked within 10 business days after the final compliance date in Table 1 in §113.2357 of this title.

§113.2350. What must I do if I close my air curtain incinerator that burns only wood waste, clean lumber, and yard waste and then restart it?

(a) If you close your incinerator but will reopen it prior to the final compliance date in your state plan, you must meet the final compliance date specified in Table 1 in §113.2357 of this title (relating to Tables Relating to Division 5).

(b) If you close your incinerator but will restart it after your final compliance date, you must meet the emission limitations on the date your incinerator restarts operation.

§113.2351. What must I do if I plan to permanently close my air curtain incinerator that burns only wood waste, clean lumber, and yard waste and not restart it?

You must close the unit before the final compliance date specified in Table 1 in §113.2357 of this title (relating to Tables Relating to Division 5).

§113.2352. What are the emission limitations for air curtain incinerators that burn only wood waste, clean lumber, and yard waste?

(a) Within 180 days after your final compliance date in Table 1 in §113.2357 of this title (relating to Tables Relating to Division 5), you must meet the two limitations specified in paragraphs (1) and (2) of this subsection.

(1) The opacity limitation is 10 percent (6-minute average), except as described in paragraph (2) of this subsection.

(2) The opacity limitation is 35 percent (6-minute average) during the startup period that is within the first 30 minutes of operation.

(b) The limitations in subsection (a) of this section apply at all times except during malfunctions.

§113.2353. How must I monitor opacity for air curtain incinerators that burn only wood waste, clean lumber, and yard waste?

(a) Use Method 9 of 40 Code of Federal Regulations (CFR) Part 60, Appendix A to determine compliance with the opacity limitation.

(b) Conduct an initial test for opacity as specified in 40 CFR §60.8 within 180 days after the final compliance date in Table 1 in §113.2357 of this title (relating to Tables Relating to Division 5).

(c) After the initial test for opacity, conduct annual tests no more than 12 months following the date of your previous test.

(d) If the air curtain incinerator has been out of operation for more than 12 months following the date of your previous test, then you must conduct a test for opacity upon startup of the unit.

§113.2354. What are the recordkeeping and reporting requirements for air curtain incinerators that burn only wood waste, clean lumber, and yard waste?

(a) Keep records of results of all initial and annual opacity tests in either paper copy or computer-readable format that can be printed upon request, unless the executive director approves another format, for at least 5 years. You must keep each record on site for at least 2 years. You may keep the records off site for the remaining 3 years.

(b) Make all records available for submittal to the executive director or for an inspector's review.

(c) You must submit the results (each 6-minute average) of the initial opacity tests no later than 60 days following the initial test. Submit annual opacity test results within 12 months following the previous report.

(d) Submit initial and annual opacity test reports as electronic or paper copy on or before the applicable submittal date.

(e) Keep a copy of the initial and annual reports for a period of 5 years. You must keep each report on site for at least 2 years. You may keep the reports off site for the remaining 3 years.

§113.2355. Am I required to apply for and obtain a Title V operating permit for my air curtain incinerator that burns only wood waste, clean lumber, and yard waste?

Yes, if your air curtain incinerator is subject to this division, you are required to apply for and obtain a Title V operating permit as specified in §113.2345 and §113.2346 of this title (relating to Am I required to apply for and obtain a Title V operating permit for my unit? and When must I submit a Title V permit application for my existing unit?).

§113.2356. What equations must I use?

(a) Percent oxygen. Adjust all pollutant concentrations to 7 percent oxygen using equation 1 of this section.

Figure: 30 TAC §113.2356(a)

(b) Capacity of a very small municipal waste combustion unit. For very small municipal waste combustion units that can operate continuously for 24-hour periods, calculate the unit capacity based on 24 hours of operation at the maximum charge rate. To determine the maximum charge rate, use one of two methods:

(1) For very small municipal waste combustion units with a design based on heat input capacity, calculate the maximum charging rate based on the maximum heat input capacity and one of two heating values:

(A) If your very small municipal waste combustion unit combusts refuse-derived fuel, use a heating value of 12,800 kilojoules per kilogram (5,500 British thermal units per pound).

(B) If your very small municipal waste combustion unit combusts municipal solid waste, use a heating value of 10,500 kilojoules per kilogram (4,500 British thermal units per pound).

(2) For very small municipal waste combustion units with a design not based on heat input capacity, use the maximum design charging rate.

(c) Capacity of a batch very small municipal waste combustion unit. Calculate the capacity of a batch other solid waste incineration (OSWI) unit as the maximum design amount of municipal solid waste it can charge per batch multiplied by the maximum number of batches it can process in 24 hours. Calculate the maximum number of batches by dividing 24 by the number of hours needed to process one batch. Retain fractional batches in the calculation. For example, if one batch requires 16 hours, the OSWI unit can combust 24/16, or 1.5 batches, in 24 hours.

(d) Carbon monoxide pollutant rate. When hourly average pollutant rates (E) are obtained (e.g., continuous emission monitoring system values), compute the rolling average carbon monoxide pollutant rate (E) for each 12-hour period using the following equation:  
Figure: 30 TAC §113.2356(d)

§113.2357. Tables Relating to Division 5.

(a) Table 1 of this subsection specifies the compliance schedule for Division 5 of this subchapter.

Figure: 30 TAC §113.2357(a)

(b) Table 2 of this subsection specifies the emission limitations for Division 5 of this subchapter.

Figure: 30 TAC §113.2357(b)

(c) Table 3 of this subsection specifies the operating limits for incinerators and wet scrubbers for Division 5 of this subchapter.

Figure: 30 TAC §113.2357(c)

(d) Table 4 of this subsection specifies the requirements for continuous emission monitoring systems for Division 5 of this subchapter.

Figure: 30 TAC §113.2357(d)

(e) Table 5 of this subsection is a summary of the reporting requirements for Division 5 of this subchapter.

Figure: 30 TAC §113.2357(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.

Filed with the Office of the Secretary of State on November 7, 2008.

TRD-200805854

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: December 21, 2008

For further information, please call: (512) 239-2548



## CHAPTER 334. UNDERGROUND AND ABOVEGROUND STORAGE TANKS

The Texas Commission on Environmental Quality (agency, commission, or TCEQ) proposes amendments to §§334.71, 334.201, and 334.503.

### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

In a prior rulemaking proposal published May 2, 2008, the commission sought input regarding the appropriateness of whether Leaking Petroleum Storage Tank (LPST) sites should be removed from the requirements of Chapter 350 to support statutory changes made to Texas Water Code (TWC), §26.351(a) and (i), by House Bill 3554, 80th Legislature, 2007, authored by Representative Carl Isett. The commission directed staff at the October 8, 2008 Agenda to initiate rulemaking and address the LPST issue in a comprehensive rulemaking for both Chapter 334 and 30 TAC Chapter 350, Texas Risk Reduction Program.

### SECTION BY SECTION DISCUSSION

#### *Subchapter D - Release, Reporting, and Corrective Action*

The commission proposes to amend §334.71(a) to remove language requiring the use of Chapter 350 for releases discovered and reported to the agency on or after September 1, 2003. Currently, LPST sites discovered and reported on or after September 1, 2003 are required to follow Chapter 334, with the exception that Chapter 350 be used in lieu of §§334.78 - 334.81. This proposed amendment would effectively reinstate the use of §§334.78 - 334.81. Corresponding rule changes would be made to amend §350.2(g), by eliminating language requiring compliance with Chapter 350, for the assessment, response actions, and post-response action care for releases of regulated substances from underground storage tanks (USTs) or aboveground storage tanks (ASTs).

#### *Subchapter G - Target Concentration Criteria*

The commission proposes to amend §334.201(a) and (b), to remove the applicability of the Texas Risk Reduction Program to the criteria by which target concentrations are established for cleanup of LPST site releases. The commission also proposes

to make a clarifying change to subsection (b) in order to remove an out-dated reference to agency guidance documents.

#### *Subchapter K - Storage, Treatment, and Reuse Procedures for Petroleum-Substance Contaminated Soil*

The commission proposes to amend §334.503(b) and (c), to remove the applicability of the Texas Risk Reduction Program to reuse of petroleum-substance waste.

#### 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 rulemaking is in effect, no significant fiscal implications are anticipated for the agency or other units of state or local governments as a result of administration or enforcement of the proposed rules, although some state agencies and local governments responsible for conducting remedial activities associated with regulated USTs or ASTs could experience cost savings at sites that have low risk potential.

The proposed rulemaking will amend 30 TAC Chapters 334 and 350 which regulate the assessment and remediation requirements applicable to releases of regulated substances from USTs and ASTs. Under current rules, property regulated under Chapter 334 must also comply with Chapter 350 requirements for assessment, response actions, and post-response action care for releases of regulated substances from USTs and ASTs. The proposed rulemaking amends various sections of Chapter 334 to eliminate language requiring compliance with Chapter 350 and reinstates the use of Chapter 334 risk-based corrective action provisions applicable to corrective action for LPST sites. The amendments to both chapters will simplify and clarify the remedial process, yet continue to provide stringent protection of the environment.

In many cases, the proposed rulemaking could result in cost savings for owners of LPST sites that are of low risk potential. The agency estimates that there may be as many as 30 state agency sites and 36 local government sites that could be affected by the proposed rules. Cost savings from the proposed rulemaking for site assessment, cleanup, notice, and other actions could be as much as \$10,000 to \$140,000 per LPST site of low risk potential.

#### PUBLIC BENEFITS AND COSTS

Ms. Chamness also determined that for each year of the first five years the proposed rulemaking is in effect, the public benefit anticipated from the changes seen in the proposed rules will be continued protection of public health and safety through environmental cleanup of contaminated UST and AST sites. In many cases, the proposed rulemaking may allow for more rapid closure of contaminated sites due to the simplification of cleanup requirements. It may also allow abandoned contaminated sites to be returned to productive use more quickly.

The proposed rulemaking is not expected to increase costs to businesses or the general public. Rather, the proposed rulemaking is expected to generate cost savings for owners and operators of LPST sites of low risk potential.

The agency estimates that there may be as many as 431 LPST sites owned by individuals and large businesses that may be affected by the proposed rules. Cost savings resulting from the proposed change could be as much \$10,000 to \$140,000 per site for LPST sites of low risk potential.

#### SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses that own or operate LPSTs of low risk potential as a result of the proposed rules. Staff estimates that there may be as many as 616 of these sites owned or operated by small or micro-businesses that may experience cost savings ranging from \$10,000 to \$140,000 per site as a result of the proposed rules.

#### 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 rulemaking does not adversely affect a small or micro-business in a material way for the first five years that the proposed rulemaking is in effect. The proposed rules may save owners/operators of LPST sites money if those sites are of low risk potential.

#### 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 rulemaking does not adversely affect a local economy in a material way for the first five years that the proposed rulemaking is in effect.

#### DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. A major environmental rule means a rule the specific intent of which is to protect the environment or reduce risks to human health from 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.

Concerning the economy, this rule package represents a return to a more streamlined and flexible process for owners or operators of USTs or ASTs (e.g. retail gasoline stations) to address contamination resulting from releases from tank systems. Because costs of gasoline and diesel are a major concern for the Texas economy and the general public, it is sufficient to note that a streamlined and flexible process may result in a benefit to the economy. Concerning jobs, competition, and productivity, nothing in this package can be estimated to adversely affect these areas; to the extent that a benefit to the economy described above could also benefit jobs, competition, and productivity, then we expect to see a benefit in these areas as well.

Concerning "the environment, or the public health and safety of the state," the commission would first point out that the Chapter 334 assessment and corrective action rules and guidance are currently being used at a majority (approximately 63%) of open LPST sites. (These were LPST releases discovered and reported before September 1, 2003.) This rule affects only LPST releases discovered and reported on or after September 1, 2003, including future LPST sites.

Second, the commission notes that the particular Chapter 334 rules and guidance of concern here were originally proposed and adopted in 1995. House Bill 2587, 74th Legislature, 1995, effective September 1, 1995, significantly revised regulatory authority and responsibilities relative to USTs and ASTs. The rules proposed in July 1995 and adopted October 1995, officially incorporated "risk-based corrective action." This is the same risk-based

corrective action program which this rule package proposes to use for all current and future LPST sites. As stated in the 1995 rule proposal, the commission recognizes the level of remediation warranted at a high risk site will not be equivalent to the level necessary at a low risk site and that appropriate target concentrations and target cleanup levels should be used in determining risk actually posed to the environment and health or human safety. When risk pathways are not present or less risk is posed at a site, corrective action may generally be conducted more expeditiously. Thus, "risk" is the primary consideration in Chapter 334, as required by the TWC. Certain questions are approached using risk analysis, such as how far does a groundwater contamination plume need to be delineated, or to what concentration levels does natural attenuation have to be monitored. Remediation itself may involve a number of different actions, from soil removal to removal of "free product" (also known as non-aqueous phase liquid or NAPL) from wells, to engineered groundwater systems, to monitored natural attenuation (since petroleum products naturally biodegrade to a large degree). In each of these actions, effectiveness and efficiency of removing actual risk pathways to human health and the environment must be considered, as required by the statute, regardless of whether Chapter 334 or Chapter 350 is being applied.

Thus, when actual risk is considered, the Chapter 334 rules, both in 1995 and in the current proposal, are adequately protective of the environment. Although there may be discrete scenarios where Chapter 350 and Chapter 334 assessment and remediation require a different process and may have comparative positive or negative effects, taken as a whole this rule proposal does not represent a major environmental rule which adversely affects the environment or the public health and safety.

Lastly, even if this rule proposal were considered a "major environmental rule," it fails the second test under the Texas Government Code. It does not meet any of the four requirements listed in Texas Government Code, §2001.0225(a). That section states: "(a) This section applies only to a major environmental rule adopted by a state agency, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law." None of these four elements is applicable; the proposed rule package does not exceed any federal or state requirements, nor exceed delegation agreements or contracts. The proposed rule package is adopted under a specific state law, TWC, §26.351, and it is not adopted solely under the general powers of the agency.

Written comments on the draft regulatory impact analysis determination of this rulemaking may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

#### TAKINGS IMPACT ASSESSMENT

The commission evaluated this rulemaking action and performed an analysis of whether the rule is subject to Texas Government Code, Chapter 2007. The rulemaking returns LPST assessment and remediation to the same rules that were in effect before September 1, 2003. This may result in lower costs for assessment of releases from tanks, and may result in closure status being granted more quickly.

Promulgation and enforcement of the proposed amendments would constitute neither a statutory nor a constitutional taking of private real property. Specifically, the proposed rulemaking does not affect a landowner's rights in real property because the rulemaking does not burden (constitutionally) nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would exist in the absence of the proposed amendments.

Although a contaminated LPST site or contaminated neighboring property may suffer from market devaluation due to contamination, this devaluation is due to the basic fact of the presence of contamination; it cannot be concluded that the choice of application of Chapter 334 risk-based corrective action in lieu of the Texas Risk Reduction Program would "cause" the devaluation. As a whole, this rulemaking is not anticipated to be a cause of a reduction in market value of private real property, does not create a burden on private real property, and will not constitute a takings under Texas Government Code, Chapter 2007.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act Implementation Rules (31 TAC §505.11(b)(2)) subject to the Texas Coastal Management Program (CMP) and will, therefore, require that goals and policies of the 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 protects the environment by ensuring that the CMP goals and policies will not be adversely affected by the rule changes described in this preamble for the reason that although Chapter 334 cleanup requirements will now be used without Chapter 350 cleanup requirements, Chapter 334 risk-based corrective action requirements are adequately protective of human health and the environment.

The commission is seeking public comment on the consistency of the proposed rulemaking with the CMP. Written comments may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

#### ANNOUNCEMENT OF HEARING

A public hearing on this proposal will be held in Austin on December 16, 2008, 10:00 a. m. at the Texas Commission on Environmental Quality complex located at 12100 Park 35 Circle in Building E, Room 201S. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Michael Parrish, Office of Legal Services, at (512) 239-2548. Requests should be made as far in advance as possible.

#### SUBMITTAL OF COMMENTS

Comments may be submitted to Michael Parrish, MC 205, Texas Register Team, 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.state.tx.us/rules/ecomments/>. File size restrictions may apply to comments being



submitted via the eComments system. All comments should reference Rule Project No. 2009-003-350-PR. Copies of the proposed rulemaking can be obtained from the commission's Web site at [http://www.tceq.state.tx.us/nav/rules/propose\\_adopt.html](http://www.tceq.state.tx.us/nav/rules/propose_adopt.html). Comments must be received by January 5, 2009. For further information, please contact Anton E. Rozsygal, Jr., P.E., Remediation Division, at (512) 239-5755 or Cullen McMorrow, Litigation Division, at (512) 239-0607.

## SUBCHAPTER D. RELEASE REPORTING AND CORRECTIVE ACTION

### 30 TAC §334.71

#### STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.012, which provides that the commission is the agency responsible for implementing the constitution and laws of the state relating to the conservation of natural resources and protection of the environment; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; TWC, §5.105, which directs the commission to establish and approve all general policy of the commission by rule; TWC, §26.345, which authorizes the commission to develop a regulatory program and to adopt rules regarding underground storage tanks (USTs); TWC, §26.351, which directs the commission to adopt rules establishing the requirements for taking corrective action in response to a release from a UST or aboveground storage tank (AST) and TWC, §26.011, which requires the commission to control the quality of water by rule.

The proposed amendment implements TWC, §26.351, which directs the commission to adopt rules establishing the requirements for taking corrective action in response to a release from a UST or AST.

#### §334.71. *Applicability and Deadlines.*

(a) ~~The [For releases discovered and reported to the executive director on or before August 31, 2003, the] provisions of this subchapter are applicable to owners and operators of all underground storage tanks (USTs) and all petroleum product aboveground storage tanks (ASTs) unless otherwise specified in Subchapters A or F of this chapter (relating to General Provisions and Aboveground Storage Tanks, respectively). For releases to which Chapter 350 of this title (relating to Texas Risk Reduction Program) was previously applicable under former rule (i.e. releases reported on or after September 1, 2003), this subchapter shall be used as of the effective date of this subsection. [For releases reported to the agency on or after September 1, 2003, the provisions of this subchapter are applicable to owners and operators of all USTs and all petroleum product ASTs, except that Chapter 350 of this title (relating to Texas Risk Reduction Program) shall be used in lieu of §§334.78 - 334.81 of this title (relating to Site Assessment, Removal of Non-Aqueous Phase Liquids (NAPLs), Investigation for Soil and Groundwater Cleanup, and Corrective Action Plan, respectively) unless otherwise provided in §350.2(g) of this title (relating to Applicability).]~~

(b) If the release was reported to the agency on or before December 22, 1998, the person performing the corrective action shall meet the following deadlines:

(1) a complete site assessment and risk assessment (including, but not limited to, risk-based criteria for establishing target concentrations), as determined by the executive director, must be received by the agency no later than September 1, 2002;

(2) a complete corrective action plan, as determined by the executive director and including, but not limited to, completion of pilot studies and recommendation of a cost-effective and technically appropriate remediation methodology, must be received by the agency no later than September 1, 2003. The person may, in lieu of this requirement, submit by this same deadline a demonstration that a corrective action plan is not required for the site in question under commission rules. Such demonstration must be to the executive director's satisfaction;

(3) for those sites found under paragraph (2) of this subsection to require a corrective action plan, that plan must be initiated and proceeding according to the requirements and deadlines in the approved plan no later than March 1, 2004;

(4) for sites which require either a corrective action plan or groundwater monitoring, a comprehensive and accurate annual status report concerning those activities must be submitted to the agency;

(5) for sites which require either a corrective action plan or groundwater monitoring, all deadlines set by the executive director concerning the corrective action plan or approved groundwater monitoring plan shall be met; and

(6) for sites that require either a corrective action plan or groundwater monitoring, have met all other deadlines under this subsection, and have submitted annual progress reports that demonstrate progress toward meeting closure requirements, a site closure request must be submitted to the executive director no later than September 1, 2011. The request must be complete, as judged by the executive director.

(c) Failure to meet the deadlines detailed in subsection (b) of this section will result in a loss of reimbursement eligibility as described in Subchapter H of this chapter (relating to Reimbursement Program).

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

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Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

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For further information, please call: (512) 239-2548



## SUBCHAPTER G. TARGET CONCENTRATION CRITERIA

### 30 TAC §334.201

#### STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.012, which provides that the commission is the agency responsible for implementing the constitution and laws of the state relating to the conservation of natural resources and protection of the environment; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that

interprets law or policy; TWC, §5.105, which directs the commission to establish and approve all general policy of the commission by rule; TWC, §26.345, which authorizes the commission to develop a regulatory program and to adopt rules regarding underground storage tanks (USTs); TWC, §26.351, which directs the commission to adopt rules establishing the requirements for taking corrective action in response to a release from a UST or aboveground storage tank (AST) and TWC, §26.011, which requires the commission to control the quality of water by rule.

The proposed amendment implements TWC, §26.351, which directs the commission to adopt rules establishing the requirements for taking corrective action in response to a release from a UST or AST.

*§334.201. Purpose, Applicability, and Deadlines.*

(a) Purpose. The purpose of this subchapter is to establish the criteria by which target concentrations are established for the cleanup of leaking storage tank site releases discovered and reported to the agency ~~on or before August 31, 2003~~.

(b) Applicability. ~~The [For releases which are discovered and reported to the agency on or before August 31, 2003; the] provisions of this subchapter are applicable to owners and operators of all underground storage tanks (USTs) and petroleum product aboveground storage tanks (ASTs) unless otherwise specified in Subchapters A and F of this chapter (relating to General Provisions and Aboveground Storage Tanks, respectively). [These rules supersede previous cleanup guidelines as published in the January 1990, Guidance Manual for LPST Cleanups in Texas: All leaking storage tank cases which are not eligible for closure pursuant to the cleanup guidelines as published in the January 1990, Guidance Manual for LPST Cleanups in Texas as of November 8, 1995 shall be reevaluated by the owner and operator under this rule to establish target concentrations unless the agency has provided written approval of a remediation plan to clean a site to a specific numeric target concentration and the remediation plan has been initiated prior to November 8, 1995. For releases reported to the agency on or after September 1, 2003, the provisions of Chapter 350 of this title (relating to Texas Risk Reduction Program) are applicable to owners and operators of all USTs and petroleum product aboveground storage tanks (ASTs) unless otherwise specified in Subchapters A and F of this chapter in place of the provisions of this subchapter.]~~

(c) Deadlines. For sites where the release was reported to the agency on or before December 22, 1998, the deadlines detailed in §334.71(b) of this title (relating to Applicability and Deadlines) apply.

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

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Texas Commission on Environmental Quality

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## SUBCHAPTER K. STORAGE, TREATMENT, AND REUSE PROCEDURES FOR

## PETROLEUM-SUBSTANCE CONTAMINATED SOIL

### 30 TAC §334.503

#### STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.012, which provides that the commission is the agency responsible for implementing the constitution and laws of the state relating to the conservation of natural resources and protection of the environment; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; TWC, §5.105, which directs the commission to establish and approve all general policy of the commission by rule; TWC, §26.345, which authorizes the commission to develop a regulatory program and to adopt rules regarding underground storage tanks (USTs); TWC, §26.351, which directs the commission to adopt rules establishing the requirements for taking corrective action in response to a release from a UST or aboveground storage tank (AST) and TWC, §26.011, which requires the commission to control the quality of water by rule.

The proposed amendment implements TWC, §26.351, which directs the commission to adopt rules establishing the requirements for taking corrective action in response to a release from a UST or AST.

*§334.503. Reuse of Petroleum-Substance Waste.*

(a) Wastes that are intended for reuse are subject to all the applicable provisions of this subchapter, including, but not limited to, the following requirements. Sections 334.482, 334.496 - 334.500, and 334.502 of this title (relating to General Requirements [Prohibitions]; Shipping Procedures Applicable to Generators of Petroleum-Substance Waste; Recordkeeping and Reporting Procedures Applicable to Generators; Shipping Requirements Applicable to Transporters of Petroleum-Substance Waste; Shipping Requirements Applicable to Owners or Operators of Storage, Treatment, or Disposal Facilities; Recordkeeping Requirements Applicable to Owners or Operators of Storage, Treatment, or Disposal Facilities; and Design and Operating Requirements of Stockpiles and Land Surface Treatment Units).

~~[(b) Petroleum substance waste may be reused in accordance with §350.36 of this title (relating to the Relocation of Soils Containing COCs for Reuse Purposes). Recordkeeping and reporting requirements for any person who intends to reuse petroleum substance wastes shall be in accordance with §350.36 of this title except under the conditions of subsection (e)(3)(A) - (C) of this section as the requirements of §350.36(b)(4) and (e)(4) of this title will not apply. Under the conditions of subsection (e)(3)(A) - (C) of this section, the person must maintain records and provide to the agency when requested such information deemed necessary by the agency to ensure compliance with the requirements of this subsection.]~~

~~[(1) For releases reported to the agency on or after September 1, 2003, the information that must be maintained under subsection (e)(3)(A) - (C) of this section includes, but is not limited to:]~~

~~[(A) identification, address, and name of the authorized representative of the generating facility;]~~

~~[(B) identification, address, and name of the authorized representative for the receiving facility or location;]~~

~~[(C) identification of the landowner of the receiving location or facility;]~~

~~[(D)]~~ the quantity, type, and contaminant levels of the reused wastes;

~~[(E)]~~ documentation of the reuse methods and dates of reuse;

~~[(F)]~~ documentation that asphalt mix or road base mix meets the specifications required by the final user; and

~~[(G)]~~ documentation that the landowner of the receiving location has approved the use of the reused wastes on his property.]

(b) ~~[(2)]~~ The [For releases reported to the agency on or before August 31, 2003, the] recordkeeping and reporting requirement for any person who intends to reuse petroleum-substance wastes must require that person to maintain records and provide to the agency when requested such information deemed necessary by the agency to ensure compliance with the requirements of this subsection. This information shall include, but is not limited to:

(1) ~~[(A)]~~ identification, address, and name of the designated representative of the generating facility;

(2) ~~[(B)]~~ identification, address, and name of the designated representative for the receiving facility or location;

(3) ~~[(C)]~~ identification of the landowner of the receiving location or facility;

(4) ~~[(D)]~~ the quantity, type, and contaminant levels of the reused wastes;

(5) ~~[(E)]~~ documentation of the reuse methods and dates of reuse;

(6) ~~[(F)]~~ documentation that asphalt mix or road base mix meets the specifications required by the final user; and

(7) ~~[(G)]~~ documentation that the landowner of the receiving location has approved the use of the reused wastes on his property.

(c) Reuse requirements are as follows.

(1) Any [For releases reported to the agency on or before August 31, 2003, any] person who intends to utilize petroleum-substance wastes for reuse must obtain written approval from the landowner of the land on which the wastes will be placed and from the agency as specified by this subsection. The landowner's approval shall be submitted to the agency upon request.

(2) Petroleum-substance wastes shall be reused only in manners which are in accordance with §334.482 of this title and at contaminant levels specified by the agency.

(3) Petroleum-substance wastes may be reused under the following conditions.

(A) Petroleum-substance wastes may be utilized in cold-mix-emulsion bituminous paving at a cold-mix asphalt-producing facility registered under the terms of this subchapter. The petroleum-substance waste shall be mixed with aggregate or other suitable materials at a rate which will result in a mixture meeting or exceeding the specifications required by the final user. The petroleum-substance waste must contain less than 0.5 milligrams/kilograms (mg/kg) for each component of benzene, toluene, ethyl benzene, and total xylenes prior to mixing. Authorization for the facility must also be obtained from all other appropriate federal, state, or local governing agencies. Authorization from the owner of the road or other area where the asphalt is to be utilized must be obtained prior to laying the asphalt.

~~[(i)]~~ For releases reported to the agency on or before August 31, 2003, the petroleum-substance waste will contain less than 0.5 mg/kg for each component of benzene, toluene, ethyl benzene, and

total xylenes prior to mixing. Authorization for the facility must also be obtained from all other appropriate federal, state, or local governing agencies. Authorization from the owner of the road or other area where the asphalt is to be utilized must be obtained prior to laying the asphalt.]

~~[(ii)]~~ For releases reported to the agency on or after September 1, 2003, the concentration of benzene, toluene, ethylbenzene, and total xylenes, or any other relevant chemicals of concern derived from the petroleum substance waste must not exceed levels which are protective of human health and the environment as generally determined in accordance with Chapter 350 of this title (relating to Texas Risk Reduction Program), and must not be at concentrations which compromise the integrity of the cold-mix asphalt product. Authorization for the facility must also be obtained from all other appropriate federal, state, or local governing agencies. Authorization from the owner of the road or other area where the asphalt is to be utilized must be obtained prior to laying the asphalt.]

(B) Petroleum-substance wastes may be utilized in asphalt mix at hot-mix asphalt-producing facilities registered under this subchapter. The petroleum-substance waste must contain less than 0.5 mg/kg for each component of benzene, toluene, ethyl benzene, and total xylenes prior to mixing. The petroleum-substance waste must be mixed with aggregate at a rate which will result in a mixture meeting or exceeding the specifications required by the final user. Authorization for the facility must also be obtained from all other appropriate federal, state, or local governing agencies. Authorization from the owner of the road or other area where the asphalt is to be utilized must be obtained prior to laying the asphalt.

~~[(i)]~~ For releases reported to the agency on or before August 31, 2003, the petroleum-substance waste will contain less than 0.5 mg/kg for each component of benzene, toluene, ethyl benzene, and total xylenes prior to mixing. The petroleum-substance waste must be mixed with aggregate at a rate which will result in a mixture meeting or exceeding the specifications required by the final user. Authorization for the facility must also be obtained from all other appropriate federal, state, or local governing agencies. Authorization from the owner of the road or other area where the asphalt is to be utilized must be obtained prior to laying the asphalt.]

~~[(ii)]~~ For releases reported to the agency on or after September 1, 2003, the concentration of benzene, toluene, ethylbenzene, and total xylenes, or any other relevant chemicals of concern derived from the petroleum substance waste must not exceed levels which are protective of human health and the environment as generally determined in accordance with Chapter 350 of this title, and must not be at such concentrations which compromise the integrity of the hot-mix asphalt product. The petroleum-substance waste must be mixed with aggregate at a rate which will result in a mixture meeting or exceeding the specifications required by the final user. Authorization for the facility must also be obtained from all other appropriate federal, state, or local governing agencies. Authorization from the owner of the road or other area where the asphalt is to be utilized shall be obtained prior to laying the asphalt.]

(C) Petroleum-substance wastes may be utilized in road base or parking lot stabilized base when the base will be covered with concrete or asphalt if the contaminant levels of the soil prior to mixing into the stabilized base are less than 0.5 mg/kg for each component of benzene, toluene, ethyl benzene, and total xylenes, and less than 500.0 mg/kg total petroleum hydrocarbons or at contaminant levels otherwise specified by the agency. The base must be mixed according to the specifications required by the final user. Soil which is not mixed into stabilized road base must meet the criteria for clean soil as specified by the agency to be spread on a road or parking lot. The generator

must obtain prior written consent for the placement of the soil from the owner of the road (if different from the landowner).

~~/(i) For releases reported to the agency on or before August 31, 2003, the contaminant levels of the soil prior to mixing into the stabilized base are less than 0.5 mg/kg for each component of benzene, toluene, ethyl benzene, and total xylenes, and less than 500.0 mg/kg total petroleum hydrocarbons or at contaminant levels otherwise specified by the agency. The base must be mixed according to the specifications required by the final user. Soil which is not mixed into stabilized road base must meet the criteria for clean soil as specified by the agency to be spread on a road or parking lot. The generator must obtain prior written consent for the placement of the soil from the owner of the road (if different from the landowner).]~~

~~/(ii) For releases reported to the agency on or after September 1, 2003, the concentration of benzene, toluene, ethylbenzene, and total xylenes, or any other relevant chemicals of concern derived from the petroleum substance waste shall not exceed levels which are protective of human health and the environment as generally determined in accordance with Chapter 350 of this title, and must not be at such concentrations which compromise the integrity of the stabilized base. The base must be mixed according to the specifications required by the final user. Soil which is not mixed into stabilized road base must meet the criteria for clean soil as specified by the agency to be spread on a road or parking lot. The generator must obtain prior written consent for the placement of the soil from the owner of the road (if different from the landowner).]~~

~~(D) Petroleum-substance [For releases reported to the agency on or before August 31, 2003, petroleum-substance] wastes may be utilized, if appropriate, in road base or parking lot stabilized base when the base will not be covered with asphalt or concrete. To determine if the soil to be reused is appropriate for the application, analysis for contamination must be conducted as specified by this agency. The agency will give written approval for the particular reuse after ensuring that the implementation will, in the opinion of agency staff, adequately protect human health, safety, and the environment. The base must be mixed according to the specifications required by the final user. The base must be professionally mixed by a facility registered under the terms of this subchapter. Soil which is not mixed into stabilized road base must meet the criteria for clean soil to be spread on a road or parking lot. The generator must obtain prior written consent for the placement of the soil from the owner of the road (if different from the landowner).~~

~~(E) Petroleum-substance [For releases reported to the agency on or before August 31, 2003, petroleum-substance] wastes may, if appropriate, be used as fill. To determine if the soil to be reused is appropriate for the application, analysis for contamination must be conducted as specified by this agency. The agency will give written approval for the particular reuse after ensuring that the implementation will, in the opinion of agency staff, adequately protect human health, safety, and the environment. The landowner at the receiving site (if different from the original owner of the petroleum substance contaminated soil) must give written consent for this activity. Fill for tank hold bedding and backfill for tank systems must meet the requirements of §334.46(a)(5) of this title (relating to Installation Standards for New Underground Storage Tank Systems).~~

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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Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

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## CHAPTER 350. TEXAS RISK REDUCTION PROGRAM

The Texas Commission on Environmental Quality (agency, commission, or TCEQ) proposes amendments to §§350.2, 350.4, 350.77, 350.91, and 350.92.

### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

In a prior rulemaking proposal published May 2, 2008, the commission sought input regarding the appropriateness of whether Leaking Petroleum Storage Tank (LPST) sites should be removed from the requirements of Chapter 350 to support statutory changes made to Texas Water Code (TWC), §26.351(a) and (j) by House Bill 3554, 80th Legislature, 2007, authored by Representative Carl Isett. The commission directed staff at the October 8, 2008 Agenda to initiate rulemaking and address the LPST issue in a comprehensive rulemaking for both 30 TAC Chapter 334, Underground and Aboveground Storage Tanks and Chapter 350.

### SECTION BY SECTION DISCUSSION

#### *Subchapter A - General Information*

The commission proposes to amend §350.2 to eliminate language requiring compliance with Chapter 350 for the assessment, response actions, and post-response action care for releases of regulated substances from underground storage tanks (USTs) and aboveground storage tanks (ASTs). Currently, LPST sites discovered and reported on or after September 1, 2003 are required to follow Chapter 334, with the exception that Chapter 350 be used in lieu of certain parts of Chapter 334. This rulemaking would effectively reinstate the sole use of Chapter 334 for releases from USTs and ASTs. The commission also proposes to amend §350.4(a)(11) so that the definition of "chemical of concern" in the Texas Risk Reduction Program does not include reference to the UST provisions of the TWC and Chapter 334.

#### *Subchapter D - Development of Protective Concentration Levels*

The commission proposes to amend §350.77(b) so that the definition of "chemical of concern" does not include references to the UST provisions of the TWC and Chapter 334.

#### *Subchapter E - Reports*

The commission proposes to amend §350.91 and §350.92 to remove reference to LPST identification numbers.

### 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 rulemaking is in effect, no significant fiscal implications are anticipated for the agency or other units of state or local governments as a result of administration or enforcement of the proposed rules, although some state agencies and local govern-

ments responsible for conducting remedial activities associated with regulated USTs or ASTs could experience cost savings at sites that have low risk potential.

The proposed rulemaking will amend two chapters of 30 TAC which regulate the assessment and remediation requirements applicable to releases of regulated substances from USTs and ASTs. Under current rules, property regulated under Chapter 334 must also comply with Chapter 350 requirements for assessment, response actions, and post-response action care for releases of regulated substances from USTs and ASTs. The proposed rulemaking amends various sections of Chapter 350 to eliminate language requiring compliance with Chapter 350 and reinstates the use of Chapter 334 risk-based corrective action provisions applicable to corrective action for LPST sites. The amendments to both chapters will simplify and clarify the remedial process, yet continue to provide stringent protection of the environment.

In many cases, the proposed rulemaking could result in cost savings for owners of LPST sites that are of low risk potential. The agency estimates that there may be as many as 30 state agency sites and 36 local government sites that could be affected by the proposed rules. Cost savings from the proposed rules for site assessment, cleanup, notice, and other actions could be as much as \$10,000 to \$140,000 per LPST site of low risk potential.

#### PUBLIC BENEFITS AND COSTS

Ms. Chamness also determined that for each year of the first five years the proposed rulemaking is in effect, the public benefit anticipated from the changes seen in the proposed rules will be continued protection of public health and safety through environmental cleanup of contaminated UST and AST sites. In many cases, the proposed rulemaking may allow for more rapid closure of contaminated sites due to the simplification of cleanup requirements. It may also allow abandoned contaminated sites to be returned to productive use more quickly.

The proposed rulemaking is not expected to increase costs to businesses or the general public. Rather, the proposed rulemaking is expected to generate cost savings for owners and operators of LPST sites of low risk potential.

The agency estimates that there may be as many as 431 LPST sites owned by individuals and large businesses that may be affected by the proposed rules. Cost savings resulting from the proposed changes could be as much \$10,000 to \$140,000 per site for LPST sites of low risk potential.

#### SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses that own or operate LPSTs of low risk potential as a result of the proposed rules. Staff estimates that there may be as many as 616 of these sites owned or operated by small or micro-businesses that may experience cost savings ranging from \$10,000 to \$140,000 per site as a result of the proposed rules.

#### 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 rulemaking does not adversely affect a small or micro-business in a material way for the first five years that the proposed rulemaking is in effect. The proposed rules may save owners/operators of LPST sites money if those sites are of low risk potential.

#### 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 rulemaking does not adversely affect a local economy in a material way for the first five years that the proposed rulemaking is in effect.

#### DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. A major environmental rule means a rule the specific intent of which is to protect the environment or reduce risks to human health from 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.

Concerning the economy, this rule package represents a return to a more streamlined and flexible process for owners or operators of USTs or ASTs (e.g. retail gasoline stations) to address contamination resulting from releases from tank systems. Because costs of gasoline and diesel are a major concern for the Texas economy and the general public, it is sufficient to note that a streamlined and flexible process may result in a benefit to the economy. Concerning jobs, competition, and productivity, nothing in this package can be estimated to adversely affect these areas; to the extent that a benefit to the economy previously described could also benefit jobs, competition, and productivity, then we expect to see a benefit in these areas as well.

Concerning "the environment, or the public health and safety of the state," the commission would first point out that the Chapter 334 assessment and corrective action rules and guidance are currently being used at a majority (approximately 63%) of open LPST sites. (These were LPST releases discovered and reported before September 1, 2003.) This rule affects only LPST releases discovered and reported on or after September 1, 2003, including future LPST sites.

Second, the commission notes that the particular Chapter 334 rules and guidance of concern here were originally proposed and adopted in 1995. House Bill 2587, 74th Legislature, 1995, effective September 1, 1995, significantly revised regulatory authority and responsibilities relative to USTs and ASTs. The rules proposed in July 1995 and adopted October 1995, officially incorporated "risk-based corrective action." This is the same risk-based corrective action program which this rule package proposes to use for all current and future LPST sites. As stated in the 1995 rule proposal, the commission recognizes that the level of remediation warranted at a high risk site will not be equivalent to the level necessary at a low risk site and that appropriate target concentrations and target cleanup levels should be used in determining risk actually posed to the environment and health or human safety. When risk pathways are not present or less risk is posed at a site, corrective action may generally be conducted more expeditiously. Thus, "risk" is the primary consideration in Chapter 334, as required by the TWC. Certain questions are approached using risk analysis, such as how far does a groundwater contamination plume need to be delineated, or for how many years (or to what concentration levels) does natural attenuation have to be monitored. Remediation itself may involve a number of different actions, from soil removal to removal of "free product"

(also known as non-aqueous phase liquid or NAPL) from wells, to engineered groundwater systems, to monitored natural attenuation (since petroleum products naturally biodegrade to a large degree). In each of these actions, effectiveness and efficiency of removing actual risk pathways to human health and the environment must be considered, as required by the statute, regardless of whether Chapter 334 or Chapter 350 is being applied.

Thus, when actual risk is considered, the Chapter 334 rules, both in 1995 and in the current proposal, are adequately protective of the environment. Although there may be discrete scenarios where Chapter 350 and Chapter 334 assessment and remediation require a different process and may have comparative positive or negative effects, taken as a whole this rule proposal does not represent a major environmental rule which adversely affects the environment or the public health and safety.

Lastly, even if this rule proposal were considered a "major environmental rule," it fails the second test under the Texas Government Code. It does not meet any of the four requirements listed in Texas Government Code, §2001.0225(a). That section states: "(a) This section applies only to a major environmental rule adopted by a state agency, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law." None of these four elements is applicable; the proposed rule package does not exceed any federal or state requirements, nor exceed delegation agreements or contracts. The proposed rule package is adopted under a specific state law, TWC, §26.351, and it is not adopted solely under the general powers of the agency.

Written comments on the draft regulatory impact analysis determination of this rulemaking may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

#### TAKINGS IMPACT ASSESSMENT

The commission evaluated this rulemaking action and performed an analysis of whether the rules are subject to Texas Government Code, Chapter 2007. The rulemaking returns LPST assessment and remediation to the same rules that were in effect before September 1, 2003. This may result in lower costs for assessment of releases from tanks, and may result in closure status being granted more quickly.

Promulgation and enforcement of the proposed amendments would constitute neither a statutory nor a constitutional taking of private real property. Specifically, the proposed rulemaking does not affect a landowner's rights in real property because the rulemaking does not burden (constitutionally) nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would exist in the absence of the proposed amendments.

Although a contaminated LPST site or contaminated neighboring property may suffer from market devaluation due to contamination, this devaluation is due to the basic fact of the presence of contamination; it cannot be concluded that the choice of application of Chapter 334 risk-based corrective action in lieu of the Texas Risk Reduction Program would "cause" the devaluation. As a whole, this rulemaking is not anticipated to be a cause of a

reduction in market value of private real property, does not create a burden on private real property, and will not constitute a takings under Texas Government Code, Chapter 2007.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act Implementation Rules (31 TAC §505.11(b)(2)) subject to the Texas Coastal Management Program (CMP) and will, therefore, require that goals and policies of the 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 protects the environment by ensuring that the CMP goals and policies will not be adversely affected by the rule changes described in this preamble for the reason that although Chapter 334 cleanup requirements will now be used without Chapter 350 cleanup requirements, Chapter 334 risk-based corrective action requirements are adequately protective of human health and the environment.

The commission is seeking public comment on the consistency of the proposed rulemaking with the CMP. Written comments may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble

#### ANNOUNCEMENT OF HEARING

A public hearing on this proposal will be held in Austin on December 16, 2008, 10:00 a.m. at the Texas Commission on Environmental Quality complex located at 12100 Park 35 Circle in Building E, Room 201S. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Michael Parrish, Office of Legal Services, at (512) 239-2548. Requests should be made as far in advance as possible.

#### SUBMITTAL OF COMMENTS

Comments may be submitted to Michael Parrish, MC 205, Texas Register Team, 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.state.tx.us/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project No. 2009-003-350-PR. Copies of the proposed rulemaking can be obtained from the commission's Web site at [http://www.tceq.state.tx.us/nav/rules/propose\\_adopt.html](http://www.tceq.state.tx.us/nav/rules/propose_adopt.html). Comments must be received by January 5, 2009. For further information, please contact Anton E. Rozsygal, Jr., P.E., Remediation Division, at (512) 239-5755 or Cullen McMorrow, Litigation Division, at (512) 239-0607.

#### SUBCHAPTER A. GENERAL INFORMATION

##### 30 TAC §350.2, §350.4

#### STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code (TWC), §5.012, which provides that the commission is the agency re-

sponsible for implementing the constitution and laws of the state relating to the conservation of natural resources and protection of the environment; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; TWC, §5.105, which directs the commission to establish and approve all general policy of the commission by rule; TWC, §26.345, which authorizes the commission to develop a regulatory program and to adopt rules regarding underground storage tanks (USTs); TWC, §26.351, which directs the commission to adopt rules establishing the requirements for taking corrective action in response to a release from a UST or aboveground storage tank (AST) and TWC, §26.011, which requires the commission to control the quality of water by rule.

The proposed amendments implement TWC, §26.351, which directs the commission to adopt rules establishing the requirements for taking corrective action in response to a release from a UST or AST.

#### §350.2. *Applicability.*

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

(g) Property regulated under Chapter 334 of this title (relating to Underground and Aboveground Storage Tanks). The person shall comply with the requirements of Chapter 334 of this title and not this chapter for the assessment, response actions, and post-response action care for releases of regulated substances from underground storage tanks (USTs) and aboveground storage tanks (ASTs). [as specified in Chapter 334, Subchapter A of this title (relating to General Provisions), as amended, and for releases of petroleum products from aboveground storage tanks (ASTs) as specified in Chapter 334, Subchapter F of this title (relating to Aboveground Storage Tanks), as amended, which are reported to the executive director in accordance with Chapter 334, Subchapter D of this title (relating to Release Reporting and Corrective Action), as amended, on or after September 1, 2003, unless a variance is granted in accordance with the requirements in paragraphs (1) - (7) of this subsection. Additional corrective action requirements for these facilities are found in Chapter 334, Subchapters D, J, and K of this title (relating to Release Reporting and Corrective Action; Leaking Petroleum Storage Tank Corrective Action Specialist Registration and Project Manager Licensing; and Storage, Treatment, and Reuse Procedures for Petroleum-Substance Contaminated Soil, respectively), as amended. For releases discovered and reported to the executive director before September 1, 2003, the person shall continue to comply with Chapter 334, Subchapters D, G, H, J, K, and M of this title (relating to Release Reporting and Corrective Action; Target Concentration Criteria; Reimbursement Program; Leaking Petroleum Storage Tank Corrective Action Specialist Registration and Project Manager Licensing; Storage, Treatment, and Reuse Procedures for Petroleum-Substance Contaminated Soil; and Reimbursable Cost Specifications for the Petroleum Storage Tank Reimbursement Program, respectively), as amended, which were in effect prior to the effective date of this chapter, not to preclude compliance with a subsequent amendment of Chapter 334 of this title.]

{(1) The executive director may consider requests for a variance to applicability of this chapter, as amended, upon submission of a written request for a variance from applicability of this chapter that includes the following documentation in a form prescribed or allowed by the executive director:}

{(A) documents, either submitted in accordance with the requirements of Chapter 334, Subchapters A, C, D, and F of this title, as amended and as applicable, or otherwise credible and appropriate documented evidence as determined by the executive director

demonstrating that, before September 1, 2003, the UST system at the property for which the variance is sought was permanently removed from service and the AST at the property for which the variance is sought was removed from the property;}

{(B) a draft restrictive covenant to be filed in the property records of the county where the property is located upon granting of the variance by the executive director that:}

{(i) prohibits use of ASTs or USTs at the property or at any subsequent subdivision of the property;}

{(ii) is written in favor of the TCEQ and the State of Texas; and}

{(iii) runs with the land;}

{(C) documents identifying UST or AST release sites addressed under Chapter 334, Subchapters D and G of this title, as amended, that are within 1/4 mile from the property for which the variance is sought, with an accompanying description comparing the release, site, and receptor conditions at the release sites located within 1/4 mile and any other relevant factors that demonstrate any regulatory inequity that may occur as the result of compliance with this chapter; and}

{(D) any other information requested by the executive director that is reasonably necessary for appropriate consideration of the request.}

{(2) The executive director may grant a variance requested in accordance with paragraph (1) of this subsection if:}

{(A) before September 1, 2003, the UST system at the site for which the variance is sought was permanently removed from service and the AST at the site for which the variance is sought was removed from the property;}

{(B) a UST or AST release site addressed under Chapter 334, Subchapters D and G of this title, as amended, is within 1/4 mile from the site for which a variance is sought;}

{(C) within 45 calendar days of a request for additional information by the executive director, or within a time period directed or agreed upon by the executive director in writing, the person seeking a variance submitted the requested information; and}

{(D) the variance request documents an unjustifiable degree of regulatory inequity between the site for which a variance is sought and a UST or AST release site addressed under Chapter 334, Subchapters D and G of this title, based on a comparison of the release, site, and receptor conditions and any other relevant factors at the release sites located within 1/4 mile.}

{(3) The executive director must provide written notice to the person seeking the variance that the variance is granted, denied, or repealed. The executive director may direct the person seeking the variance to make changes to the draft restrictive covenant described in paragraph (1)(B) of this subsection if necessary to ensure that the restrictive covenant conforms with the intent of this subsection. If the executive director denies the request or repeals the variance, the notice required by this paragraph must include the reason(s) the variance has been denied or repealed.}

{(4) Within 45 calendar days of issuance of the written notice described in paragraph (3) of this subsection that grants the variance, the person who sought the variance shall provide:}

{(A) proof that the restrictive covenant, with any changes directed by the executive director, described in paragraph

(1)(B) of this subsection was filed in the property records of the county where the property is located; and]

[(B) a copy of the restrictive covenant filed in the property records of the county where the property is located.]

[(5) Upon the effective date indicated in the notice granting a variance, the person who sought the variance shall comply with Chapter 334, Subchapters D and G of this title, as amended, in lieu of this chapter.]

[(6) The executive director shall repeal a variance if the person who sought the variance fails to comply with paragraph (4) of this subsection unless the person who sought the variance provides compelling evidence that uncontrollable circumstances, including, but not limited to, an act of God, an act of war, severe meteorological conditions, or other similar occurrences beyond the reasonable control of the person seeking the variance, led to their inability to comply within the time frame provided in paragraph (4) of this subsection.]

[(7) Regardless of whether the release has been fully addressed and closed under Chapter 334, Subchapters D and G of this title, a variance granted under this subsection is automatically repealed, and this chapter becomes immediately applicable to the release, if the property or subdivision of the property is used for UST or AST purposes as regulated under Chapter 334 of this title.]

(h) Property regulated under Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste). The person shall comply with the requirements of this chapter when undertaking the remediation of affected property at facilities used for the storage, processing or disposal of industrial solid waste or municipal hazardous waste, or for the remediation of environmental media containing COCs resulting from releases from waste management facility components (e.g., tank, container storage area, surface impoundment, etc.), either as part of closure or at any time before or after closure. The person shall close a waste management facility component in a manner that minimizes or eliminates the need for further maintenance and controls. The manner of closure shall also minimize or eliminate, to the extent necessary to protect human health and the environment, the post-closure escape of waste, contaminants, leachate, run-off, or decomposition products to the surrounding environmental media. Waste management facility components undergoing closure for which the person can demonstrate that no release of COCs to surrounding environmental media has occurred are subject to this chapter only with regard to this closure performance standard and the removal, decontamination or control requirements for waste as specified in Subchapter B of this chapter (relating to Remedy Standards). In the event a release of COCs to surrounding environmental media has occurred, then the person shall comply with this chapter for response to the release. The person shall comply with §335.118(b) of this title (relating to Closure Plan; Submission and Approval of Plan), as amended, or applicable permit provisions regarding requirements for public participation in the corrective action process for permitted hazardous waste facilities. The person shall also comply with the requirements of paragraphs (1) - (3) of this subsection, as applicable.

(1) (No change.)

(2) Any person who stores, processes, or disposes of hazardous waste is also subject to the applicable provisions relating to closure and post-closure in Chapter 335, Subchapters E and F of this title (relating to Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, [Processing,] or Disposal Facilities; and Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, [Processing,] or Disposal Facilities, respectively), as amended.

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

(i) - (m) (No change.)

#### §350.4. *Definitions and Acronyms.*

(a) Definitions.

(1) - (10) (No change.)

(11) Chemical of concern--Any chemical that has the potential to adversely affect ecological or human receptors due to its concentration, distribution, and mode of toxicity. Depending on the program area, chemicals of concern may include the following: solid waste, industrial solid waste, municipal solid waste, and hazardous waste as defined in the Texas Health and Safety Code, §361.003, as amended; hazardous constituents as listed in 40 Code of Federal Regulations Part 261, Appendix VIII, as amended; constituents on the groundwater monitoring list in 40 Code of Federal Regulations Part 264, Appendix IX, as amended; constituents as listed in 40 Code of Federal Regulations Part 258 Appendices I and II, as amended; pollutant as defined in Texas Water Code, §26.001, as amended; hazardous substance as defined in the Texas Health and Safety Code, §361.003, as amended, and Texas Water Code, §26.263, as amended; [regulated substance as defined in Texas Water Code, §26.342, as amended, and §334.2 of this title (relating to Definitions); as amended; petroleum product as defined in Texas Water Code, §26.342, as amended, and §334.122(b)(12) of this title (relating to Definitions for (ASTs); as amended;] other substances as defined in Texas Water Code, §26.039(a), as amended; and daughter products of the aforementioned constituents.

(12) - (91) (No change.)

(b) - (d) (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 November 7, 2008.

TRD-200805859

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: December 21, 2008

For further information, please call: (512) 239-2548



## SUBCHAPTER D. DEVELOPMENT OF PROTECTIVE CONCENTRATION LEVELS

### 30 TAC §350.77

#### STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code (TWC), §5.012, which provides that the commission is the agency responsible for implementing the constitution and laws of the state relating to the conservation of natural resources and protection of the environment; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; TWC, §5.105, which directs the commission to establish and approve all general policy of the commission by rule; TWC, §26.345, which authorizes the commission to



develop a regulatory program and to adopt rules regarding underground storage tanks (USTs); TWC, §26.351, which directs the commission to adopt rules establishing the requirements for taking corrective action in response to a release from a UST or aboveground storage tank (AST) and TWC, §26.011, which requires the commission to control the quality of water by rule.

The proposed amendments implement TWC, §26.351, which directs the commission to adopt rules establishing the requirements for taking corrective action in response to a release from a UST or AST.

*§350.77. Ecological Risk Assessment and Development of Ecological Protective Concentration Levels.*

(a) (No change.)

(b) Tier 1: exclusion criteria checklist. The person shall conduct a Tier 1 assessment at all affected properties to which this rule is applicable as presented in §350.2 of this title (relating to Applicability), unless the person elects to begin the ecological evaluation at Tier 2 or Tier 3. The person shall use the Tier 1 Exclusion Criteria Checklist provided in the following figure. The person will have fulfilled the ecological risk assessment requirements if the affected property meets the exclusion criteria. However, the person shall re-enter the ecological risk assessment process if changing circumstances result in the affected property not meeting the Tier 1 exclusion criteria. The person is required to continue the ecological risk assessment process as described in subsection (c) or (d) of this section if the affected property fails the exclusion criteria, unless the reasoned justification and/or expedited stream evaluation processes described in subsection (a) of this section are used to demonstrate that no unacceptable ecological risk exists.

Figure: 30 TAC §350.77(b)  
[Figure: 30 TAC §350.77(b)]

(c) - (f) (No change.)

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

Filed with the Office of the Secretary of State on November 7, 2008.

TRD-200805860  
Kathleen C. Decker  
Director, Litigation Division  
Texas Commission on Environmental Quality  
Earliest possible date of adoption: December 21, 2008  
For further information, please call: (512) 239-2548



## SUBCHAPTER E. REPORTS

### 30 TAC §350.91, §350.92

#### STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code (TWC), §5.012, which provides that the commission is the agency responsible for implementing the constitution and laws of the state relating to the conservation of natural resources and protection of the environment; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; TWC, §5.105, which directs the commis-

sion to establish and approve all general policy of the commission by rule; TWC, §26.345, which authorizes the commission to develop a regulatory program and to adopt rules regarding underground storage tanks (USTs); TWC, §26.351, which directs the commission to adopt rules establishing the requirements for taking corrective action in response to a release from a UST or aboveground storage tank (AST) and TWC, §26.011, which requires the commission to control the quality of water by rule.

The proposed amendments implement TWC, §26.351, which directs the commission to adopt rules establishing the requirements for taking corrective action in response to a release from a UST or AST.

*§350.91. Affected Property Assessment Report.*

(a) The person shall include the contact and identifications as described in paragraphs (1) - (3) of this subsection in an affected property assessment report (APAR):

(1) (No change.)

(2) the program and identification numbers for the project, if any (e.g., Solid Waste Registration number, [~~Leaking Petroleum Storage Tank identification number,~~] Voluntary Cleanup Program number, etc.); and

(3) (No change.)

(b) (No change.)

*§350.92. Self-Implementation Notice.*

The person shall include the following information in a self-implementation notice (SIN):

(1) the person shall include the following contact and identifications:

(A) (No change.)

(B) the program and identification numbers for the project, if any (e.g., Solid Waste Registration number, [~~Leaking Petroleum Storage Tank identification number,~~] Voluntary Cleanup Program number, etc.); and

(C) (No change.)

(2) - (9) (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 November 7, 2008.

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Kathleen C. Decker  
Director, Litigation Division  
Texas Commission on Environmental Quality  
Earliest possible date of adoption: December 21, 2008  
For further information, please call: (512) 239-2548



## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### PART 3. TEXAS YOUTH COMMISSION

CHAPTER 85. ADMISSION, PLACEMENT,  
AND PROGRAM COMPLETION  
SUBCHAPTER B. PLACEMENT PLANNING  
37 TAC §85.25

The Texas Youth Commission (TYC) proposes an amendment to §85.25, concerning Minimum Length of Stay. In accordance with provisions of Senate Bill 103 (80th Texas Legislature), the amended section will establish a minimum length of stay assignment system based on the nature and seriousness of the conduct of youth committed to TYC, as well as the danger posed to the community by the youth. The minimum length of stay will no longer be based solely on the committing offense.

Robin McKeever, Chief Financial Officer, has determined that insufficient data are available at this time to accurately determine the fiscal implications for state or local government as a result of enforcing or administering the amended section.

Cheryl N. Townsend, Executive Commissioner, has 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 the establishment of a minimum length of stay system that is more directly associated with a youth's rehabilitation needs, protection of the public, and compliance with recent legislative mandates. There will be no effect on small businesses or micro-businesses. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted within 30 days of the publication of this notice to DeAnna Lloyd, Manager of Policy and Accreditation, Texas Youth Commission, P.O. Box 4260, Austin, Texas 78765, or e-mail to deanna.lloyd@tyc.state.tx.us.

The amendment is proposed under the Human Resources Code, §61.062, which requires the commission to consider the nature and seriousness of the conduct engaged in by the child and the danger the child poses to the community when establishing the minimum length of stay.

The proposed amendment implements the Human Resources Code, §61.034.

§85.25. *Minimum Length of Stay/Minimum Period of Confinement.*

(a) Purpose. This rule establishes a minimum period of time youth will spend in high or medium restriction placements. [The purpose of this rule is to establish by policy a minimum period of time a youth will spend in residential placements (high or medium restriction) having reduced access to the public and which is based on the most serious offense the youth committed. The maximum period of time a youth may spend in residential placement is the total time prior to the youth's 21st birthday.]

(b) Applicability.

(1) This policy applies only to:

(A) youth who are committed to the Texas Youth Commission (TYC) on or after February 1, 2009; and

(B) youth whose parole is revoked on or after February 1, 2009, regardless of the commitment date.

(2) Youth who were committed to TYC and/or whose parole was revoked prior to February 1, 2009 remain subject to provisions of this rule in effect at the time of the commitment or revocation.

{(1) Except where specifically named, requirements herein do not apply to sentenced offenders. See §85.59 of this title (relating to Program Completion for Sentenced Offenders Under Age 19), §85.61 of this title (relating to Program Completion for Sentenced Offenders Age 19 or Older) and §85.69 of this title (relating to Program Completion for Sentenced Offenders Adjudicated for Capital Murder) for additional information. The Texas Youth Commission (TYC) complies with orders of the committing court regarding sentences for youth sentenced to commitment to TYC.}

{(2) A disciplinary assigned length of stay of up to six (6) months may be assigned in accordance with §95.11 of this title (relating to Disciplinary Consequences).}

(c) Definitions [Explanation of Terms Used].

(1) Assessment Rating Level--a score derived from evidence-based criminogenic factors in a youth's history used to assess the danger a youth poses to the community.

(2) Committing Offense--the offense on which the initial minimum length of stay assessment is based. It is the most serious of the relevant offenses found at the youth's commitment proceeding and any probated offense(s) modified by the commitment order.

(3) Federal Offenses--youth who have committed federal offenses and are sent to TYC by federal courts. If a committing offense is a violation of a federal statute, the offense will be treated as a violation of a state statute which prohibits the same conduct as the relevant federal offense.

(4) Minimum Length of Stay--the predetermined minimum period of time established by TYC that a youth will be assigned to live in a high or medium restriction placement.

(5) Minimum Period of Confinement--the predetermined minimum period of time established by law that a youth committed to TYC on a determinate sentence must remain confined in a high restriction placement.

(6) Most Serious Relevant Offense--the offense that carries the most severe consequences which are, from most to least severe:

(A) an offense which carries a determinate sentence;

(B) the offense for which the designated minimum length of stay will produce the longest time in the physical custody of TYC;

(C) the offense which requires the highest level of restriction in placement;

(D) the offense which carries the most severe criminal penalty; and

(E) the most recently adjudicated offense.

(7) Revocation Offense--the offense on which a youth's minimum length of stay is based following a parole revocation hearing. It is the most serious of the relevant offenses found at a parole revocation hearing.

(8) Sentenced Offender--a youth sent to TYC under the provisions of the Determinate Sentence Act, as codified by the Texas Family Code.

(9) Severity of Offense--the degree of an offense as defined by the Texas Penal Code or relevant federal statute and any of the following applicable aggravating factors:

(A) sex offense as identified in §62.001 of the Texas Code of Criminal Procedure;

(B) felony against a person;

(C) possession or use of a firearm during the commission of the committing offense.

{(1) Minimum Length of Stay—the factor in the placement and movement system which is the predetermined minimum period of time a youth will be assigned to live in a residential placement. TYC has established two types of minimum lengths of stay requirements for TYC youth; classification minimum length of stay; and assigned disciplinary minimum length of stay. This rule primarily addresses classification minimum length of stay.}

{(2) Minimum period of confinement—the period of time established by law that a youth sentenced to commitment in TYC shall be confined in a TYC residential placement. The minimum period of confinement is the earliest of:}

{(A) completion of the sentence; or}

{(B) ten (10) years for youth sentenced for capital murder; three (3) years for youth sentenced for an aggravated controlled substance felony or a felony of the first degree; two (2) years for a felony of the second degree; and one (1) year for a felony of the third degree.}

{(3) Classification minimum length of stay—a minimum length of stay directly associated with each classification established on initial commitment, for youth recommitted for the commission of a felony or high-risk offense, and for youth found at an administrative Level I hearing to have committed a felony or high-risk offense.}

{(4) Assigned disciplinary minimum length of stay—the minimum length of stay assigned to a youth as a disciplinary consequence for behavior.}

(d) Minimum Length of Stay.

(1) Minimum Length of Stay Assigned upon Commitment. The initial minimum length of stay applies only to non-sentenced offenders. The initial minimum length of stay is calculated based on the severity of the committing offense and an assessment of the danger the youth poses to the community.

(A) Youth whose committing offense is of high severity will be assigned the following minimum length of stay:

(i) 24 months, for youth with a high assessment rating level;

(ii) 18 months, for youth with a medium assessment rating level; or

(iii) 15 months, for youth with a low assessment rating level.

(B) Youth whose committing offense is of moderate severity will be assigned the following minimum length of stay:

(i) 15 months, for youth with a high assessment rating level;

(ii) 12 months, for youth with a medium assessment rating level; or

(iii) 12 months, for youth with a low assessment rating level.

(C) Youth whose committing offense is of low severity will be assigned the following minimum length of stay:

(i) 12 months, for youth with a high assessment rating level;

(ii) 9 months, for youth with a medium assessment rating level; or

(iii) 9 months, for youth with a low assessment rating level.

(2) Minimum Length of Stay Assigned upon Parole Revocation.

(A) A minimum length of stay may also be assigned by a TYC administrative law judge during a parole revocation hearing. This type of minimum length of stay may be assigned to sentenced offenders or non-sentenced offenders. The minimum length of stay will be based on the revocation offense proven at the hearing. Youth whose parole is revoked will be assigned the following minimum length of stay:

(i) 9 months, for youth found to have engaged in felony level conduct;

(ii) 6 months, for youth found to have broken a federal, state, or other law that is not a felony grade offense; or

(iii) 3 months, for youth found to have violated a condition of parole that is not also a violation of law.

(B) A designated minimum length of stay may be reduced by the administrative law judge if extenuating circumstances to the offense are found at the parole revocation hearing.

{(1) Sentenced offenders shall serve the time assessed by the juvenile court, until the earliest of:}

{(A) release approved by the committing court;}

{(B) completion of the sentence; or}

{(C) completion of the minimum period of confinement.}

{(2) Type A violent offenders must complete a minimum length of stay of 24 months.}

{(3) Type B violent offenders must complete a minimum length of stay of 12 months.}

{(4) Chronic serious offenders, controlled substances dealers, and firearms offenders must complete a minimum length of stay of 12 months.}

{(5) General offenders must complete a minimum length of stay of nine (9) months on initial commitment. General offenders on recommitment, or returning as a result of a Level I due process hearing for a non-felony, non-high risk offense have no minimum length of stay. (See subsection (e)(3) of this section.}

{(6) A Violator of Conduct Indicating a Need for Supervision (CINS) Probation has no minimum length of stay.}

(e) Minimum Period of Confinement. The minimum period of confinement applies only to sentenced offenders. The minimum period of confinement is:

(1) ten years for youth sentenced for capital murder;

(2) three years for youth sentenced for an aggravated controlled substance felony or a felony of the first degree;

(3) two years for a felony of the second degree; and

(4) one year for a felony of the third degree.

(f) [(e)] Creditable Time for Non-Sentenced Offenders.

(1) ~~Upon admission [On initial classification],~~ the minimum length of stay shall be counted from the first day a youth reaches any TYC operated or assigned facility.

(2) On recommitment, the minimum length of stay shall be counted from the first day a youth reaches any TYC operated or assigned facility, and shall run concurrently with any incomplete minimum length of stay requirements. ~~[and any incomplete minimum length of stay at the time of recommitment is eliminated; unless:]~~

(A) ~~A [a] youth who is recommitted for the same conduct following an appeal of the original commitment[; in which case the youth]~~ shall be given credit toward completion of the new minimum length of stay for any time spent in TYC custody as a result of the original commitment; or

(B) ~~A [a] youth who is recommitted for the same conduct for which a Level I [or H] hearing has already been held[; in which case the youth]~~ shall be given credit toward completion of the new minimum length of stay for the time already served as a result of that [Level I or H] hearing.

~~[(3) On TYC reclassification; if previous classification minimum length of stay:]~~

~~[(A) has been completed, the new classification minimum length of stay shall be counted from the date of the most recent due process hearing; and]~~

~~[(B) has not yet been completed, the new classification minimum length of stay shall be counted from the completion of the previous minimum length of stay.]~~

~~(3) [(4)]~~ After the count begins, all time spent in program, on furlough or in detention or jail (except as a disposition in a criminal case) will be counted toward meeting a minimum length of stay requirement.

~~(4) [(5)]~~ Time spent as an escapee from a TYC placement or time spent in jail or a court ordered placement in an adult correctional residential program as disposition in a criminal case shall not be counted toward meeting the minimum length of stay requirement.

~~(g) [(f)]~~ Creditable Time for Sentenced Offenders.

~~(1) For sentenced offenders committed prior to June 9, 2007, [On initial classification;] the minimum period of confinement shall be counted from the first day a youth reaches any TYC residential placement. [operated or assigned facility. Only time spent in a TYC assigned facility shall be credited toward completion of minimum period of confinement.]~~

~~(2) For sentenced offenders committed on or after June 9, 2007, credit shall be granted toward completion of the minimum period of confinement for time spent in a secure detention facility in connection with the committing case prior to admission to TYC. [Sentenced offenders will be credited with days detained in connection with the committing case. Time will be credited at the end of the total sentence. Refer to §85.95 of this title (relating to Discharge/Transfer of Custody).]~~

~~(3) Regardless of the date of commitment:~~

~~(A) once a youth reaches a TYC placement and is credited with any applicable time in detention, only time spent in a TYC residential placement shall be credited toward completion of the minimum period of confinement; and~~

~~(B) credit shall be granted toward completion of the sentence for time spent in a secure detention facility in connection with the committing case prior to admission to TYC.~~

~~(h) Concurrent Commitments. If a youth is committed to TYC under both determinate and indeterminate commitment orders, the determinate commitment order will have precedence.~~

~~(1) The minimum period of confinement and minimum length of stay will run concurrently. The youth will be managed as a sentenced offender until discharged from the determinate commitment.~~

~~(2) If a youth completes the determinate sentence prior to meeting discharge criteria for the indeterminate commitment, the youth will be:~~

~~(A) discharged from the determinate commitment;~~

~~(B) reassessed for rehabilitation needs under the indeterminate commitment; and~~

~~(C) required to serve any remaining minimum length of stay associated with the indeterminate commitment.~~

~~[(g) Restrictions.]~~

~~[(1) All minimum lengths of stay will run consecutively except when a youth is recommitted.]~~

~~[(2) Classification minimum lengths of stay must be completed before any assigned disciplinary minimum length of stay begins.]~~

~~[(3) Certain youth may be eligible for transition to medium restriction to complete the minimum length of stay requirement in accordance with §85.55 of this title (relating to Program Completion for Other Than Sentenced Offenders).]~~

~~[(4) For other procedures affecting minimum length of stay refer to §95.7 of this title (relating to Reclassification Consequence); §95.9 of this title (relating to Parole Revocation Consequence); and §95.11 of this title.]~~

~~(i) [(h) Waivers and] Reductions to Minimum Length of stay.~~

~~(1) The [classification] minimum length of stay requirement may be reduced by appeal to the TYC executive commissioner [the deputy executive director in extenuating circumstances] when it is determined [documented] that the minimum length of stay is not justified because of the nature of the [youth's classifying] offense and offense history or when it is determined that the youth has made sufficient progress in treatment programs.~~

~~(2) Upon recommendation by the facility administrator, the division director over residential services may reduce a youth's minimum length of stay up to three months due to positive progress in treatment programs so long as the youth serves at least nine months in a residential placement. [The disciplinary assigned minimum length of stay may be reduced in accordance with §95.11 of this title.]~~

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

Filed with the Office of the Secretary of State on November 10, 2008.

TRD-200805879  
Cheryl K. Townsend  
Executive Commissioner  
Texas Youth Commission

Earliest possible date of adoption: December 21, 2008

For further information, please call: (512) 424-6014

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# WITHDRAWN RULES

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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)

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## TITLE 4. AGRICULTURE

### PART 1. TEXAS DEPARTMENT OF AGRICULTURE

#### CHAPTER 19. QUARANTINES AND NOXIOUS AND INVASIVE PLANTS

##### SUBCHAPTER U. ASIAN CITRUS PSYLLID QUARANTINE

###### 4 TAC §19.411, §19.413

The Texas Department of Agriculture withdraws the emergency adoption of the amendments to §19.411 and §19.413 which ap-

peared in the September 12, 2008, issue of the *Texas Register* (33 TexReg 7653).

Filed with the Office of the Secretary of State on November 5, 2008.

TRD-200805817

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

Effective date: November 5, 2008

For further information, please call: (512) 463-4075



# 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 1. ADMINISTRATION

### PART 7. STATE OFFICE OF ADMINISTRATIVE HEARINGS

#### CHAPTER 155. RULES OF PROCEDURES

**1 TAC §§155.1, 155.3, 155.5, 155.7, 155.9, 155.11, 155.13, 155.15, 155.17, 155.19, 155.21, 155.23, 155.25, 155.27, 155.29 - 155.31, 155.33, 155.35, 155.37, 155.39, 155.41, 155.43, 155.45, 155.47, 155.49, 155.51, 155.53, 155.55 - 155.57, 155.59**

The State Office of Administrative Hearings (SOAH) adopts the repeal of §§155.1, 155.3, 155.5, 155.7, 155.9, 155.11, 155.13, 155.15, 155.17, 155.19, 155.21, 155.23, 155.25, 155.27, 155.29, 155.30, 155.31, 155.33, 155.35, 155.37, 155.39, 155.41, 155.43, 155.45, 155.47, 155.49, 155.51, 155.53, 155.55, 155.56, 155.57, and 155.59. The repeals are adopted without changes to the proposal as published in the July 4, 2008, issue of the *Texas Register* (33 TexReg 5089).

The existing rules have been developed to provide a uniform set of procedural rules to be followed in contested cases at SOAH. Repeal of the existing rules will allow the simultaneous adoption of new rules, which are being concurrently adopted, that remain uniform in application, but provide better and more helpful organization.

No comments were received during the 30-day comment period.

The repeals are adopted under Government Code, Chapter 2003, §2003.050, which authorizes the State Office of Administrative Hearings to conduct contested case hearings and requires SOAH to promulgate procedural rules for hearings, and Government Code, Chapter 2001, §2001.004, which requires agencies to promulgate rules of practice setting forth the nature and requirements of formal and informal procedures.

The repeals affect Government Code, Chapters 2001 and 2003.

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-200805829

Kerry D. Sullivan

General Counsel

State Office of Administrative Hearings

Effective date: November 26, 2008

Proposal publication date: July 4, 2008

For further information, please call: (512) 475-4931



#### CHAPTER 155. RULES OF PROCEDURE

The State Office of Administrative Hearings (SOAH) adopts new Chapter 155, Subchapter A, §§155.1, 155.3, 155.5, 155.7, and 155.9; Subchapter B, §155.51 and §155.53; Subchapter C, §155.101 and §155.103; Subchapter D, §§155.151, 155.153, 155.155, and 155.157; Subchapter E, §155.201, Subchapter F, §155.251; Subchapter G, §§155.301, 155.303, 155.305, and 155.307; Subchapter H, §155.351; Subchapter I, §§155.401, 155.403, 155.405, 155.407, 155.409, 155.411, 155.413, 155.415, 155.417, 155.419, 155.421, 155.423, 155.425, 155.427, 155.429, and 155.431; and Subchapter J, §§155.501, 155.503, 155.505, and 155.507, which provide a uniform set of procedural rules to be followed in contested cases at SOAH. Sections 155.201, 155.251, 155.305, 155.307, 155.351, 155.413, 155.423, 155.501, and 155.505 are adopted with changes to the proposed text, as published in the July 4, 2008, issue of the *Texas Register* (33 TexReg 5090). Sections 155.1, 155.3, 155.5, 155.7, 155.9, 155.51, 155.53, 155.101, 155.103, 155.151, 155.153, 155.155, 155.157, 155.301, 155.303, 155.401, 155.403, 155.405, 155.407, 155.409, 155.411, 155.415, 155.417, 155.419, 155.421, 155.425, 155.427, 155.429, 155.431, 155.503, and 155.507 are adopted without changes to the proposed text and will not be republished.

The new rules replace the current rules, which are being simultaneously adopted for repeal. In general, the new rules do not substantially change SOAH's existing rules. The new rules are being adopted to clarify wording, to delete unnecessary language, and to provide better and more helpful organization.

New Subchapter A is entitled General and contains §§155.1, 155.3, 155.5, 155.7, and 155.9. These sections set out SOAH's rules concerning purpose; application and construction of this chapter; definitions; computation of time; and SOAH's seal.

New Subchapter B is entitled Docketing--Filing a Contested Case and contains §155.51 and §155.53. These sections set out SOAH's rules concerning jurisdiction and request to docket case.

New Subchapter C is entitled Filing and Service of Documents and contains §155.101 and §155.103. These sections set out SOAH's rules concerning filing documents and service of documents on parties.

New Subchapter D is entitled Judges and contains §§155.151, 155.153, 155.155, and 155.157. These sections set out SOAH's rules concerning assignment of judges to cases; powers and duties; orders; and sanctioning authority.

New Subchapter E is entitled Representation of Parties and contains §155.201. This section sets out SOAH's rules concerning representation of parties and is adopted with changes. The change is nonsubstantive; it removes the website citation of the Board of Law Examiners, and instead directs the reader to search for the rule on the Board of Law Examiners website.

New Subchapter F is entitled Discovery and contains §155.251. This section sets out SOAH's rules concerning discovery and is adopted with changes. The changes are nonsubstantive. In subsection (c), paragraph (1), the word "submitted" is replaced with the word "served". In subsection (d), the wording is changed to clarify when a motion to compel discovery should be filed. Specifically, the changes to subsection (d) are as follows: in the second sentence the word "The" is replaced by the words "Unless otherwise ordered, a", and in the same sentence, the words "seeking discovery shall file a motion to compel within ten days of receipt of the pertinent objection or" are deleted, and the word "alleged" is changed to "alleging"; also in the same sentence, after the word "discovery", the words "shall file a motion to compel no later than 14 days before the first day of the hearing on the merits" are added to complete the sentence. Subsection (f), Sealing records, is removed from §155.251 and inserted verbatim into §155.423 as subsection (g). The subsections following subsection (f) in §155.251 are changed to conform to the outline; specifically, subsection (g) becomes subsection (f) and subsection (h) becomes subsection (g).

New Subchapter G is entitled Pleadings and Motions and contains §§155.301, 155.303, 155.305, and 155.307. These sections set out SOAH's rules concerning required form of pleadings; effect of signing pleadings; motions, generally; and continuance. Sections 155.305 and 155.307 are adopted with changes. The changes are nonsubstantive. In §155.305, subsection (b), paragraph (2), subparagraphs (A) and (B), brackets are added to distinguish instructional language. In subparagraph (A), the brackets are added before the word "succinct" and after the word "resolution." In subparagraph (B), the brackets are added before the word "succinctly" and after the word "attempts." In §155.307, subsection (a), paragraph (3); subsection (b); subsection (c); and subsection (d) and in paragraph (2) of that subsection, the word "hearing" is replaced with the word "proceeding." Also, in subsection (c) the reference to §155.305(b) of this title (relating to Motion, Generally), is changed to reference §155.103 of this title (relating to Service of Documents on Parties) instead, which conforms better to the meaning of "Date of service."

New Subchapter H is entitled Mediation and contains §155.351. This section sets out SOAH's rules concerning mediations. Section 155.351 is adopted with changes. The changes are nonsubstantive. In subsection (a), paragraph (2), the word "motion" is replaced with the word "request," and in paragraph (3) of that same section, the words "the proposed" is replaced with the word "a."

New Subchapter I is entitled Hearings and Prehearings and contains §§155.401, 155.403, 155.405, 155.407, 155.409, 155.411, 155.413, 155.415, 155.417, 155.419, 155.421, 155.423, 155.425, 155.427, 155.429, and 155.431. These sections set out SOAH's rules concerning notice of hearing; venue; participation by telephone or videoconference; interpreters,

public attendance and comment; media coverage; redaction of documents; party agreements; stipulations; consideration of policy not incorporated in referring agency's rules; certification of questions; making a record of the proceeding; procedure at hearing; burden of proof; evidence; and conduct and decorum. Section 155.413 is adopted with changes. The changes are nonsubstantive. In subsection (a), the wording is changed to show the word "document" as plural, and after the acronym SOAH, the following words were added to the sentence: "...., including exhibits offered at hearing,..." Section 155.423 is adopted with changes. The changes are nonsubstantive. In §155.423, subsection (g) has been added. The wording for the subsection was transferred from §155.251, subsection (f), to this section because the topic of "sealing records" is a better fit in the subchapter dealing with Hearings and Prehearings.

New Subchapter J is entitled Disposition of Case and contains §§155.501, 155.503, 155.505, and 155.507. These sections set out SOAH's rules concerning default proceedings; dismissal proceedings; summary disposition; and proposal for decision. Sections 155.501 and 155.505 are adopted with changes. The changes are nonsubstantive. In §155.501, subsection (a), the words "provided or served" are changed to read "served or provided." In the same section, the last sentence that reads "Failure to allege sufficient facts to support a default will result in denial of the relief sought" is deleted. In subsection (b), paragraph (1), the words "provided to" are changed to read "received by" and after the word "party", the sentence that reads "under Tex. Gov't Code Chapter 2001 and §155.401 of this title (relating to Notice of Hearing)" is deleted. In subsection (e) of the same section, paragraph (1), subparagraph (A), the word "or" is moved down to subparagraph (B) and subparagraph (C) is added which reads, "deny the relief sought if the notice of hearing fails to establish the necessary elements of the case." In §155.505, subsection (c), paragraph (1), the words "an opposing party's" are deleted from the sentence.

No comments were received during the 30-day comment period. However, SOAH did receive a late comment by the Texas Department of Insurance (TDI). Based on some of the comments TDI made resulted in SOAH making some of the clarifications listed above.

## SUBCHAPTER A. GENERAL

### 1 TAC §§155.1, 155.3, 155.5, 155.7, 155.9

The new rules are adopted under Government Code, Chapter 2003, §2003.050, which authorizes the State Office of Administrative Hearings to conduct contested case hearings and requires SOAH to promulgate procedural rules for hearings, and Government Code, Chapter 2001, §2001.004, which requires agencies to promulgate rules of practice setting forth the nature and requirements of formal and informal procedures.

The provisions to which the adopted new rules relate affect Government Code, Chapters 2001 and 2003.

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 November 6, 2008.

TRD-200805830

Kerry D. Sullivan  
General Counsel  
State Office of Administrative Hearings  
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Proposal publication date: July 4, 2008  
For further information, please call: (512) 475-4931



## SUBCHAPTER B. DOCKETING--FILING A CONTESTED CASE

### 1 TAC §155.51, §155.53

The new rules are adopted under Government Code, Chapter 2003, §2003.050, which authorizes the State Office of Administrative Hearings to conduct contested case hearings and requires SOAH to promulgate procedural rules for hearings, and Government Code, Chapter 2001, §2001.004, which requires agencies to promulgate rules of practice setting forth the nature and requirements of formal and informal procedures.

The provisions to which the adopted new rules relate affect Government Code, Chapters 2001 and 2003.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER C. FILING AND SERVICE OF DOCUMENTS

### 1 TAC §155.101, §155.103

The new rules are adopted under Government Code, Chapter 2003, §2003.050, which authorizes the State Office of Administrative Hearings to conduct contested case hearings and requires SOAH to promulgate procedural rules for hearings, and Government Code, Chapter 2001, §2001.004, which requires agencies to promulgate rules of practice setting forth the nature and requirements of formal and informal procedures.

The provisions to which the adopted new rules relate affect Government Code, Chapters 2001 and 2003.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER D. JUDGES

### 1 TAC §§155.151, 155.153, 155.155, 155.157

The new rules are adopted under Government Code, Chapter 2003, §2003.050, which authorizes the State Office of Administrative Hearings to conduct contested case hearings and requires SOAH to promulgate procedural rules for hearings, and Government Code, Chapter 2001, §2001.004, which requires agencies to promulgate rules of practice setting forth the nature and requirements of formal and informal procedures.

The provisions to which the adopted new rules relate affect Government Code, Chapters 2001 and 2003.

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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Kerry D. Sullivan  
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State Office of Administrative Hearings  
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For further information, please call: (512) 475-4931



## SUBCHAPTER E. REPRESENTATION OF PARTIES

### 1 TAC §155.201

The new rule is adopted under Government Code, Chapter 2003, §2003.050, which authorizes the State Office of Administrative Hearings to conduct contested case hearings and requires SOAH to promulgate procedural rules for hearings, and Government Code, Chapter 2001, §2001.004, which requires agencies to promulgate rules of practice setting forth the nature and requirements of formal and informal procedures.

The provisions to which the adopted new rule relates affects Government Code, Chapters 2001 and 2003.

§155.201. *Representation of Parties.*

(a) Representation for individuals. An individual may represent himself or herself or may appear by authorized representative.

(b) Appearance by authorized representative. A party's authorized representative shall enter an appearance with SOAH that contains the representative's mailing address and telephone and facsimile numbers. If the party's representative is not licensed to practice law in Texas and the authority of the representative is challenged, the representative must show authority to appear as the party's representative.



(c) Nonresident attorney. An attorney who is a resident of and licensed to practice law in another state and who is not an active member of the State Bar of Texas shall comply with the requirements of Tex. Gov't Code §82.0361 and Rule XIX of the Rules Governing Admission to the Bar of Texas before entering an appearance on behalf of a party at SOAH. Rule XIX may be found on the website of the Board of Law Examiners.

(d) Attorney in charge. When more than one attorney makes an appearance on behalf of a party, the attorney whose signature first appears on the initial pleading for a party shall be the attorney in charge for that party unless another attorney is specifically designated in writing. Unless otherwise ordered by the judge, all communications sent by SOAH or other parties regarding the matter shall be sent to the attorney in charge.

(e) Motion to withdraw as counsel. The attorney of record or authorized representative seeking to withdraw shall file a motion to withdraw and shall provide in the motion a mailing address and telephone number for the party. If the party is to be represented by another attorney, the motion shall include the mailing address, telephone number, and any facsimile number of the substitute attorney. A party's attorney of record or authorized representative shall remain as such until a motion to withdraw is filed and granted by the judge.

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-200805834

Kerry D. Sullivan

General Counsel

State Office of Administrative Hearings

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For further information, please call: (512) 475-4931



## SUBCHAPTER F. DISCOVERY

### 1 TAC §155.251

The new rule is adopted under Government Code, Chapter 2003, §2003.050, which authorizes the State Office of Administrative Hearings to conduct contested case hearings and requires SOAH to promulgate procedural rules for hearings, and Government Code, Chapter 2001, §2001.004, which requires agencies to promulgate rules of practice setting forth the nature and requirements of formal and informal procedures.

The provisions to which the adopted new rule relates affect Government Code, Chapters 2001 and 2003.

#### §155.251. Discovery.

(a) Commencement of discovery. Discovery may begin when SOAH acquires jurisdiction under §155.51 of this title (relating to Jurisdiction).

(b) Discovery rights. Parties have the discovery rights provided in this section, the APA, and the TRCP, except the provisions relating to the discovery control plans. Discovery rights may be modified or changed by the judge. For cases not adjudicated under the APA, the judge will determine what discovery, if any, will be permitted.

(c) Forms of discovery. Parties may use the forms of discovery provided by the TRCP, with the following modifications:

(1) Discovery period. Discovery responses and depositions must be completed by the tenth day before the hearing on the merits begins unless otherwise ordered by the judge or agreed by the parties. Discovery requests shall be served at least 30 days before the end of the discovery period.

(2) Copies. Copies of discovery requests and answers to those requests shall not be filed with SOAH unless directed by the judge, or in support of a motion to compel, motion for protective order, or motion to quash.

(3) Response. The judge may establish deadlines as necessary for discovery requests and responses. If the judge does not establish a deadline, responses to discovery requests, except for notices of depositions, shall be made within 20 days after receipt.

(4) Depositions.

(A) The APA governs the taking and use of depositions unless otherwise provided by law.

(B) Except with permission of the judge upon a showing of good cause or upon agreement by all parties, the following apply:

(i) All parties must receive at least seven days' notice of a deposition.

(ii) No party or side may examine or cross-examine an individual witness for more than six hours.

(iii) Brief breaks taken during the deposition do not count in the calculation of the period for a deposition.

(5) Requests for admissions. Unless the judge directs otherwise, each party may serve no more than 25 requests on any other party.

(6) Interrogatories. Each party may serve no more than two sets of interrogatories to any other party unless the judge directs otherwise. The number of questions, including subsections, in a set of interrogatories shall be limited to require no more than 25 answers.

(7) *In camera* inspections. If a party's objection to a discovery request is based on a claim of privilege or an exemption under the TRCP, and a motion to compel is timely filed, the burden is on the objecting party to request an *in camera* inspection and to provide the documents for review under seal. The request shall state the factual and legal bases that support the claimed privilege or exemption and shall comply with the provisions of §155.101(b)(2) of this title (relating to Filing Documents).

(d) Motions to compel. Unless otherwise ordered, a party alleging failure to comply with discovery shall file a motion to compel no later than 14 days before the first day of the hearing on the merits.

(e) Certificate of conference. The parties and their authorized representatives shall cooperate in discovery and shall endeavor to make any agreements reasonably necessary for the efficient disposition of the case. All discovery motions shall include a certificate of conference complying substantially with §155.305(b)(2) of this title (relating to Motions, Generally).

(f) Subpoenas. Except in TCEQ and PUC cases, requests for issuance of subpoenas or commissions shall be directed to the referring agency. Any such requests shall comply with the APA and the applicable agency procedure, if any, regarding issuance of subpoenas or commissions. Disputes over whether a request complies with applicable law will be resolved by the judge. In TCEQ and PUC cases, a request shall be submitted in accordance with those agencies' rules.

(g) Confidentiality. Nothing in this section excuses compliance with law concerning the confidentiality of certain records, including medical or mental health records.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Kerry D. Sullivan

General Counsel

State Office of Administrative Hearings

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For further information, please call: (512) 475-4931



## SUBCHAPTER G. PLEADINGS AND MOTIONS

### 1 TAC §§155.301, 155.303, 155.305, 155.307

The new rules are adopted under Government Code, Chapter 2003, §2003.050, which authorizes the State Office of Administrative Hearings to conduct contested case hearings and requires SOAH to promulgate procedural rules for hearings, and Government Code, Chapter 2001, §2001.004, which requires agencies to promulgate rules of practice setting forth the nature and requirements of formal and informal procedures.

The provisions to which the adopted new rules relate affect Government Code, Chapters 2001 and 2003.

#### §155.305. *Motions, Generally.*

(a) Purpose and effect of motions. To make any request, including a request to change a setting or obtain a ruling, order, or any other procedural relief from the judge, a party shall file a written motion. The motion shall describe specifically the action requested and the basis for the requested action. The mere filing of a motion that has not been ruled on by the judge, even if uncontested or agreed, does not serve to grant the motion or to change or extend any time limit or deadline established by statute, rule, or order, or operate to continue or delay any setting by SOAH or the judge.

(b) General requirements for motions. Except as provided in this section or chapter, all motions shall:

(1) be filed in writing no later than seven days before the date of the hearing; except, for good cause demonstrated in the motion, the judge may consider a motion filed after that time or presented orally at a hearing;

(2) include a certificate of conference that complies substantially with one of the following examples:

(A) Example one: "Certificate of Conference: I certify that I conferred with *name of other party or other party's authorized representative on date about this motion* {*Succinct statement of other party's position on the action sought and/or a statement that the parties negotiated in good faith but were unable to resolve their dispute before submitting it to the judge for resolution.*} *Signature.*"

(B) Example two: "Certificate of Conference: I certify that I made reasonable but unsuccessful attempts to confer with *name of*

*other party or other party's authorized representative on date or dates about this motion* {*Succinctly describe these attempts.*} *Signature.*"

(3) include a reference in the motion's title to a request for a hearing on the motion if the moving party seeks a hearing; and

(4) if requesting an extension of an established deadline, include:

(A) a proposed date for the deadline; and

(B) a certificate of conference that complies substantially with one of the examples set out in paragraph (2) of this subsection.

(c) Responses to motions generally. Except as provided in this section or chapter, responses to motions described in subsection (b) of this section shall be in writing and filed on the earlier of:

(1) five days after receipt of the motion; or

(2) the date and time of the hearing; however, if the judge finds a good reason has been shown, late-filed responses to written motions may be presented orally at hearing.

(d) Motions to intervene or for party status. Motions for party status shall be filed no later than 20 days prior to the date the case is set for hearing. Responses to such motions shall be filed no later than seven days after the motion is served on other parties.

(e) Other motions. Motions to reopen the record under §155.153(a)(4) of this title (relating to Powers and Duties), to compel and for protective orders under §155.251 of this title (relating to Discovery), to set aside a default under §155.501(d) of this title (relating to Default Proceedings), to set aside a dismissal for failure to prosecute under §155.503(a) of this title (relating to Dismissal Proceedings), and for summary disposition under §155.505 (relating to Summary Disposition), shall be governed by the referenced sections.

#### §155.307. *Continuance.*

(a) Contents. Motions for continuance shall include:

(1) a statement of the number of motions for continuance previously filed in the case by each party;

(2) the specific reason for the continuance;

(3) at least three proposed dates for the rescheduled proceeding, or a deadline by which the movant will confer with the non-moving parties to submit three agreed proposed dates; and

(4) a certificate of conference that complies substantially with one of the examples set out in §155.305(b)(2) of this title (relating to Motions, Generally).

(b) Date of filing. Motions for continuance shall be filed no later than five days before the date of the proceeding, except, if the judge finds a good reason has been demonstrated, the judge may consider a motion filed after that time or presented orally at the proceeding.

(c) Date of service. Motions for continuance shall be served in accordance with §155.103 of this title (relating to Service of Documents on Parties). However, a motion for continuance that is filed five days or less before the date of the proceeding shall be served:

(1) by personal or facsimile delivery on the same day it is filed with SOAH, if feasible; or

(2) if same-day service is not feasible, by overnight delivery on the next business day.

(d) Responses to written motions for continuance. Responses to written motions for continuance shall be in writing, except a response to a written motion for continuance filed on the date of the proceeding

may be presented orally at the proceeding. Responses to motions for continuance shall be filed on the earlier of:

- (1) three days after receipt of the motion; or
- (2) the date and time of the proceeding.

(e) Consequences of failure to appear when a motion for continuance has not been ruled on. A case is subject to default or dismissal for a party's failure to appear at a scheduled hearing in which a motion for continuance has not been ruled on by the judge, even when the motion is agreed or unopposed.

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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Kerry D. Sullivan

General Counsel

State Office of Administrative Hearings

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For further information, please call: (512) 475-4931



## SUBCHAPTER H. MEDIATION

### 1 TAC §155.351

The new rule is adopted under Government Code, Chapter 2003, §2003.050, which authorizes the State Office of Administrative Hearings to conduct contested case hearings and requires SOAH to promulgate procedural rules for hearings, and Government Code, Chapter 2001, §2001.004, which requires agencies to promulgate rules of practice setting forth the nature and requirements of formal and informal procedures.

The provisions to which the adopted new rule relates affect Government Code, Chapters 2001 and 2003.

#### §155.351. Mediation.

##### (a) Requesting mediation.

(1) A party may request mediation in writing, or orally during a prehearing conference or hearing.

(2) A request for mediation must be based on a good faith belief that the parties may be able to resolve all or a portion of their dispute in mediation.

(3) A party may object to a request for mediation orally or in writing.

(4) Mediation may not be used as a delay or discovery tactic.

(5) Mediation does not stay an existing procedural schedule unless ordered by the presiding judge.

(6) A judge may refer a case to mediation without agreement of the parties.

##### (b) Evaluation.

(1) A party may request, or the judge may order, that a mediator evaluate whether a case is appropriate for mediation.

(2) The mediator evaluating the case may conduct confidential, *ex parte* communications with the parties during the course of the evaluation.

(3) The mediator will make a written recommendation to the judge. The written recommendation will be served on all parties.

##### (c) Referral to mediation.

(1) If a request for mediation is granted, the judge will refer the case to SOAH's ADR Team Leader for assignment of a mediator, unless the parties have notified the judge that they intend to retain and pay a private mediator qualified in accordance with Tex. Civ. Prac. & Rem. Code Chapter 154.

(2) The referral order may include requirements to facilitate the mediation.

##### (d) Assignment of SOAH mediators.

(1) SOAH's ADR Team Leader will assign a qualified judge or judges to serve as mediator or co-mediators.

(2) If either party promptly and with good cause objects to an appointed mediator, SOAH will appoint another qualified judge to serve as mediator.

(3) The appointed mediator will not serve as presiding judge in the case.

##### (e) Use of non-SOAH mediators.

(1) Parties who agree to retain a non-SOAH qualified private mediator shall notify the presiding judge within ten days of the mediator's retention.

(A) The notice must include the name, address, and telephone number of the non-SOAH mediator selected; a statement that the parties have entered into an agreement with the mediator regarding the mediator's rate and method of compensation; and an affirmation that the mediator is qualified to serve according to Tex. Civ. Prac. & Rem. Code Chapter 154.

(B) The judge shall issue an order specifying the date by which the mediation must be completed.

(2) When a judge refers a TCEQ case to mediation, the mediation will be conducted by a TCEQ mediator unless a party or TCEQ's Senior Mediator requests that SOAH conduct the mediation. TCEQ enforcement cases shall not be referred to mediation except on request of the Executive Director's representative.

##### (f) Confidentiality of mediation.

(1) All communications in a mediation are confidential and subject to the provisions of the Governmental Dispute Resolution Act, Tex. Gov't Code §2009.054 and Tex. R. Evid. 408.

(2) The mediator shall not communicate about the mediation with the presiding judge except to disclose in a written report, copied to all parties, whether the parties attended the mediation, whether the matter settled, and any other stipulations or matters the parties agree to be reported.

(3) The mediator shall not be required to testify about communications that occur in a mediation or to produce documents submitted to the mediator.

##### (g) Agreements reached in mediation.

(1) Agreements reached by the parties in mediation shall be reduced to writing and signed by the parties before the end of the mediation, if possible.

(2) Whether an agreement signed by a governmental entity is subject to disclosure shall be determined in accordance with applicable law.

(h) Limits on mediator's authority.

(1) A mediator has no authority to order the parties to settle their dispute.

(2) A mediator has no authority to issue orders in a case referred to mediation. Deadlines in the case may be extended only by order of the presiding judge.

(i) This section does not limit the parties' ability to settle cases without mediation.

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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Kerry D. Sullivan  
General Counsel

State Office of Administrative Hearings

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For further information, please call: (512) 475-4931



## SUBCHAPTER I. HEARINGS AND PREHEARINGS

**1 TAC §§155.401, 155.403, 155.405, 155.407, 155.409, 155.411, 155.413, 155.415, 155.417, 155.419, 155.421, 155.423, 155.425, 155.427, 155.429, 155.431**

The new rules are adopted under Government Code, Chapter 2003, §2003.050, which authorizes the State Office of Administrative Hearings to conduct contested case hearings and requires SOAH to promulgate procedural rules for hearings, and Government Code, Chapter 2001, §2001.004, which requires agencies to promulgate rules of practice setting forth the nature and requirements of formal and informal procedures.

The provisions to which the adopted new rules relate affect Government Code, Chapters 2001 and 2003.

*§155.413. Redaction of Documents.*

(a) Redaction of personal identifiers. A person who files documents at SOAH, including exhibits offered at hearing, shall redact from the documents all personal identifiers that are:

(1) protected by law from disclosure; or

(2) unnecessary for resolution of the case. At the time of filing, SOAH personnel will not be responsible for screening documents for compliance with this rule.

(b) Personal identifiers. "Personal identifiers" shall include: Social Security numbers, taxpayer identification numbers, full names of minors, full names of persons who are patients or clients in a health care setting, full names of persons who are victims of crimes, addresses and telephone numbers of commissioned peace officers, expunged criminal records, or records subject to a non-disclosure order issued by a court of this state unless allowed by law.

(c) Protective measures. If the judge determines that personal identifiers are necessary to the resolution of the case, the judge may admit the information into the record under seal or employ appropriate protective measures.

(d) Return to party for redaction. If the judge determines that the personal identifiers are not necessary to the resolution of the case, the judge may order the documents redacted prior to their admission into the record.

*§155.423. Making a Record of the Proceeding.*

(a) Record of proceedings. A record will be made of all contested case proceedings. At the judge's discretion, the making of a record of a prehearing conference may be waived. The actions taken at the prehearing conference may instead be reflected in a written order.

(b) Court reporters. Unless otherwise ordered by the judge, the referring agency shall provide a court reporter for any proceeding set to last longer than one day.

(c) SOAH's responsibility. For any proceeding in a docket set to last no longer than one day, SOAH is responsible for making a recording of the proceeding unless otherwise ordered by the judge.

(d) Official record. The recording made by SOAH under subsection (c) of this section or the transcript prepared under subsection (e) of this section is the official record of the proceeding for purposes of all actions within SOAH's jurisdiction. The judge may order a different means of making a record and may designate that record as the official record of the proceeding.

(e) Transcripts. The court reporter shall make a stenographic record of the proceeding but shall prepare a transcript only on the request of a party or the judge. If a proceeding lasts longer than one day, the judge may order that a transcript be prepared. Costs of a transcript ordered by any party ordinarily shall be paid by that party. If SOAH has recorded the proceeding, the referring agency shall inform SOAH of the need to deliver a copy of the original recording to a court reporter.

(1) The original transcript shall be filed with SOAH.

(2) The transcript prepared according to these procedures becomes the official record of the proceedings for purposes of all actions within SOAH's jurisdiction.

(3) Proposed written corrections of purported transcript errors must be filed with SOAH and served on the parties and the court reporter before issuance of the proposal for decision or final decision. The judge may establish deadlines for the filing of proposed corrections and responses. The transcript will be corrected only upon order of the judge.

(f) Maintenance of exhibits and official record. The judge shall maintain all exhibits admitted during the proceeding and the official record of the proceeding.

(1) The judge may allow the court reporter to retain the exhibits and the recording of the proceeding, if applicable, while a transcript is being prepared.

(2) The judge may retain the exhibits and transcript or recording to prepare for presentation of the proposal for decision to the referring agency. SOAH will send the exhibits and transcript or recording to the referring agency no later than after:

(A) the judge has issued the final decision;

(B) the judge has issued the proposal for decision and the deadline for filing exceptions and replies has passed.

(g) Sealing records. The judge may order all or part of the record sealed in accordance with applicable law or rule or upon a showing of the following:

(1) a specific, serious, and substantial interest that clearly outweighs the presumption of openness that applies to SOAH's records;

(2) any probable adverse effect that sealing will have upon the public health or safety; and

(3) no less restrictive means than sealing the records will adequately and effectively protect the specific interest asserted.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER J. DISPOSITION OF CASE

### 1 TAC §§155.501, 155.503, 155.505, 155.507

The new rules are adopted under Government Code, Chapter 2003, §2003.050, which authorizes the State Office of Administrative Hearings to conduct contested case hearings and requires SOAH to promulgate procedural rules for hearings, and Government Code, Chapter 2001, §2001.004, which requires agencies to promulgate rules of practice setting forth the nature and requirements of formal and informal procedures.

The provisions to which the adopted new rules relate affect Government Code, Chapters 2001 and 2003.

#### §155.501. *Default Proceedings.*

(a) Default. If a party to whom a notice of hearing is served or provided under this section fails to appear for hearing, the judge may proceed in that party's absence on a default basis. In the proposal for decision or final decision, the factual allegations listed in the notice of hearing will be deemed admitted.

(b) Proof to support default. Any default proceeding under this section requires adequate proof of the following:

(1) proper notice was received by the defaulting party; and

(2) the notice included a disclosure in at least 12-point, bold-face type that the factual allegations listed in the notice could be deemed admitted, and the relief sought in the notice of hearing might be granted by default against the party that fails to appear at hearing.

(c) Alternative showing of notice. In the alternative, when it is not possible to prove actual receipt of notice, a hearing may proceed on a default basis if:

(1) the referring agency's statute or rules authorize service of the notice of hearing by sending it to the party's last known address as shown by the referring agency's records; and

(2) there is credible evidence that the notice of hearing was sent by first class or certified mail to such address.

(d) Motion to set aside default. A party may file a motion no later than ten days after the hearing to set aside a default and to reopen the record if a proposal for decision or a final decision has not been issued. The judge may grant the motion, set aside the default, and reopen the hearing for good cause shown.

(e) Judge's authority.

(1) If a party fails to appear at the hearing, the judge may:

(A) grant a continuance or dismissal from SOAH's docket to allow the referring agency to dispose of the case on a default basis under Tex. Gov't Code §2001.056 and the referring agency's rules;

(B) issue a default proposal for decision or final decision; or

(C) deny the relief sought if the notice of hearing fails to establish the necessary elements of the case.

(2) The judge has the authority to determine whether proper and adequate notice under Tex. Gov't Code Chapter 2001 and §155.401 of this title (relating to Notice of Hearing) was given.

#### §155.505. *Summary Disposition.*

(a) Final decision or proposal for decision on summary disposition. The judge may issue a final decision or a proposal for decision on all or part of a contested case without an evidentiary hearing. The evidence must show that there is no genuine issue as to any material fact and that a party is entitled to a decision in its favor as a matter of law.

(b) Motions: deadlines, content, and format.

(1) A motion for summary disposition must be filed at least 30 days before the hearing on the merits unless otherwise ordered by the judge.

(2) A motion shall include a separate statement that sets forth plainly and concisely all material facts that the moving party contends are undisputed.

(3) Each of the material facts stated to be undisputed shall be followed by a clear and specific reference to the supporting evidence.

(4) A party's failure to comply with these requirements may constitute sufficient grounds for denial of the motion.

(c) Motions: summary disposition evidence.

(1) A party's motion for summary disposition may be based on pleadings, affidavits, materials obtained by discovery, matters officially noticed, stipulations, authenticated or certified public, business, or medical records, or other admissible evidence.

(2) Relevant portions of materials obtained by discovery may be relied upon to support or oppose a motion for summary disposition if:

(A) copies are filed with the motion or response; and

(B) a notice containing specific reference to the materials is served on all parties.

(d) Responses to motions: deadlines, content, and format.

(1) A response to a motion shall be filed within 14 days of receipt of the motion.

(2) The response shall include a separate statement that:

(A) addresses each of the material facts contended by the moving party to be undisputed; and

(B) indicates whether the responding party agrees or disagrees that the facts are undisputed.

(3) The response shall set forth plainly and concisely any other material facts that the responding party contends are disputed.

(4) Each of the material facts claimed by the responding party to be disputed shall be followed by a clear and specific reference to the supporting evidence.

(5) The response shall also include objections to the form of the motion and to the evidence.

(e) Movant's reply to response.

(1) The movant's reply to the response shall be filed within seven days of receipt of the response.

(2) The reply shall include objections to the form of the response and to the evidence.

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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Kerry D. Sullivan

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State Office of Administrative Hearings

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For further information, please call: (512) 475-4931



## CHAPTER 161. REQUESTS FOR RECORDS

### 1 TAC §161.1

The State Office of Administrative Hearings adopts amendments to §161.1 concerning charges for copies of public information. Section 161.1 is adopted without changes to the proposed text, as published in the June 27, 2008, issue of the *Texas Register* (33 TexReg 4945), and that text will not be republished.

The adopted amendments change the current language of the section to be in conformity with the Public Information Act, Texas Government Code Chapter 552, and the applicable rules promulgated by the Office of the Attorney General, the state agency that guides the established charges applicable to requests for public information. The adopted amendment also corrects the citation reference to the Office of the Attorney General's rules concerning charges for public information.

No comments were received during the 30-day comment period.

The amendments are adopted under Government Code, Chapter 2001, §2001.004, which requires agencies to promulgate rules of practice setting forth the nature and requirements of formal and informal procedures.

The provisions to which the adopted amendments relate affect Government Code, Chapter 2001.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## TITLE 10. COMMUNITY DEVELOPMENT

### PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

#### CHAPTER 80. MANUFACTURED HOUSING

The Manufactured Housing Division of the Texas Department of Housing and Community Affairs (Department) adopts without changes 10 TAC Chapter 80, §80.23 and §80.30. The text to the adopted rules without changes will not be republished in the *Texas Register*. Section 80.100 is adopted with a non-substantive change and will be republished in the *Texas Register*. The proposed rules were published in the September 5, 2008, issue of the *Texas Register* (33 TexReg 7386).

The rules, Consumer Disclosure Statement form, and Application for Statement of Ownership and Location form are revised for clarification and a new Statement from Tax Assessor-Collector form is adopted to assist the tax assessor-collectors in complying with requirements to provide a tax statement pursuant to §1201.206(g) of the Occupations Code.

The rules relating to installation standards (§80.23) are effective sixty (60) days following the date of publication and all other rules are effective thirty (30) days following the date of publication with the Texas Register of notice that the rules have been adopted.

There were no comments received during the comment period and no requests were received for a public hearing to take comments on the rules.

Except as noted below, the rules as proposed on September 5, 2008, are adopted as final rules with the following non-substantive changes.

Figure: 10 TAC §80.100(b)(19) - Corrected a typographical error in Block 2(b) in the Application for Statement of Ownership and Location form.

The following is a restatement of the rules' factual basis:

Section 80.23(j) - is adopted (without changes) to reword subsection for clarification.

Section 80.30(i) - is adopted (without changes) to reword subsection for clarification.

Section 80.100(a) - is adopted (without changes) to add new form number (44) to the list of forms.

Figure: 10 TAC §80.100(b)(8) - is adopted (without changes) to revise the disclosure form by removing the notice that the form is also available in Spanish.

Figure: 10 TAC §80.100(b)(19) - is adopted (with changes) to revise Blocks 4(d) and 8 in the Application for Statement of Ownership and Location by asking if there are any liens against the home.

Figure: 10 TAC §80.100(b)(44) - is adopted (without changes) to add new Statement from Tax Assessor-Collector form to meet requirements of §1201.206(g) of the Standards Act.

## SUBCHAPTER B. INSTALLATION STANDARDS AND DEVICE APPROVALS

### 10 TAC §80.23

The amended rule is adopted under the Texas Manufactured Housing Standards Act, Occupations Code, Chapter 1201, §1201.052, which provides the department with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and under Texas Government Code, Chapter 2306, §2306.6014 and §2306.6020, 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 adopted rules.

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 November 7, 2008.

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Executive Director, Manufactured Housing Division  
Texas Department of Housing and Community Affairs  
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## SUBCHAPTER C. LICENSEES' RESPONSIBILITIES AND REQUIREMENTS

### 10 TAC §80.30

The amended rule is adopted under the Texas Manufactured Housing Standards Act, Occupations Code, Chapter 1201, §1201.052, which provides the department with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and under Texas Government Code, Chapter 2306, §2306.6014 and §2306.6020, 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 adopted rule.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Joe A. Garcia

Executive Director, Manufactured Housing Division  
Texas Department of Housing and Community Affairs  
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For further information, please call: (512) 475-2206



## SUBCHAPTER I. FORMS

### 10 TAC §80.100

The amended rule is adopted under the Texas Manufactured Housing Standards Act, Occupations Code, Chapter 1201, §1201.052, which provides the department with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and under Texas Government Code, Chapter 2306, §2306.6014 and §2306.6020, 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 adopted rule.

§80.100. *List of Forms.*

(a) The following list is in numerical order with the forms located in subsection (b) of this section.

- (1) Application for Manufacturer's License.
- (2) Application for Retailer, Broker, Installer and/or Re-builder's License.
- (3) Application for Retailer with Branch Locations License.
- (4) Application for Salesperson's License.
- (5) Licensing Surety Bond.
- (6) Licensing Security Agreement.
- (7) Manufacturer's Certificate of Origin (MCO).
- (8) Consumer Disclosure Statement.
- (9) Warranty and Disclosure for a Used Manufactured Home.
- (10) Retail Monitoring Checklist.
- (11) Consumer Notice of Licensed and Bonded Location.
- (12) Notice and Informed Consent to Installation on an Improperly Prepared Site.
- (13) Formaldehyde Notice.
- (14) Texas Inventory Finance Security Form.
- (15) Broker Disclosure Form.
- (16) Notice of Installation (Form T).
- (17) Installation Checklist.

- (18) Estimate for Reassigned Warranty Work. Figure: 10 TAC §80.100(b)(7) (No change.)
- (19) Application for Statement of Ownership and Location. (8) Consumer Disclosure Statement. Figure: 10 TAC §80.100(b)(8)
- (20) Affidavit of Fact for Real Property. (9) Warranty and Disclosure for a Used Manufactured Home. Figure: 10 TAC §80.100(b)(9) (No change.)
- (21) Affidavit of Fact. (10) Retail Monitoring Checklist. Figure: 10 TAC §80.100(b)(10) (No change.)
- (22) Affidavit of Error. (11) Consumer Notice of Licensed and Bonded Location. Figure: 10 TAC §80.100(b)(11) (No change.)
- (23) Affidavit of Fact for Right of Survivorship. (12) Notice and Informed Consent to Installation on an Improperly Prepared Site. Figure: 10 TAC §80.100(b)(12) (No change.)
- (24) Addendum to Application for SOL. (13) Formaldehyde Notice. Figure: 10 TAC §80.100(b)(13) (No change.)
- (25) Release or Foreclosure of Lien (Form B). (14) Texas Inventory Finance Security Form. Figure: 10 TAC §80.100(b)(14) (No change.)
- (26) Statement of Inheritance (Form C). (15) Broker Disclosure Form. Figure: 10 TAC §80.100(b)(15) (No change.)
- (27) Taxing Entity Application for Texas Seal (Form S). (16) Notice of Installation (Form T). Figure: 10 TAC §80.100(b)(16) (No change.)
- (28) Multiple Application Log (Form M). (17) Installation Checklist. Figure: 10 TAC §80.100(b)(17) (No change.)
- (29) Instructions to Third Party Closer. (18) Estimate for Reassigned Warranty Work. Figure: 10 TAC §80.100(b)(18) (No change.)
- (30) Notice of Lien for Tax Lien/Release Form. (19) Application for Statement of Ownership and Location. Figure: 10 TAC §80.100(b)(19)
- (31) Notice of Lien to Perfect a Lien (Other than Tax Lien) Form. (20) Affidavit of Fact for Real Property. Figure: 10 TAC §80.100(b)(20) (No change.)
- (32) Notification of filing status as a Central Tax Collector. (21) Affidavit of Fact. Figure: 10 TAC §80.100(b)(21) (No change.)
- (33) Site Preparation Notice Form. (22) Affidavit of Error. Figure: 10 TAC §80.100(b)(22) (No change.)
- (34) Sample of Statement of Ownership and Location. (23) Affidavit of Fact for Right of Survivorship. Figure: 10 TAC §80.100(b)(23) (No change.)
- (35) Application for License Renewal (other than a salesperson). (24) Addendum to Application for SOL. Figure: 10 TAC §80.100(b)(24) (No change.)
- (36) Right of Rescission Waiver Form. (25) Release or Foreclosure of Lien (Form B). Figure: 10 TAC §80.100(b)(25) (No change.)
- (37) List of Unlicensed Installers Form. (26) Statement of Inheritance (Form C). Figure: 10 TAC §80.100(b)(26) (No change.)
- (38) Probationary Notice of Installation (Form T). (27) Taxing Entity Application for Texas Seal (Form S). Figure: 10 TAC §80.100(b)(27) (No change.)
- (39) Notice of Intent to Acquire Ownership of an Abandoned Home. (28) Multiple Application Log (Form M). Figure: 10 TAC §80.100(b)(28) (No change.)
- (40) Affidavit of Fact for Abandonment. (29) Instructions to Third Party Closer. Figure: 10 TAC §80.100(b)(29) (No change.)
- (41) Disclosure to Consumer (Possible Need to Vacate Home if Financing does not Close. (30) Notice of Lien for Tax Lien/Release Form. Figure: 10 TAC §80.100(b)(30) (No change.)
- (42) Application for Salesperson's License Renewal. (31) Notice of Lien to Perfect a Lien (Other than Tax Lien) Form. Figure: 10 TAC §80.100(b)(31) (No change.)
- (43) Application for License Instruction Provider.
- (44) Statement from Tax Assessor-Collector.
- (b) Forms.
- (1) Application for Manufacturer's License. Figure: 10 TAC §80.100(b)(1) (No change.)
- (2) Application for Retailer, Broker, Installer and/or Rebuilder's License. Figure: 10 TAC §80.100(b)(2) (No change.)
- (3) Application for Retailer with Branch Locations License. Figure: 10 TAC §80.100(b)(3) (No change.)
- (4) Application for Salesperson's License. Figure: 10 TAC §80.100(b)(4) (No change.)
- (5) Licensing Surety Bond. Figure: 10 TAC §80.100(b)(5) (No change.)
- (6) Licensing Security Agreement. Figure: 10 TAC §80.100(b)(6) (No change.)
- (7) Manufacturer's Certificate of Origin (MCO).



(32) Notification of filing status as a Central Tax Collector.  
Figure: 10 TAC §80.100(b)(32) (No change.)

(33) Site Preparation Notice Form.  
Figure: 10 TAC §80.100(b)(33) (No change.)

(34) Sample of Statement of Ownership and Location.  
Figure: 10 TAC §80.100(b)(34) (No change.)

(35) Application for License Renewal (other than a salesperson).  
Figure: 10 TAC §80.100(b)(35) (No change.)

(36) Right of Rescission Waiver Form.  
Figure: 10 TAC §80.100(b)(36) (No change.)

(37) List of Unlicensed Installers Form.  
Figure: 10 TAC §80.100(b)(37) (No change.)

(38) Probationary Notice of Installation (Form T).  
Figure: 10 TAC §80.100(b)(38) (No change.)

(39) Notice of Intent to Acquire Ownership of an Abandoned Home.  
Figure: 10 TAC §80.100(b)(39) (No change.)

(40) Affidavit of Fact for Abandonment.  
Figure: 10 TAC §80.100(b)(40) (No change.)

(41) Disclosure to Consumer (Possible Need to Vacate Home if Financing does not Close).  
Figure: 10 TAC §80.100(b)(41) (No change.)

(42) Application for Salesperson's License Renewal.  
Figure: 10 TAC §80.100(b)(42) (No change.)

(43) Application for License Instruction Provider.  
Figure: 10 TAC §80.100(b)(43) (No change.)

(44) Statement from Tax Assessor-Collector.  
Figure: 10 TAC §80.100(b)(44)

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## TITLE 19. EDUCATION

### PART 2. TEXAS EDUCATION AGENCY

#### CHAPTER 97. PLANNING AND ACCOUNTABILITY

The Texas Education Agency (TEA) adopts amendments to §§97.1037, 97.1051, 97.1053, and 97.1055, concerning record review of certain decisions and accreditation statuses and standards. The amendments are adopted without changes to the proposed text as published in the September 12, 2008,

issue of the *Texas Register* (33 TexReg 7659) and will not be republished. Section 97.1037 establishes procedures for creating an administrative record for review by the State Office of Administrative Hearings. Sections 97.1051, 97.1053, and 97.1055 address accreditation statuses and standards, including definitions and purpose. The adopted amendments add language to include charter schools in the accreditation process under Texas Education Code (TEC), Chapter 39.

During the 79th Texas Legislature, Third Called Session, 2006, House Bill (HB) 1 was passed, which amended the TEC, Chapter 39, Public School System Accountability. The HB 1 changes addressed, in part, the accreditation of school districts; sanctions and interventions for school districts, charter schools, and campuses; and the review by the State Office of Administrative Hearings of certain sanctions. As a result, the TEA was required to adopt rules to implement the changes addressed.

In January 2008, the TEA notified districts that 19 TAC Chapter 97, Planning and Accountability, Subchapter DD, Investigative Reports, Sanctions, and Record Reviews, had been amended and that 19 TAC Chapter 97, Planning and Accountability, Subchapter EE, Accreditation Status, Standards, and Sanctions, and 19 TAC Chapter 157, Hearings and Appeals, Subchapter EE, Review by State Office of Administrative Hearings: Certain Accreditation Sanctions, had been adopted to establish new and revised rules in compliance with HB 1. The rule actions clarified and codified current TEA practice, as well as the commissioner of education's intent, regarding accreditation issues.

New 19 TAC Chapter 97, Planning and Accountability, Subchapter EE, Accreditation Status, Standards, and Sanctions, adopted to be effective January 6, 2008, included new rules that define the accreditation statuses of Accredited, Accredited-Warning, Accredited-Probation, and Not Accredited-Revoked and state how accreditation statuses will be determined and assigned to school districts. The adoption also established accreditation standards and sanctions, including definitions, purpose, and oversight appointments.

Because they were not included in the School FIRST (Financial Integrity Rating System of Texas) financial accountability rating system, charter schools have not received an accreditation status under the TEC, Chapter 39. The adopted amendments add language to include charter schools in the accreditation process. The adopted amendments to 19 TAC Chapter 97, Subchapters DD and EE, include the following.

In 19 TAC Chapter 97, Subchapter DD, Investigative Reports, Sanctions, and Record Reviews, §97.1037, Record Review of Certain Decisions, has been amended to add new subsection (a)(5) to apply the request for record review process to a charter school accreditation finding.

In 19 TAC Chapter 97, Subchapter EE, Accreditation Status, Standards, and Sanctions, the following amendments are adopted.

Section 97.1051, Definitions, has been amended to include a charter school campus to the definition of campus and add other definitions to clarify applicability to open-enrollment charter schools. Section 97.1053, Purpose, has been amended to add new subsection (c) to specify applicability to open-enrollment charter schools.

Section 97.1055, Accreditation Status, has been amended to address charter school accreditation by adding new subsection (g) that establishes substitute criteria when considering the financial

performance of a charter operator in lieu of a financial accountability rating. The adopted new subsection (g) also establishes the process to be used concerning specific financial accountability findings. In addition, adopted new subsection (h) has been added to address third-party accreditation.

The TEA determined that the amendments will have no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The public comment period on the proposal began September 12, 2008, and ended October 13, 2008. Following is a summary of the public comments received during the comment period and corresponding agency responses.

**Comment.** A representative of Orenda Education suggested that language be included that defines the constitution of an adverse opinion in §97.1055(g)(1)(C)(i) and an established amount or percentage of financial resources or expenditures that were not properly documented in §97.1055(g)(1)(C)(ii).

**Agency Response.** The agency disagrees. These terms have specific meanings within the finance industry and are established in accounting rules set forth by the American Institution of Certified Public Accountants.

**Comment.** A representative of Pegasus School of Liberal Arts and Sciences recommended adding the word *material* before the word *financial* in §97.1055(g)(1)(C)(ii)(I).

**Agency Response.** The agency disagrees. This is a term of art used in the finance industry and has a specific meaning. If the school received an adverse or disclaimed opinion based on financial resources or expenditures that were not properly documented, that in itself makes this material. Use of the word *material* would be redundant.

**Comment.** A representative of Pegasus School of Liberal Arts and Sciences recommended making performance for the 2006-2007 and 2007-2008 fiscal years under §97.1055(g)(2)(C) for informational purposes only.

**Agency Response.** The agency disagrees. To postpone as recommended would mean that the first year charters would be held financially accountable for accreditation purposes would be 2010-2011. An annual audit is already a requirement for charter schools, and the commissioner considers financial issues when considering renewals and revocations as indicated in TEC, §12.115(a)(1)-(2); in 19 TAC §100.1021(a)(1), (2), (4), and (5); and in 19 TAC §100.1022(c). Current financial requirements are outlined in 19 TAC §100.1022(c).

**Comment.** A representative of Pegasus School of Liberal Arts and Sciences recommended an entirely new accreditation process be in effect for the 2008-2009 fiscal year, making performance for the 2006-2007 and 2007-2008 fiscal years under §97.1055(g)(2)(C) for informational purposes only.

**Agency Response.** The agency disagrees. This postponement would unduly delay the accreditation process authorized by the 79th Texas Legislature, Third Called Session, 2006, and established clearly for charter schools in TEC, §39.1321. This section in statute makes charter schools accountable for sanctions under TEC, Chapter 39, and gives the commissioner the authority to adopt rules to sanction charter schools. It should be noted that charters already receive state accountability ratings, and sanctions for low student performance should already be known.

**Comment.** A representative of Shekinah Learning Institute, Radiance Academy of Learning, and Shekinah Radiance Academy requested that the commissioner postpone the implementation of the rules to allow more time to investigate the impact the rules will have on charters and their students.

**Agency Response.** The agency disagrees. This postponement would unduly delay the accreditation process authorized by the 79th Texas Legislature, Third Called Session, 2006, and established clearly for charter schools in TEC, §39.1321. This section in statute makes charter schools accountable for sanctions under TEC, Chapter 39, and gives the commissioner the authority to adopt rules to sanction charter schools. It should be noted that charters already receive state accountability ratings, and sanctions for low student performance should already be known.

Charters currently submit annual audits, and the commissioner already reviews financial issues when considering renewals and revocations as indicated in TEC, §12.115(a)(1)-(2); in 19 TAC §100.1021(a)(1), (2), (4), and (5); and in 19 TAC §100.1022(c). Current financial requirements are outlined in 19 TAC §100.1022(c).

**Comment.** A representative of Erath Excels Academy requested that the commissioner postpone the implementation of the rules until the following year to further investigate the proposal.

**Agency Response.** The agency disagrees. This postponement would unduly delay the accreditation process authorized by the 79th Texas Legislature, Third Called Session, 2006, and established clearly for charter schools in TEC, §39.1321. This section in statute makes charter schools accountable for sanctions under TEC, Chapter 39, and gives the commissioner the authority to adopt rules to sanction charter schools. It should be noted that charters already receive state accountability ratings, and sanctions for low student performance should already be known.

Charters currently submit annual audits, and the commissioner already reviews financial issues when considering renewals and revocations as indicated in TEC, §12.115(a)(1)-(2); in 19 TAC §100.1021(a)(1), (2), (4), and (5); and in 19 TAC §100.1022(c). Current financial requirements are outlined in 19 TAC §100.1022(c).

**Comment.** A representative from DKH Consulting requested that the commissioner postpone the implementation of the rules until the following year in order to not create the failure of many charter schools based on rules that have been implemented unfairly and retroactively.

**Agency Response.** The agency disagrees. This postponement would unduly delay the accreditation process authorized by the 79th Texas Legislature, Third Called Session, 2006, and established clearly for charter schools in TEC, §39.1321. This section in statute makes charter schools accountable for sanctions under TEC, Chapter 39, and gives the commissioner the authority to adopt rules to sanction charter schools. It should be noted that charters already receive state accountability ratings, and sanctions for low student performance should already be known.

Charters currently submit annual audits, and the commissioner already reviews financial issues when considering renewals and revocations as indicated in TEC, §12.115(a)(1)-(2); in 19 TAC §100.1021(a)(1), (2), (4), and (5); and in 19 TAC §100.1022(c). Current financial requirements are outlined in 19 TAC §100.1022(c).

**Comment.** A representative of Feldman, Rogers, Morris, & Grover, L.L.P., commented that the commissioner does not have

authority to adopt the proposed amendments to 19 TAC Chapter 97, stating charters are not subject to the financial accountability rating system under TEC, Chapter 39, Subchapter I, and that the proposed rule in §97.1055(g)(1) allows the commissioner to use a finding in lieu of a rating, thus overreaching statutory authority.

**Agency Response.** The agency disagrees. TEC, §12.104(b)(2)(L), makes clear that charter schools are bound by public school accountability under TEC, Chapter 39, Subchapters B, C, D, and G. In addition, TEC, Chapter 39, Subchapter K, §39.301(a), explicitly states, "The commissioner by rule shall provide a process for a school district or open-enrollment charter school to challenge an agency decision made under this chapter relating to an academic or financial accountability rating that affects the district or the school."

Clearly the intent is for the commissioner to evaluate charter schools based on financial criteria, and the commissioner already reviews financial issues when considering renewals and revocations as indicated in TEC, §12.115(a)(1)-(2); in 19 TAC §100.1021(a)(1), (2), (4), and (5); and in 19 TAC §100.1022(c). Current financial requirements are outlined in 19 TAC §100.1022(c).

The accreditation process was authorized by the 79th Texas Legislature, Third Called Session, 2006, and established clearly for charter schools in TEC, §39.1321. This section in statute makes charter schools accountable for sanctions under TEC, Chapter 39, and gives the commissioner the authority to adopt rules to sanction charter schools.

**Comment.** A representative from Seashore Learning Center commented that state accreditation should be replaced with regional accreditation.

**Agency Response.** The agency agrees that third-party accreditation has merit; however, the agency has no authority to substitute regional accreditation for state accreditation. A change from state accreditation to regional accreditation would require explicit statutory authority.

**Comment.** Orenda Education inquired about third-party accreditation rating agencies.

**Agency Response.** At this time, there is no commissioner's approved list of third-party accreditation rating agencies. Under 19 TAC §97.1055(h), a third-party accreditation rating process is a permissible option left to the discretion of the commissioner.

**Comment.** DKH Consulting, Erath Excels Academy, Shekinah Learning Institute, Radiance Academy of Learning, and Shekinah Radiance Academy expressed concerns about imposing the same instructional accountability and student attendance standards on school districts and charters alike. The commenters stated that this system, along with financial accountability standards and the evaluation of districts and charters, places charters at a disadvantage.

**Agency Response.** The agency disagrees. The issues raised by the commenters address topics that are not part of this adoption.

## **SUBCHAPTER DD. INVESTIGATIVE REPORTS, SANCTIONS, AND RECORD REVIEWS**

**19 TAC §97.1037**

The amendment is adopted under the Texas Education Code (TEC), §12.104, which establishes the applicability of public school accountability under TEC, Chapter 39, to an open-enrollment charter school; TEC, §39.076, which authorizes the agency to adopt written procedures for conducting on-site investigations under TEC, Chapter 39, Subchapter D; TEC, §39.131, which authorizes the commissioner to determine sanctions for a district that does not satisfy accreditation criteria under TEC, §39.071, the academic performance standards under TEC, §39.072, or any financial accountability standard as determined by the commissioner; TEC, §39.132, which authorizes the commissioner to determine sanctions for an under-performing campus; TEC, §39.1321, which authorizes the commissioner to adopt rules to implement procedures to impose any sanction provision under TEC, Chapter 39, as those provisions relate to open-enrollment charter schools; and TEC, §39.302, which authorizes the agency to establish procedures for creating an administrative record for review by the State Office of Administrative Hearings for certain decisions.

The adopted amendment implements the Texas Education Code, §§12.104, 39.076, 39.131, 39.132, 39.1321, and 39.302.

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 November 3, 2008.

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Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Effective date: November 23, 2008

Proposal publication date: September 12, 2008

For further information, please call: (512) 475-1497



## **SUBCHAPTER EE. ACCREDITATION STATUS, STANDARDS, AND SANCTIONS**

**19 TAC §§97.1051, 97.1053, 97.1055**

The amendments are adopted under the Texas Education Code (TEC), §12.104, which establishes the applicability of public school accountability under TEC, Chapter 39, to an open-enrollment charter school; TEC, §39.071, which authorizes the commissioner to define accreditation statuses and to determine the accreditation status of each school district; TEC, §39.131, which authorizes the commissioner to determine sanctions for a district that does not satisfy accreditation criteria under TEC, §39.071, the academic performance standards under TEC, §39.072, or any financial accountability standard as determined by the commissioner; TEC, §39.132, which authorizes the commissioner to determine sanctions for an under-performing campus; and TEC, §39.1321, which authorizes the commissioner to adopt rules to implement procedures to impose any sanction provision under TEC, Chapter 39, as those provisions relate to open-enrollment charter schools.

The adopted amendments implement the Texas Education Code, §§12.104, 39.071, 39.131, 39.132, and 39.1321.

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 128. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR SPANISH LANGUAGE ARTS AND READING AND ENGLISH AS A SECOND LANGUAGE

The State Board of Education (SBOE) adopts amendments to §§128.1, 128.21, and 128.41; new §§128.10-128.18 and 128.30-128.32; and repeal of §§128.23-128.26 and 128.44-128.66, concerning Texas essential knowledge and skills (TEKS) for Spanish language arts and reading and English as a second language. The amendments to §§128.1, 128.21, and 128.41; new §§128.10, 128.17, and 128.30; and repeal of §§128.23-128.26 and 128.44-128.66 are adopted without changes to the proposed text as published in the August 15, 2008, issue of the *Texas Register* (33 TexReg 6505) and will not be republished. New §§128.11-128.16, 128.18, 128.31, and 128.32 are adopted with changes to the proposed text as published in the August 15, 2008, issue of the *Texas Register* (33 TexReg 6505). The adopted amendments, new sections, and repeals establish revised Spanish language arts and reading TEKS for Kindergarten-Grade 6 and English I-II for Speakers of Other Languages for implementation beginning with the 2009-2010 school year in order to allow districts to begin preparing for implementation. Included in the revisions are amendments to specify that existing TEKS will be superseded by the revised TEKS once implemented.

The refinement and alignment of English language arts and reading, Spanish language arts, and English as a second language TEKS began in 2005 with the same process used for mathematics TEKS. The review process included gathering input from stakeholders throughout Texas and review of the TEKS by a work group of SBOE nominees. The draft refinements were placed on the Texas Education Agency (TEA) website in the form of a survey to collect feedback from the public for 30 days beginning in February 2006. In June 2006, the SBOE directed agency staff to reconvene the review committees for further revision of the English language arts and reading TEKS. The committee was charged with making the TEKS more grade-level specific, less repetitive, and measurable at the state or local level. In keeping with the alignment of the TEKS for English language arts and reading, Spanish language arts, and English as a second language, changes proposed for 19 TAC Chapter 110, Texas Essential Knowledge and Skills for English Language Arts and Reading, drive the changes proposed for 19 TAC Chapter 128, Texas Essential Knowledge and Skills for Spanish Language Arts and Reading and English as a Second Language.

Upon approval of the proposed revisions to 19 TAC Chapter 110 for first reading and filing authorization at the March 2008 meeting, work to incorporate corresponding changes to 19 TAC Chapter 128 began in order to present the proposed revisions for first reading and filing authorization. Proposed revisions to 19 TAC Chapter 110 were adopted by the SBOE during the May 2008 meeting. The Spanish language arts TEKS review committee was reconvened on June 19 and 20, 2008, to prepare proposed revisions to 19 TAC Chapter 128 in alignment with recently adopted revisions to 19 TAC Chapter 110. The committee also met on July 9, 2008.

At the July 18, 2008, meeting, the SBOE approved for first reading and filing authorization the proposed revisions to 19 TAC Chapter 128, Subchapters A-C, recommended by the Spanish language arts TEKS review committee. The Spanish language arts TEKS review committee reconvened in September to provide further clarification on the recommendations. At the September 29, 2008, special meeting, the SBOE amended and approved for second reading and final adoption the proposed revisions to 19 TAC Chapter 128, Subchapters A-C, incorporating the final work of the Spanish language arts TEKS review committee. Changes to the proposed revisions to 19 TAC Chapter 128 made by the SBOE at adoption include the following.

Adjustments were made to address developmental appropriateness in student expectations from Kindergarten to Grade 6. For example, the phrase, "use print and electronic resources to find and check correct spellings," was removed from Kindergarten because this skill is not developmentally appropriate.

Adjustments were made for stronger vertical alignment. For example, the spelling student expectations that address accents were adjusted to ensure concepts are introduced at appropriate grade levels.

Adjustments were made to ensure alignment with changes made to English language arts and reading TEKS after revisions to the Spanish language arts TEKS were approved for first reading and filing authorization.

Language was added to the introductions for the English for Speakers of Other Languages (ESOL) I and ESOL II courses to further clarify the focus of these courses.

The last student expectation for second language acquisition, "viewing and representing," was deleted from the ESOL I and ESOL II courses.

Following is a summary of public comments and corresponding responses regarding the proposed revisions to 19 TAC Chapter 128, Subchapters A-C.

**Comment.** The Spanish language arts TEKS review committee recommended changes that would address developmental appropriateness in student expectations from Kindergarten to Grade 6, adjust for stronger vertical alignment, ensure alignment with changes made to English language arts and reading TEKS, add language to the introductions for the ESOL I and ESOL II courses to further clarify the focus of these courses, and delete the "viewing and representing" student expectation from the ESOL I and ESOL II courses.

**Response.** The SBOE agreed and incorporated the recommended changes.

**Comment.** A director of Bilingual/ESL education in San Elizario Independent School District commented that much work is

needed in the area of English for speakers of other languages. She further commented that support for English language learners at the secondary level needs to be revisited and that standards that address the different levels of English language proficiency are needed.

Response. The SBOE agreed that guidance to districts should be updated following the adoption of these TEKS. The SBOE adopted language that includes second language acquisition skills and took action to respond to other comments made by the appointed Spanish language arts TEKS review committee.

The TEA determined that the revisions will have no direct adverse economic impact for small businesses or microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

In accordance with the TEC, §7.102(f), the SBOE approved this rule action for final adoption by a vote of more than two-thirds of its members to specify an effective date earlier than the beginning of the 2009-2010 school year. The earlier effective date is necessary in order to allow districts to begin preparing for implementation. The effective date of the adopted rule action is 20 days after filing as adopted.

## SUBCHAPTER A. ELEMENTARY

### 19 TAC §§128.1, 128.10 - 128.16

The amendment and new sections are adopted under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements, §28.002, which authorizes the SBOE to by rule identify the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating textbooks and addressed on the assessment instruments, and §28.005 and §29.051, which establishes bilingual education and special language programs in the public schools to ensure students' reasonable proficiency in the English language and ability to achieve academic success.

The amendment and new sections implement the Texas Education Code, §§7.102(c)(4), 28.002, 28.005, and 29.051.

§128.11. *Spanish Language Arts and Reading, Kindergarten, Beginning with School Year 2009-2010.*

#### (a) Introduction.

(1) The Spanish Language Arts and Reading Texas Essential Knowledge and Skills (TEKS) reflect language arts standards that are authentic to the Spanish language and Spanish literacy, not mere translations from English. The Spanish Language Arts and Reading TEKS are organized into the following strands: Reading, where students read and understand a wide variety of literary and informational texts; Writing, where students compose a variety of written texts with a clear controlling idea, coherent organization, and sufficient detail; Research, where students are expected to know how to locate a range of relevant sources and evaluate, synthesize, and present ideas and information; Listening and Speaking, where students listen and respond to the ideas of others while contributing their own ideas in conversations and in groups; and Oral and Written Conventions, where students learn how to use the oral and written conventions of the Spanish language in speaking and writing. The Reading strand is structured to reflect major topic areas of the National Reading Panel Report as well as other current and relevant research on Spanish literacy development. In Kindergarten, students engage in activities that build on their natural curiosity and prior knowledge to develop their reading, writing, and oral language skills. Students should be read to on a daily basis.

(2) Research consistently shows that literacy development in the student's native language facilitates learning in English (Collier & Thomas, 1997; Cummins, 2001). Students can develop cognition, learn, and achieve best when they can understand the language of instruction (August, Calderon, & Carlo, 2003). Students who have strong literacy skills in their primary language can be expected to transfer those skills to English and *progress rapidly* in learning in English. Although English and Spanish look very similar on the surface (i.e., similar alphabets; directionality; cognates) the conventions of each language presuppose the reading process in that language. Consequently, systematic instruction in the appropriate sequence of skills is critical. For this reason, the Spanish Language Arts and Reading TEKS reflect language arts standards that are authentic to the Spanish language and not mere translations from English.

(A) Spanish, as opposed to English, has a closer letter-sound relationship and clearly defined syllable boundaries. The syllable in Spanish is a more critical unit of phonological awareness than in English because of the consistent phoneme-grapheme correspondence. Syllables are important units for Spanish because of their strong effect in visual word recognition (Carreiras et al., 1993) and their major role in predicting Spanish reading success. In addition, Spanish presents a much higher level of orthographic transparency than English and does not rely on sight words for decoding. This orthographic transparency accelerates the decoding process, and the focus quickly moves to fluency and comprehension. Spanish uses frequency words that are identified by the rate of occurrence in grade appropriate text and used to build on fluency and comprehension. However, in English, "sight" words are used because of words that are not decodable such as "are" or "one." In Spanish, decoding issues are not as prevalent as issues of comprehension. These specific features of the Spanish language will influence reading methodology and development.

(B) Spanish instruction maximizes access to English content. Students with strong literacy skills in Spanish phonemic awareness, phonics, vocabulary, and reading comprehension can be expected to transfer those skills to English. The "transfer" of knowledge and skills from one language to another refers to the metalinguistic and metacognitive processes and awareness that students gain in developing literacy in two languages. Current research on bilingual instruction (e.g., August & Shanahan, 2006; Genesse et al., 2006) shows how students use native literacy knowledge when learning to read and write in another language.

(C) The effective transfer of skills transpires as students develop their metalinguistic skills and as they engage in a contrastive analysis of the Spanish and English languages (Cummins, 2007). Transfer matters occur within fundamentals of language that are common to Spanish and English; within fundamentals that are similar, but not exact in both languages; and in fundamentals specific to each language and not applicable to the other language. The strength of learning through formal instruction in Spanish determines the extent of transfer in English (August, Calderon, & Carlo, 2000; Slavin & Calderon, 2001; Garcia, 2001). In other words, for transfer to occur, comprehension of the "rules" and the realization of their applicability to the new language specific tasks are necessary.

(D) The concept of transfer necessitates the use of some of both languages in which both (Spanish and English) *co-exist with flexibility*. As a result of working within two language systems, students' metalinguistic and metacognitive skills are enhanced when they learn about the similarities and differences between languages. This is *reliant* on the type of bilingual program model being used (See Texas Education Code, §29.066).

(3) To meet Public Education Goal 1 of the Texas Education Code, §4.002, which states, "The students in the public educa-

tion system will demonstrate exemplary performance in the reading and writing of the English language," students will accomplish the essential knowledge, skills, and student expectations at Kindergarten as described in subsection (b) of this section.

(4) To meet Texas Education Code, §28.002(h), which states, "... each school district shall foster the continuation of the tradition of teaching United States and Texas history and the free enterprise system in regular subject matter and in reading courses and in the adoption of textbooks," students will be provided oral and written narratives as well as other informational texts that can help them to become thoughtful, active citizens who appreciate the basic democratic values of our state and nation.

(b) Knowledge and skills.

(1) Reading/Beginning Reading Skills/Print Awareness. Students understand how Spanish is written and printed. Students are expected to:

- (A) recognize that spoken words can be represented by print for communication;
- (B) identify upper- and lower-case letters;
- (C) demonstrate the one-to-one correspondence between a spoken word and a printed word in text;
- (D) recognize the difference between a letter and a printed word;
- (E) recognize that sentences are comprised of words separated by spaces and demonstrate the awareness of word boundaries (e.g., through kinesthetic or tactile actions such as clapping and jumping);
- (F) hold a book right side up, turn its pages correctly, and know that reading moves from top to bottom and left to right; and
- (G) identify different parts of a book (e.g., front and back covers, title page).

(2) Reading/Beginning Reading Skills/Phonological Awareness. Students display phonological awareness. Students are expected to:

- (A) identify a sentence made up of a group of words;
- (B) identify syllables in spoken words;
- (C) orally generate rhymes in response to spoken words (e.g., "¿Qué rima con mesa?");
- (D) distinguish orally presented rhyming pairs of words from non-rhyming pairs;
- (E) recognize spoken alliteration or groups of words that begin with the same initial sound (e.g., "Pepe Pecas pica papas");
- (F) blend spoken phonemes to form syllables and words (e.g., /m/.../a/ says ma, ma-pa says "mapa");
- (G) isolate the initial syllabic sound in spoken words (e.g., /pa/ta, /la/ta, /ra/ta); and
- (H) separate spoken multi-syllabic words into two to three syllables (e.g., /to/ /ma/ /te/).

(3) Reading/Beginning Reading Skills/Phonics. Students use the relationships between letters and sounds and morphological analysis to decode written Spanish. Students are expected to:

- (A) decode the five vowel sounds;
- (B) decode syllables;

(C) use phonological knowledge to match sounds to individual letters and syllables, including hard and soft consonants such as "r," "c," and "g";

(D) decode the written "y" when used as a conjunction, as in "mamá y papá";

(E) become familiar with the concept that "h" is silent;

(F) become familiar with the digraphs /ch/, /rr/;

(G) become familiar with the concept that "ll" and "y" have the same sound (e.g., llave, ya);

(H) use knowledge of consonant/vowel sound relationships to decode syllables and words in text and independent of content (e.g., CV, VC, CVC, CVCV words); and

(I) recognize that new words are created when syllables are changed, added, or deleted.

(4) Reading/Beginning Reading/Strategies. Students comprehend a variety of texts drawing on useful strategies as needed. Students are expected to:

(A) predict what might happen next in text based on the cover, title, and illustrations; and

(B) ask and respond to questions about texts read aloud.

(5) Reading/Vocabulary Development. Students understand new vocabulary and use it correctly when reading and writing. Students are expected to:

(A) identify and use words that name actions, directions, positions, sequences, and locations;

(B) become familiar with grade appropriate vocabulary including content and function words;

(C) recognize that compound words are made by putting two words together (e.g., saca + puntas = sacapuntas);

(D) identify and sort pictures of objects into conceptual categories (e.g., colors, shapes, textures); and

(E) use a picture dictionary to find words.

(6) Reading/Comprehension of Literary Text/Theme and Genre. Students analyze, make inferences and draw conclusions about theme and genre in different cultural, historical, and contemporary contexts and provide evidence from the text to support their understanding. Students are expected to:

(A) identify elements of a story including setting, character, and key events;

(B) discuss the big idea (theme) of a well-known folktale or fable and connect it to personal experience;

(C) recognize sensory details; and

(D) recognize recurring phrases and characters in traditional fairy tales, lullabies, and folktales from various cultures.

(7) Reading/Comprehension of Literary Text/Poetry. Students understand, make inferences and draw conclusions about the structure and elements of poetry and provide evidence from text to support their understanding. Students are expected to respond to rhythm and rhyme in poetry through identifying a regular beat and similarities in word sounds.

(8) Reading/Comprehension of Literary Text/Fiction. Students understand, make inferences and draw conclusions about the

structure and elements of fiction and provide evidence from text to support their understanding. Students are expected to:

- (A) retell a main event from a story read aloud; and
- (B) describe characters in a story and the reasons for their actions.

(9) Reading/Comprehension of Informational Text/Culture and History. Students analyze, make inferences and draw conclusions about the author's purpose in cultural, historical, and contemporary contexts and provide evidence from the text to support their understanding. Students are expected to identify the topic of an informational text heard.

(10) Reading/Comprehension of Informational Text/Expository Text. Students analyze, make inferences and draw conclusions about expository text, and provide evidence from text to support their understanding. Students are expected to:

- (A) identify the topic and details in expository text heard or read, referring to the words and/or illustrations;
- (B) retell important facts in a text, heard or read;
- (C) discuss the ways authors group information in text; and
- (D) use titles and illustrations to make predictions about text.

(11) Reading/Comprehension of Informational Text/Procedural Texts. Students understand how to glean and use information in procedural texts and documents. Students are expected to:

- (A) follow pictorial directions (e.g., recipes, science experiments); and
- (B) identify the meaning of specific signs (e.g., traffic signs, warning signs).

(12) Reading/Media Literacy. Students use comprehension skills to analyze how words, images, graphics, and sounds work together in various forms to impact meaning. Students continue to apply earlier standards with greater depth in increasingly more complex texts. Students (with adult assistance) are expected to:

- (A) identify different forms of media (e.g., advertisements, newspapers, radio programs); and
- (B) identify techniques used in media (e.g., sound, movement).

(13) Writing/Writing Process. Students use elements of the writing process (planning, drafting, revising, editing, and publishing) to compose text. Students (with adult assistance) are expected to:

- (A) plan a first draft by generating ideas for writing through class discussion;
- (B) develop drafts by sequencing the action or details in the story;
- (C) revise drafts by adding details or sentences;
- (D) edit drafts by leaving spaces between letters and words; and
- (E) share writing with others.

(14) Writing/Literary Texts. Students write literary texts to express their ideas and feelings about real or imagined people, events, and ideas. Students are expected to:

- (A) dictate or write sentences to tell a story and put the sentences in chronological sequence; and
- (B) write short poems.

(15) Writing/Expository and Procedural Texts. Students write expository and procedural or work-related texts to communicate ideas and information to specific audiences for specific purposes. Students are expected to dictate or write information for lists, captions, or invitations.

(16) Oral and Written Conventions/Conventions. Students understand the function of and use the conventions of academic language when speaking and writing. Students continue to apply earlier standards with greater complexity. Students are expected to:

- (A) understand and use the following parts of speech in the context of reading, writing, and speaking (with adult assistance):
  - (i) verbs, including commands and past and future tenses when speaking;
  - (ii) nouns (singular/plural);
  - (iii) descriptive words;
  - (iv) prepositions and simple prepositional phrases appropriately when speaking or writing (e.g., en, de, por la tarde, en la mañana); and
  - (v) personal pronouns (e.g., yo, ellos);
- (B) speak in complete sentences to communicate; and
- (C) use complete simple sentences.

(17) Oral and Written Conventions/Handwriting, Capitalization, and Punctuation. Students write legibly and use appropriate capitalization and punctuation conventions in their compositions. Students are expected to:

- (A) form upper- and lower-case letters legibly using the basic conventions of print (left-to-right and top-to-bottom progression);
- (B) capitalize the first letter in a sentence; and
- (C) use punctuation at the beginning (when appropriate) and at the end of a sentence.

(18) Oral and Written Conventions/Spelling. Students spell correctly. Students are expected to:

- (A) use phonological knowledge to match sounds to individual letters or syllables;
- (B) use letter-sound correspondences to spell mono- and multi-syllabic words;
- (C) use knowledge of consonant/vowel sound relationships to spell syllables and words in text and independent of content (e.g., CV, ma; VC, un; VCV, oso; CVC, sol; CVCV, mesa);
- (D) use "y" to represent /i/ when used as a conjunction (e.g. mamá y papá); and
- (E) write one's own name.

(19) Research/Research Plan. Students ask open-ended research questions and develop a plan for answering them. Students (with adult assistance) are expected to:

- (A) ask questions about topics of class-wide interest; and

(B) decide what sources or people in the classroom, school, library, or home can answer these questions.

(20) Research/Gathering Sources. Students determine, locate, and explore the full range of relevant sources addressing a research question and systematically record the information they gather. Students (with adult assistance) are expected to:

(A) gather evidence from provided text sources; and

(B) use pictures in conjunction with writing when documenting research.

(21) Listening and Speaking/Listening. Students use comprehension skills to listen attentively to others in formal and informal settings. Students continue to apply earlier standards with greater complexity. Students are expected to:

(A) listen attentively by facing speakers and asking questions to clarify information; and

(B) follow oral directions that involve a short related sequence of actions.

(22) Listening and Speaking/Speaking. Students speak clearly and to the point, using the conventions of language. Students continue to apply earlier standards with greater complexity. Students are expected to share information and ideas by speaking audibly and clearly using the conventions of language.

(23) Listening and Speaking/Teamwork. Students work productively with others in teams. Students continue to apply earlier standards with greater complexity. Students are expected to follow agreed-upon rules for discussion, including taking turns and speaking one at a time.

§128.12. *Spanish Language Arts and Reading, Grade 1, Beginning with School Year 2009-2010.*

(a) Introduction.

(1) The Spanish Language Arts and Reading Texas Essential Knowledge and Skills (TEKS) reflect language arts standards that are authentic to the Spanish language and Spanish literacy, not mere translations from English. The Spanish Language Arts and Reading TEKS are organized into the following strands: Reading, where students read and understand a wide variety of literary and informational texts; Writing, where students compose a variety of written texts with a clear controlling idea, coherent organization, and sufficient detail; Research, where students are expected to know how to locate a range of relevant sources and evaluate, synthesize, and present ideas and information; Listening and Speaking, where students listen and respond to the ideas of others while contributing their own ideas in conversations and in groups; and Oral and Written Conventions, where students learn how to use the oral and written conventions of the Spanish language in speaking and writing. The Reading strand is structured to reflect major topic areas of the National Reading Panel Report as well as other current and relevant research on Spanish literacy development. In first grade, students will engage in activities that build on their prior knowledge and skills in order to strengthen their reading, writing, and oral language skills. Students should write, read, and be read to on a daily basis.

(2) Research consistently shows that literacy development in the student's native language facilitates learning in English (Collier & Thomas, 1997; Cummins, 2001). Students can develop cognition, learn, and achieve best when they can understand the language of instruction (August, Calderon, & Carlo, 2003). Students who have strong literacy skills in their primary language can be expected to transfer those skills to English and *progress rapidly* in learning in English. Although English and Spanish look very similar on the surface (i.e.,

similar alphabets; directionality; cognates) the conventions of each language presuppose the reading process in that language. Consequently, systematic instruction in the appropriate sequence of skills is critical. For this reason, the Spanish Language Arts and Reading TEKS reflect language arts standards that are authentic to the Spanish language and not mere translations from English.

(A) Spanish, as opposed to English, has a closer letter-sound relationship and clearly defined syllable boundaries. The syllable in Spanish is a more critical unit of phonological awareness than in English because of the consistent phoneme-grapheme correspondence. Syllables are important units for Spanish because of their strong effect in visual word recognition (Carreiras et al., 1993) and their major role in predicting Spanish reading success. In addition, Spanish presents a much higher level of orthographic transparency than English and does not rely on sight words for decoding. This orthographic transparency accelerates the decoding process and the focus quickly moves to fluency and comprehension. Spanish uses frequency words that are identified by the rate of occurrence in grade appropriate text and used to build on fluency and comprehension. However, in English, "sight" words are used because of words that are not decodable such as "are" or "one." In Spanish, decoding issues are not as prevalent as issues of comprehension. These specific features of the Spanish language will influence reading methodology and development.

(B) Spanish instruction maximizes access to English content. Students with strong literacy skills in Spanish phonemic awareness, phonics, vocabulary, and reading comprehension can be expected to transfer those skills to English. The "transfer" of knowledge and skills from one language to another refers to the metalinguistic and metacognitive processes and awareness that students gain in developing literacy in two languages. Current research on bilingual instruction (e.g., August & Shanahan, 2006; Genesee et al., 2006) shows how students use native literacy knowledge when learning to read and write in another language.

(C) The effective transfer of skills transpires as students develop their metalinguistic skills and as they engage in a contrastive analysis of the Spanish and English languages (Cummins, 2007). Transfer matters occur within fundamentals of language that are common to Spanish and English; within fundamentals that are similar, but not exact in both languages; and in fundamentals specific to each language and not applicable to the other language. The strength of learning through formal instruction in Spanish determines the extent of transfer in English (August, Calderon, & Carlo, 2000; Slavin & Calderon, 2001; Garcia, 2001). In other words, for transfer to occur, comprehension of the "rules" and the realization of their applicability to the new language specific tasks are necessary.

(D) The concept of transfer necessitates the use of some of both languages in which both (Spanish and English) *co-exist with flexibility*. As a result of working within two language systems, students' metalinguistic and metacognitive skills are enhanced when they learn about the similarities and differences between languages. This is *reliant* on the type of bilingual program model being used (See Texas Education Code, §29.066).

(3) To meet Public Education Goal 1 of the Texas Education Code, §4.002, which states, "The students in the public education system will demonstrate exemplary performance in the reading and writing of the English language," students will accomplish the essential knowledge, skills, and student expectations in Grade 1 as described in subsection (b) of this section.

(4) To meet Texas Education Code, §28.002(h), which states, "... each school district shall foster the continuation of the tradition of teaching United States and Texas history and the free



enterprise system in regular subject matter and in reading courses and in the adoption of textbooks," students will be provided oral and written narratives as well as other informational texts that can help them to become thoughtful, active citizens who appreciate the basic democratic values of our state and nation.

(b) Knowledge and skills.

(1) Reading/Beginning Reading Skills/Print Awareness. Students understand how Spanish is written and printed. Students are expected to:

(A) recognize that spoken words are represented in written Spanish by specific sequences of letters;

(B) identify upper- and lower-case letters;

(C) sequence the letters of the alphabet;

(D) recognize the distinguishing features of a sentence (e.g., capitalization of first word, beginning and ending punctuation, the em dash to indicate dialogue);

(E) read texts by moving from top to bottom of the page and tracking words from left to right with return sweep; and

(F) identify the information that different parts of a book provide (e.g., title, author, illustrator, table of contents).

(2) Reading/Beginning Reading Skills/Phonological Awareness. Students display phonological awareness. Students are expected to:

(A) orally generate a series of original rhyming words using a variety of endings (e.g., -ita, -osa, -ión);

(B) recognize the change in a spoken word when a specified syllable or phoneme is added, changed, or removed (e.g., "ma-lo" to "ma-sa"; "to-mo" to "co-mo");

(C) blend spoken phonemes to form syllables and words (e.g., sol, pato);

(D) distinguish orally presented rhyming pairs of words from non-rhyming pairs;

(E) identify syllables in spoken words, including diphthongs and *hiatus* (le-er, rí-o, quie-ro, na-die, ra-dio, sa-po); and

(F) separate spoken multi-syllabic words into two to four syllables (e.g., ra-na, má-qui-na, te-lé-fo-no).

(3) Reading/Beginning Reading Skills/Phonics. Students use the relationships between letters and sounds to decode written Spanish. Students will continue to apply earlier standards with greater depth in increasingly more complex texts. Students are expected to:

(A) decode the five vowel sounds;

(B) decode syllables;

(C) use phonological knowledge to match sounds to individual letters and syllables including hard and soft consonants such as "r," "c," and "g";

(D) decode the written "y" when used as a conjunction (e.g., "mamá y papá");

(E) decode words in context and in isolation by applying the knowledge of letter-sound relationships in different structures including:

(i) open syllable (e.g., CV, la; VCV, ala; CVCV, toma);

(ii) closed syllable (e.g., VC, un; CVC, mes);

(iii) consonant blends (e.g., bra/bra-zo; glo/glo-bo); and

(iv) consonant digraphs (e.g., ch/chi-le; ll/lla-ve; rr/pe-rró);

(F) decode words with the silent "h";

(G) decode words that use syllables que-, qui-, as in queso and quito; gue-, gui-, as in guiso and juguete; and güe-, güi-, as in pingüino and agüita;

(H) decode words that have the same sounds represented by different letters (e.g., "r" and "rr," as in ratón and perro; "ll" and "y," as in llave and yate; "g" and "j," as in gigante and jirafa; "c," "k," and "q," as in casa, kilo, and quince; "c," "s," and "z," as in cereal, semilla, and zapato; "j" and "x," as in cojín and México; "i" and "y," as in imán and doy; "b" and "v," as in burro and vela);

(I) identify the stressed syllable (*sílaba tónica*);

(J) decode words with an orthographic accent (e.g., "papá," "mamá"); and

(K) use knowledge of the meaning of base words to identify and read common compound words (e.g., sacapuntas, abre-lata, salvavida).

(4) Reading/Beginning Reading/Strategies. Students comprehend a variety of texts drawing on useful strategies as needed. Students are expected to:

(A) confirm predictions about what will happen next in text by "reading the part that tells";

(B) ask relevant questions, seek clarification, and locate facts and details about stories and other texts; and

(C) establish purpose for reading selected texts and monitor comprehension, making corrections and adjustments when that understanding breaks down (e.g., identifying clues, using background knowledge, generating questions, re-reading a portion aloud).

(5) Reading/Fluency. Students read grade-level text with fluency and comprehension. Students are expected to read aloud grade-level appropriate text with accuracy, expression, appropriate phrasing, and comprehension.

(6) Reading/Vocabulary Development. Students understand new vocabulary and use it when reading and writing. Students are expected to:

(A) identify words that name actions (verbs) and words that name persons, places, or things (nouns);

(B) determine the meaning of compound words using knowledge of the meaning of their individual component words (e.g., paraguas);

(C) determine what words mean from how they are used in a sentence, either heard or read;

(D) identify and sort words into conceptual categories (e.g., opposites, living things); and

(E) alphabetize a series of words to the first or second letter and use a dictionary to find words.

(7) Reading/Comprehension of Literary Text/Theme and Genre. Students analyze, make inferences and draw conclusions about theme and genre in different cultural, historical, and contemporary contexts and provide evidence from the text to support their understanding. Students are expected to:

(A) connect the meaning of a well-known story or fable to personal experiences; and

(B) explain the function of recurring phrases (e.g., "Había una vez" or "Colorín Colorado, este cuento se ha acabado") in traditional folk- and fairy tales.

(8) Reading/Comprehension of Literary Text/Poetry. Students understand, make inferences and draw conclusions about the structure and elements of poetry and provide evidence from text to support their understanding. Students are expected to respond to and use rhythm, rhyme, and alliteration in poetry.

(9) Reading/Comprehension of Literary Text/Fiction. Students understand, make inferences and draw conclusions about the structure and elements of fiction and provide evidence from text to support their understanding. Students are expected to:

(A) describe the plot (problem and solution) and retell a story's beginning, middle, and end with attention to the sequence of events; and

(B) describe characters in a story and the reasons for their actions and feelings.

(10) Reading/Comprehension of Literary Text/Literary Nonfiction. Students understand, make inferences and draw conclusions about the varied structural patterns and features of literary nonfiction and respond by providing evidence from text to support their understanding. Students are expected to determine whether a story is true or a fantasy and explain why.

(11) Reading/Comprehension of Literary Text/Sensory Language. Students understand, make inferences and draw conclusions about how an author's sensory language creates imagery in literary text and provide evidence from text to support their understanding. Students are expected to recognize sensory details in literary text.

(12) Reading/Comprehension of Text/Independent Reading. Students read independently for sustained periods of time and produce evidence of their reading. Students are expected to read independently for a sustained period of time.

(13) Reading/Comprehension of Informational Text/Culture and History. Students analyze, make inferences and draw conclusions about the author's purpose in cultural, historical, and contemporary contexts and provide evidence from the text to support their understanding. Students are expected to identify the topic and explain the author's purpose in writing the text.

(14) Reading/Comprehension of Informational Text/Expository Text. Students analyze, make inferences and draw conclusions about expository text and provide evidence from text to support their understanding. Students are expected to:

(A) restate the main idea, heard or read;

(B) identify important facts or details in text, heard or read;

(C) retell the order of events in a text by referring to the words and/or illustrations; and

(D) use text features (e.g., title, tables of contents, illustrations) to locate specific information in text.

(15) Reading/Comprehension of Informational Text/Procedural Texts. Students understand how to glean and use information in procedural texts and documents. Students are expected to:

(A) follow written multi-step directions with picture cues to assist with understanding; and

(B) explain the meaning of specific signs and symbols (e.g., map features).

(16) Reading/Media Literacy. Students use comprehension skills to analyze how words, images, graphics, and sounds work together in various forms to impact meaning. Students continue to apply earlier standards with greater depth in increasingly more complex texts. Students are expected to:

(A) recognize different purposes of media (e.g., informational, entertainment) (with adult assistance); and

(B) identify techniques used in media (e.g., sound, movement).

(17) Writing/Writing Process. Students use elements of the writing process (planning, drafting, revising, editing, and publishing) to compose text. Students are expected to:

(A) plan a first draft by generating ideas for writing (e.g., drawing, sharing ideas, listing key ideas);

(B) develop drafts by sequencing ideas through writing sentences;

(C) revise drafts by adding or deleting a word, phrase, or sentence;

(D) edit drafts for grammar, punctuation, and spelling using a teacher-developed rubric; and

(E) publish and share writing with others.

(18) Writing/Literary Texts. Students write literary texts to express their ideas and feelings about real or imagined people, events, and ideas. Students are expected to:

(A) write brief stories that include a beginning, middle, and end; and

(B) write short poems that convey sensory details.

(19) Writing/Expository and Procedural Texts. Students write expository and procedural or work-related texts to communicate ideas and information to specific audiences for specific purposes. Students are expected to:

(A) write brief compositions about topics of interest to the student;

(B) write short letters that put ideas in a chronological or logical sequence and use appropriate conventions (e.g., date, salutation, closing); and

(C) write brief comments on literary or informational texts.

(20) Oral and Written Conventions/Conventions. Students understand the function of and use the conventions of academic language when speaking and writing. Students continue to apply earlier standards with greater complexity. Students are expected to:

(A) understand and use the following parts of speech in the context of reading, writing, and speaking:

(i) verbs in the past, present, and future in the indicative mode (canto, canté);

(ii) nouns (singular/plural, common/proper);

(iii) adjectives (e.g., descriptive: verde, alto);

(iv) adverbs (e.g., time: before, next);

- (v) prepositions and prepositional phrases ("por la mañana");
- (vi) personal pronouns (e.g., yo, ellos); and
- (vii) time-order transition words (e.g., primero, luego, después);

(B) speak in complete sentences with correct article-noun agreement (e.g., la pelota, el mapa, el agua, la mano, el águila); and

(C) identify and read abbreviations (e.g., Sr., Sra.).

(21) Oral and Written Conventions/Handwriting, Capitalization, and Punctuation. Students write legibly and use appropriate capitalization and punctuation conventions in their compositions. Students are expected to:

(A) form upper- and lower-case letters legibly in text, using the basic conventions of print (left-to-right and top-to-bottom progression), including spacing between words and sentences;

(B) recognize and use basic capitalization for:

- (i) the beginning of sentences; and
- (ii) names of people; and

(C) recognize and use punctuation marks at the beginning and end of exclamatory and interrogative sentences and at the end of declarative sentences.

(22) Oral and Written Conventions/Spelling. Students spell correctly. Students are expected to:

(A) use phonological knowledge to match sounds to letters and syllables to construct words;

(B) use syllable-sound patterns to generate a series of original rhyming words using a variety of ending patterns (e.g., -ción, -illa, -ita, -ito);

(C) blend phonemes to form syllables and words (e.g., mismo, tarde);

(D) become familiar with words using orthographic patterns including:

(i) words that use syllables with hard /r/ spelled as "r" or "rr," as in ratón and carro;

(ii) words that use syllables with soft /r/ spelled as "r" and always between two vowels, as in pero and perro;

(iii) words that use syllables with silent "h," as in hora and ahora;

(iv) words that use syllables que-, qui-, as in queso and quitó; gue-, gui-, as in guiso and juguete; and güe-, güi-, as in paragüero and agüita;

(v) words that have the same sound represented by different letters (e.g., "r" and "rr," as in ratón and perro; "ll" and "y," as in llave and yate; "g" and "j," as in gigante and jirafa; "c," "k," and "q," as in casa, kilo, and quince; "c," "s," and "z," as in cereal, semilla, and zapato; "j" and "x," as in cojín and México; "i" and "y," as in imán and doy; "b" and "v," as in burro and vela); and

(vi) words using "n" before "v" (e.g., invitar), "m" before "b" (e.g., cambiar), and "m" before "p" (e.g., importante);

(E) become familiar with words with consonant blends (e.g., bra/bra-zo-, glo/glo-bo-);

(F) use knowledge of syllabic sounds, word parts, word segmentation, and syllabication to spell;

(G) become familiar with words that have a prosodic or orthographic accent on the last syllable (palabras agudas) (e.g., calor, ratón);

(H) become familiar with the appropriate use of accents on words commonly used in questions and exclamations (e.g., cuál, dónde, cómo);

(I) become familiar with creating the plural form of words ending in "z" by replacing the "z" with "c" before adding -es (e.g., lápiz, lápices, feliz, felices); and

(J) use resources to find correct spellings.

(23) Research/Research Plan. Students ask open-ended research questions and develop a plan for answering them. Students (with adult assistance) are expected to:

(A) generate a list of topics of class-wide interest and formulate open-ended questions about one or two of the topics; and

(B) decide what sources of information might be relevant to answer these questions.

(24) Research/Gathering Sources. Students determine, locate, and explore the full range of relevant sources addressing a research question and systematically record the information they gather. Students (with adult assistance) are expected to:

(A) gather evidence from available sources (natural and personal) as well as from interviews with local experts;

(B) use text features (e.g., table of contents, alphabetized index) in age-appropriate reference works (e.g., picture dictionaries) to locate information; and

(C) record basic information in simple visual formats (e.g., notes, charts, picture graphs, diagrams).

(25) Research/Synthesizing Information. Students clarify research questions and evaluate and synthesize collected information. Students (with adult assistance) are expected to revise the topic as a result of answers to initial research questions.

(26) Research/Organizing and Presenting Ideas. Students organize and present their ideas and information according to the purpose of the research and their audience. Students (with adult assistance) are expected to create a visual display or dramatization to convey the results of the research.

(27) Listening and Speaking/Listening. Students use comprehension skills to listen attentively to others in formal and informal settings. Students continue to apply earlier standards with greater complexity. Students are expected to:

(A) listen attentively to speakers and ask relevant questions to clarify information; and

(B) follow, restate, and give oral instructions that involve a short related sequence of actions.

(28) Listening and Speaking/Speaking. Students speak clearly and to the point, using the conventions of language. Students continue to apply earlier standards with greater complexity. Students are expected to share information and ideas about the topic under discussion, speaking clearly at an appropriate pace, using the conventions of language.

(29) Listening and Speaking/Teamwork. Students work productively with others in teams. Students continue to apply earlier

standards with greater complexity. Students are expected to follow agreed-upon rules for discussion, including listening to others, speaking when recognized, and making appropriate contributions.

§128.13. *Spanish Language Arts and Reading, Grade 2, Beginning with School Year 2009-2010.*

(a) Introduction.

(1) The Spanish Language Arts and Reading Texas Essential Knowledge and Skills (TEKS) reflect language arts standards that are authentic to the Spanish language and Spanish literacy, not mere translations from English. The Spanish Language Arts and Reading TEKS are organized into the following strands: Reading, where students read and understand a wide variety of literary and informational texts; Writing, where students compose a variety of written texts with a clear controlling idea, coherent organization, and sufficient detail; Research, where students are expected to know how to locate a range of relevant sources and evaluate, synthesize, and present ideas and information; Listening and Speaking, where students listen and respond to the ideas of others while contributing their own ideas in conversations and in groups; and Oral and Written Conventions, where students learn how to use the oral and written conventions of the Spanish language in speaking and writing. The Reading strand is structured to reflect major topic areas of the National Reading Panel Report as well as other current and relevant research on Spanish literacy development. In second grade, students will engage in activities that build on their prior knowledge and skills in order to strengthen their reading, writing, and oral language skills. Students should write, read, and be read to on a daily basis.

(2) Research consistently shows that literacy development in the student's native language facilitates learning in English (Collier & Thomas, 1997; Cummins, 2001). Students can develop cognition, learn, and achieve best when they can understand the language of instruction (August, Calderon, & Carlo, 2003). Students who have strong literacy skills in their primary language can be expected to transfer those skills to English and *progress rapidly* in learning in English. Although English and Spanish look very similar on the surface (i.e., similar alphabets; directionality; cognates) the conventions of each language presuppose the reading process in that language. Consequently, systematic instruction in the appropriate sequence of skills is critical. For this reason, the Spanish Language Arts and Reading TEKS reflect language arts standards that are authentic to the Spanish language and not mere translations from English.

(A) Spanish, as opposed to English, has a closer letter-sound relationship and clearly defined syllable boundaries. The syllable in Spanish is a more critical unit of phonological awareness than in English because of the consistent phoneme-grapheme correspondence. Syllables are important units for Spanish because of their strong effect in visual word recognition (Carreiras et al., 1993) and their major role in predicting Spanish reading success. In addition, Spanish presents a much higher level of orthographic transparency than English and does not rely on sight words for decoding. This orthographic transparency accelerates the decoding process and the focus quickly moves to fluency and comprehension. Spanish uses frequency words that are identified by the rate of occurrence in grade appropriate text and used to build on fluency and comprehension. However, in English, "sight" words are used because of words that are not decodable such as "are" or "one." In Spanish, decoding issues are not as prevalent as issues of comprehension. These specific features of the Spanish language will influence reading methodology and development.

(B) Spanish instruction maximizes access to English content. Students with strong literacy skills in Spanish phonemic awareness, phonics, vocabulary, and reading comprehension can be expected to transfer those skills to English. The "transfer" of

knowledge and skills from one language to another refers to the metalinguistic and metacognitive processes and awareness that students gain in developing literacy in two languages. Current research on bilingual instruction (e.g., August & Shanahan, 2006; Genesee et al., 2006) shows how students use native literacy knowledge when learning to read and write in another language.

(C) The effective transfer of skills transpires as students develop their metalinguistic skills and as they engage in a contrastive analysis of the Spanish and English languages (Cummins, 2007). Transfer matters occur within fundamentals of language that are common to Spanish and English; within fundamentals that are similar, but not exact in both languages; and in fundamentals specific to each language and not applicable to the other language. The strength of learning through formal instruction in Spanish determines the extent of transfer in English (August, Calderon, & Carlo, 2000; Slavin & Calderon, 2001; Garcia, 2001). In other words, for transfer to occur, comprehension of the "rules" and the realization of their applicability to the new language specific tasks are necessary.

(D) The concept of transfer necessitates the use of some of both languages in which both (Spanish and English) *co-exist with flexibility*. As a result of working within two language systems, students' metalinguistic and metacognitive skills are enhanced when they learn about the similarities and differences between languages. This is *reliant* on the type of bilingual program model being used (See Texas Education Code, §29.066).

(3) To meet Public Education Goal 1 of the Texas Education Code, §4.002, which states, "The students in the public education system will demonstrate exemplary performance in the reading and writing of the English language," students will accomplish the essential knowledge, skills, and student expectations at Grade 2 as described in subsection (b) of this section.

(4) To meet Texas Education Code, §28.002(h), which states, "... each school district shall foster the continuation of the tradition of teaching United States and Texas history and the free enterprise system in regular subject matter and in reading courses and in the adoption of textbooks," students will be provided oral and written narratives as well as other informational texts that can help them to become thoughtful, active citizens who appreciate the basic democratic values of our state and nation.

(b) Knowledge and skills.

(1) Reading/Beginning Reading Skills/Print Awareness. Students understand how Spanish is written and printed. Students are expected to distinguish features of a sentence (e.g., capitalization of first word, beginning and ending punctuation, commas, quotation marks, and em dash to indicate dialogue).

(2) Reading/Beginning Reading Skills/Phonics. Students use the relationships between letters and sounds and spelling based on orthographic rules to decode written Spanish. Students will continue to apply earlier standards with greater depth in increasingly more complex texts. Students are expected to:

(A) decode words in context and in isolation by applying the knowledge of letter-sound relationships in different syllabic structures. including:

- (i) open syllable (CV) (e.g., la/la-ta; to/to-ma);
- (ii) closed syllable (CVC) (e.g., mes, sol);
- (iii) diphthongs (e.g., viernes, pie, fui);
- (iv) hiatus (e.g., fideo, poeta);

- and
- (v) consonant blends (e.g., bra/bra-zo; glo/glo-bo);
- (vi) consonant digraphs (e.g., ch/chi-le; ll/lla-ve; rr/pe-rro);
- (B) use orthographic rules to segment and combine syllables including vowel diphthongs (e.g., pue-de, sien-te, va-ca);
- (C) decode words with silent "h" with increasing accuracy;
- (D) become familiar with words that use syllables que-, qui-, as in queso and quitto; gue-, gui-, as in guiso and juguete; and güe-, güi-, as in pingüino and agüita;
- (E) decode words that have same sounds represented by different letters with increased accuracy (e.g., "r" and "rr," as in ratón and perro; "ll" and "y," as in llave and yate; "g" and "j," as in gigante and jirafa; "c," "k," and "q," as in casa, kilo, and quince; "c," "s," and "z," as in cereal, semilla, and zapato; "j" and "x," as in cojín and México; "i" and "y," as in imán and doy; "b" and "v," as in burro and vela);
- (F) read words with common prefixes (e.g., in-, des-) and suffixes (e.g., -mente, -dad, -oso);
- (G) identify and read abbreviations (e.g., Sr., Dra.);
- (H) identify the stressed syllable (*silaba tónica*);
- (I) decode words with an orthographic accent (e.g., papá, avión); and
- (J) use knowledge of the meaning of base words to identify and read common compound words (e.g., sacapuntas, abrelatas, sobrecama).
- (3) Reading/Beginning Reading/Strategies. Students comprehend a variety of texts drawing on useful strategies as needed. Students are expected to:
- (A) use ideas (e.g., illustrations, titles, topic sentences, key words, and foreshadowing) to make and confirm predictions;
- (B) ask relevant questions, seek clarification, and locate facts and details about stories and other texts and support answers with evidence from text; and
- (C) establish purpose for reading selected texts and monitor comprehension, making corrections and adjustments when that understanding breaks down (e.g., identifying clues, using background knowledge, generating questions, re-reading a portion aloud).
- (4) Reading/Fluency. Students read grade-level text with fluency and comprehension. Students are expected to read aloud grade-level appropriate text with accuracy, expression, appropriate phrasing, and comprehension.
- (5) Reading/Vocabulary Development. Students understand new vocabulary and use it when reading and writing. Students are expected to:
- (A) use prefixes and suffixes to determine the meaning of words (e.g., componer/descomponer; obedecer/desobedecer);
- (B) use context to determine the relevant meaning of unfamiliar words or multiple-meaning words;
- (C) identify and use common words that are opposite (antonyms) or similar (synonyms) in meaning; and
- (D) alphabetize a series of words and use a dictionary or a glossary to find words.

(6) Reading/Comprehension of Literary Text/Theme and Genre. Students analyze, make inferences and draw conclusions about theme and genre in different cultural, historical, and contemporary contexts and provide evidence from the text to support their understanding. Students are expected to:

(A) identify moral lessons as themes in well-known fables, legends, myths, or stories; and

(B) compare different versions of the same story in traditional and contemporary folktales with respect to their characters, settings, and plot.

(7) Reading/Comprehension of Literary Text/Poetry. Students understand, make inferences and draw conclusions about the structure and elements of poetry and provide evidence from text to support their understanding. Students are expected to describe how rhyme, rhythm, and repetition interact to create images in poetry.

(8) Reading/Comprehension of Literary Text/Drama. Students understand, make inferences and draw conclusions about the structure and elements of drama and provide evidence from text to support their understanding. Students are expected to identify the elements of dialogue and use them in informal plays.

(9) Reading/Comprehension of Literary Text/Fiction. Students understand, make inferences and draw conclusions about the structure and elements of fiction and provide evidence from text to support their understanding. Students are expected to:

(A) describe similarities and differences in the plots and settings of several works by the same author; and

(B) describe main characters in works of fiction, including their traits, motivations, and feelings.

(10) Reading/Comprehension of Literary Text/Literary Nonfiction. Students understand, make inferences and draw conclusions about the varied structural patterns and features of literary nonfiction and respond by providing evidence from text to support their understanding. Students are expected to distinguish between fiction and nonfiction.

(11) Reading/Comprehension of Literary Text/Sensory Language. Students understand, make inferences and draw conclusions about how an author's sensory language creates imagery in literary text and provide evidence from text to support their understanding. Students are expected to recognize that some words and phrases have literal and non-literal meanings (e.g., take steps).

(12) Reading/Comprehension of Text/Independent Reading. Students read independently for sustained periods of time and produce evidence of their reading. Students are expected to read independently for a sustained period of time and paraphrase what the reading was about, maintaining meaning.

(13) Reading/Comprehension of Informational Text/Culture and History. Students analyze, make inferences and draw conclusions about the author's purpose in cultural, historical, and contemporary contexts and provide evidence from the text to support their understanding. Students are expected to identify the topic and explain the author's purpose in writing the text.

(14) Reading/Comprehension of Informational Text/Expository Text. Students analyze, make inferences and draw conclusions about and understand expository text and provide evidence from text to support their understanding. Students are expected to:

(A) identify the main idea in a text and distinguish it from the topic;

- (B) locate the facts that are clearly stated in a text;
- (C) describe the order of events or ideas in a text; and
- (D) use text features (e.g., table of contents, index, headings) to locate specific information in text.

(15) Reading/Comprehension of Informational Text/Procedural Text. Students understand how to glean and use information in procedural texts and documents. Students are expected to:

- (A) follow written multi-step directions; and
- (B) use common graphic features to assist in the interpretation of text (e.g., captions, illustrations).

(16) Reading/Media Literacy. Students use comprehension skills to analyze how words, images, graphics, and sounds work together in various forms to impact meaning. Students continue to apply earlier standards with greater depth in increasingly more complex texts. Students are expected to:

- (A) recognize different purposes of media (e.g., informational, entertainment);
- (B) describe techniques used to create media messages (e.g., sound, graphics); and
- (C) identify various written conventions for using digital media (e.g., e-mail, website, video game).

(17) Writing/Writing Process. Students use elements of the writing process (planning, drafting, revising, editing, and publishing) to compose text. Students are expected to:

- (A) plan a first draft by generating ideas for writing (e.g., drawing, sharing ideas, listing key ideas);
- (B) develop drafts by sequencing ideas through writing sentences;
- (C) revise drafts by adding or deleting words, phrases, or sentences;
- (D) edit drafts for grammar, punctuation, and spelling using a teacher-developed rubric; and
- (E) publish and share writing with others.

(18) Writing/Literary Texts. Students write literary texts to express their ideas and feelings about real or imagined people, events, and ideas. Students are expected to:

- (A) write brief stories that include a beginning, middle, and end; and
- (B) write short poems that convey sensory details.

(19) Writing/Expository and Procedural Texts. Students write expository and procedural or work-related texts to communicate ideas and information to specific audiences for specific purposes. Students are expected to:

- (A) write brief compositions about topics of interest to the student;
- (B) write short letters that put ideas in a chronological or logical sequence and use appropriate conventions (e.g., date, salutation, closing); and
- (C) write brief comments on literary or informational texts.

(20) Writing/Persuasive Texts. Students write persuasive texts to influence the attitudes or actions of a specific audience on specific issues. Students are expected to write persuasive statements about

issues that are important to the student for the appropriate audience in the school, home, or local community.

(21) Oral and Written Conventions/Conventions. Students understand the function of and use the conventions of academic language when speaking and writing. Students continue to apply earlier standards with greater complexity. Students are expected to:

(A) understand and use the following parts of speech in the context of reading, writing, and speaking:

- (i) regular and irregular verbs (past, present, and future in the indicative mode);
- (ii) nouns (singular/plural, common/proper);
- (iii) adjectives (e.g., descriptive: viejo, maravilloso);
- (iv) articles (e.g., un, una, la, el);
- (v) adverbs (e.g., time: antes, después; manner: cuidadosamente);
- (vi) prepositions and prepositional phrases;
- (vii) pronouns (e.g., él, su); and
- (viii) time-order transition words; and

(B) distinguish among declarative, interrogative, exclamatory, and imperative sentences.

(22) Oral and Written Conventions/Handwriting, Capitalization, and Punctuation. Students write legibly and use appropriate capitalization and punctuation conventions in their compositions. Students are expected to:

- (A) write legibly leaving appropriate margins for readability;
- (B) use capitalization for:
  - (i) proper nouns; and
  - (ii) the salutation and closing of a letter;
- (C) understand that months and days of the week are not capitalized;
- (D) recognize and use punctuation marks, including beginning and ending punctuation in sentences; and
- (E) identify, read, and write abbreviations (e.g., Srta., Dr.).

(23) Oral and Written Conventions/Spelling. Students spell correctly. Students are expected to:

- (A) become familiar with words using orthographic patterns including:
  - (i) words that use syllables with hard /r/ spelled as "r" or "rr," as in ratón and carro;
  - (ii) words that use syllables with soft /r/ spelled as "r" and always between two vowels, as in loro and cara;
  - (iii) words that use syllables with silent "h," as in hora and hoy;
  - (iv) words that use syllables que-, qui-, as in queso and quite; gue-, gui-, as in guiso and juguete; and güe-, güi-, as in paraguero and agüita;
  - (v) words that have the same sound represented by different letters (e.g., "r" and "rr," as in ratón and perro; "ll" and "y," as

in llave and yate; "g" and "j," as in gigante and jirafa; "c," "k," and "q," as in casa, kilo, and quince; "c," "s," and "z," as in cereal, semilla, and zapato; "j" and "x," as in cojín and México; "i" and "y," as in imán and doy; "b" and "v," as in burro and vela); and

(vi) words using "n" before "v" (e.g., invitación), "m" before "b" (e.g., cambiar), and "m" before "p" (e.g., comprar);

(B) spell words with consonant blends (e.g., bra/bra-zo-, glo/glo-bo-);

(C) spell the plural form of words ending in "z" by replacing the "z" with "c" before adding -es (e.g., lápiz, lápices, feliz, felices);

(D) use knowledge of syllabic sounds, word parts, word segmentation, and syllabication to spell;

(E) spell words that have a prosodic or orthographic accent on the last syllable (palabras agudas) (e.g., feliz, canción);

(F) become familiar with words that have a prosodic or orthographic accent on the second-to-last syllable (palabras graves) (e.g., casa, árbol);

(G) use accents appropriately on words commonly used in questions and exclamations (e.g., cuál, dónde, cómo);

(H) mark accents appropriately when conjugating verbs in the simple past in the indicative mode (e.g., corrió, jugó);

(I) identify, read, and write abbreviations (e.g., Sr., Dra.); and

(J) use resources to find correct spellings.

(24) Research/Research Plan. Students ask open-ended research questions and develop a plan for answering them. Students are expected to:

(A) generate a list of topics of class-wide interest and formulate open-ended questions about one or two of the topics; and

(B) decide what sources of information might be relevant to answer these questions.

(25) Research/Gathering Sources. Students determine, locate, and explore the full range of relevant sources addressing a research question and systematically record the information they gather. Students are expected to:

(A) gather evidence from available sources (natural and personal) as well as from interviews with local experts;

(B) use text features (e.g., table of contents, alphabetized index, headings) in age-appropriate reference works (e.g., picture dictionaries) to locate information; and

(C) record basic information in simple visual formats (e.g., notes, charts, picture graphs, diagrams).

(26) Research/Synthesizing Information. Students clarify research questions and evaluate and synthesize collected information. Students are expected to revise the topic as a result of answers to initial research questions.

(27) Research/Organizing and Presenting Ideas. Students organize and present their ideas and information according to the purpose of the research and their audience. Students (with adult assistance) are expected to create a visual display or dramatization to convey the results of the research.

(28) Listening and Speaking/Listening. Students use comprehension skills to listen attentively to others in formal and informal

settings. Students continue to apply earlier standards with greater complexity. Students are expected to:

(A) listen attentively to speakers and ask relevant questions to clarify information; and

(B) follow, restate, and give oral instructions that involve a short related sequence of actions.

(29) Listening and Speaking/Speaking. Students speak clearly and to the point, using the conventions of language. Students continue to apply earlier standards with greater complexity. Students are expected to share information and ideas that focus on the topic under discussion, speaking clearly at an appropriate pace, using the conventions of language.

(30) Listening and Speaking/Teamwork. Students work productively with others in teams. Students continue to apply earlier standards with greater complexity. Students are expected to follow agreed-upon rules for discussion, including listening to others, speaking when recognized, and making appropriate contributions.

§128.14. *Spanish Language Arts and Reading, Grade 3, Beginning with School Year 2009-2010.*

(a) Introduction.

(1) The Spanish Language Arts and Reading Texas Essential Knowledge and Skills (TEKS) reflect language arts standards that are authentic to the Spanish language and Spanish literacy, not mere translations from English. The Spanish Language Arts and Reading TEKS are organized into the following strands: Reading, where students read and understand a wide variety of literary and informational texts; Writing, where students compose a variety of written texts with a clear controlling idea, coherent organization, and sufficient detail; Research, where students are expected to know how to locate a range of relevant sources and evaluate, synthesize, and present ideas and information; Listening and Speaking, where students listen and respond to the ideas of others while contributing their own ideas in conversations and in groups; and Oral and Written Conventions, where students learn how to use the oral and written conventions of the Spanish language in speaking and writing. The standards are cumulative--students will continue to address earlier standards as needed while they attend to standards for their grade. In third grade, students will engage in activities that build on their prior knowledge and skills in order to strengthen their reading, writing, and oral language skills. Students should read, write, and be read to on a daily basis.

(2) Research consistently shows that literacy development in the student's native language facilitates learning in English (Collier & Thomas, 1997; Cummins, 2001). Students can develop cognition, learn, and achieve best when they can understand the language of instruction (August, Calderon, & Carlo, 2003). Students who have strong literacy skills in their primary language can be expected to transfer those skills to English and *progress rapidly* in learning in English. Although English and Spanish look very similar on the surface (i.e., similar alphabets; directionality; cognates) the conventions of each language presuppose the reading process in that language. Consequently, systematic instruction in the appropriate sequence of skills is critical. For this reason, the Spanish Language Arts and Reading TEKS reflect language arts standards that are authentic to the Spanish language and not mere translations from English.

(A) Spanish, as opposed to English, has a closer letter-sound relationship and clearly defined syllable boundaries. The syllable in Spanish is a more critical unit of phonological awareness than in English because of the consistent phoneme-grapheme correspondence. Syllables are important units for Spanish because of their strong effect in visual word recognition (Carreiras et al., 1993) and their

major role in predicting Spanish reading success. In addition, Spanish presents a much higher level of orthographic transparency than English and does not rely on sight words for decoding. This orthographic transparency accelerates the decoding process and the focus quickly moves to fluency and comprehension. Spanish uses frequency words that are identified by the rate of occurrence in grade appropriate text and used to build on fluency and comprehension. However, in English, "sight" words are used because of words that are not decodable such as "are" or "one." In Spanish, decoding issues are not as prevalent as issues of comprehension. These specific features of the Spanish language will influence reading methodology and development.

(B) Spanish instruction maximizes access to English content. Students with strong literacy skills in Spanish phonemic awareness, phonics, vocabulary, and reading comprehension can be expected to transfer those skills to English. The "transfer" of knowledge and skills from one language to another refers to the metalinguistic and metacognitive processes and awareness that students gain in developing literacy in two languages. Current research on bilingual instruction (e.g., August & Shanahan, 2006; Genesse et al., 2006) shows how students use native literacy knowledge when learning to read and write in another language.

(C) The effective transfer of skills transpires as students develop their metalinguistic skills and as they engage in a contrastive analysis of the Spanish and English languages (Cummins, 2007). Transfer matters occur within fundamentals of language that are common to Spanish and English; within fundamentals that are similar, but not exact in both languages; and in fundamentals specific to each language and not applicable to the other language. The strength of learning through formal instruction in Spanish determines the extent of transfer in English (August, Calderon, & Carlo, 2000; Slavin & Calderon, 2001; Garcia, 2001). In other words, for transfer to occur, comprehension of the "rules" and the realization of their applicability to the new language specific tasks are necessary.

(D) The concept of transfer necessitates the use of some of both languages in which both (Spanish and English) *co-exist with flexibility*. As a result of working within two language systems, students' metalinguistic and metacognitive skills are enhanced when they learn about the similarities and differences between languages. This is *reliant* on the type of bilingual program model being used (See Texas Education Code, §29.066).

(3) To meet Public Education Goal 1 of the Texas Education Code, §4.002, which states, "The students in the public education system will demonstrate exemplary performance in the reading and writing of the English language," students will accomplish the essential knowledge, skills, and student expectations at Grade 3 as described in subsection (b) of this section.

(4) To meet Texas Education Code, §28.002(h), which states, "... each school district shall foster the continuation of the tradition of teaching United States and Texas history and the free enterprise system in regular subject matter and in reading courses and in the adoption of textbooks," students will be provided oral and written narratives as well as other informational texts that can help them to become thoughtful, active citizens who appreciate the basic democratic values of our state and nation.

(b) Knowledge and skills.

(1) Reading/Beginning Reading Skills/Phonics. Students use the relationships between letters and sounds and spelling based on orthographic rules to decode written Spanish. Students will continue to apply earlier standards with greater depth in increasingly more complex texts. Students are expected to:

- (A) use orthographic rules to segment and combine syllables including diphthongs (e.g., na-die, ra-dio);
  - (B) decode words with silent "h" with increasing accuracy;
  - (C) decode words that use the syllables que-, qui-, as in queso and quito; gue-, gui-, as in guiso and juguete; and güe-, güi-, as in pingüino and agüita;
  - (D) develop automatic recognition of words that have the same sounds represented by different letters with increased accuracy (e.g., "r" and "rr," as in ratón and perro; "ll" and "y," as in llave and yate; "g" and "j," as in gigante and jirafa; "c," "k," and "q," as in casa, kilo, and quince; "c," "s," and "z," as in cereal, semilla, and zapato; "j" and "x," as in cojín and México; "i" and "y," as in imán and doy; "b" and "v," as in burro and vela);
  - (E) read words with common prefixes (e.g., in-, des-) and suffixes (e.g., -mente, -dad, -oso);
  - (F) identify the syllable that is stressed (*sílaba tónica*);
  - (G) decode words with an orthographic accent (e.g., día, también, después);
  - (H) use knowledge of the meaning of base words to identify and read common compound words (e.g., sacapuntas, abrelatas, salvavidas); and
  - (I) monitor accuracy in decoding words that have same sound represented by different letters.
- (2) Reading/Beginning Reading/Strategies. Students comprehend a variety of texts drawing on useful strategies as needed. Students are expected to:
- (A) use ideas (e.g., illustrations, titles, topic sentences, key words, and foreshadowing clues) to make and confirm predictions;
  - (B) ask relevant questions, seek clarification, and locate facts and details about stories and other texts and support answers with evidence from text; and
  - (C) establish purpose for reading selected texts and monitor comprehension, making corrections and adjustments when that understanding breaks down (e.g., identifying clues, using background knowledge, generating questions, re-reading a portion aloud).
- (3) Reading/Fluency. Students read grade-level text with fluency and comprehension. Students are expected to read aloud grade-level appropriate text with accuracy, expression, appropriate phrasing, and comprehension.
- (4) Reading/Vocabulary Development. Students understand new vocabulary and use it when reading and writing. Students are expected to:
- (A) identify the meaning of common prefixes (e.g., ex-, des-) and suffixes (e.g., -era, -oso), and know how they change the meaning of roots;
  - (B) use context to determine the relevant meaning of unfamiliar words or distinguish among multiple meaning words and homographs (e.g., *vino*-la bebida; *vino*-del verbo venir);
  - (C) identify and use antonyms, synonyms, and homophones (e.g., tubo, tuvo);
  - (D) identify and apply playful uses of language (e.g., tongue twisters, palindromes, riddles); and



(E) alphabetize a series of words to the third letter and use a dictionary or a glossary to determine the meanings and syllabication of unknown words.

(5) Reading/Comprehension of Literary Text/Theme and Genre. Students analyze, make inferences and draw conclusions about theme and genre in different cultural, historical, and contemporary contexts and provide evidence from the text to support their understanding. Students are expected to:

(A) paraphrase the themes and supporting details of fables, legends, myths, or stories; and

(B) compare and contrast the settings in myths and traditional folktales.

(6) Reading/Comprehension of Literary Text/Poetry. Students understand, make inferences and draw conclusions about the structure and elements of poetry and provide evidence from text to support their understanding. Students are expected to describe the characteristics of various forms of poetry and how they create imagery (e.g., narrative poetry, lyrical poetry, humorous poetry, free verse).

(7) Reading/Comprehension of Literary Text/Drama. Students understand, make inferences and draw conclusions about the structure and elements of drama and provide evidence from text to support their understanding. Students are expected to explain the elements of plot and character as presented through dialogue in scripts that are read, viewed, written, or performed.

(8) Reading/Comprehension of Literary Text/Fiction. Students understand, make inferences and draw conclusions about the structure and elements of fiction and provide evidence from text to support their understanding. Students are expected to:

(A) sequence and summarize the plot's main events and explain their influence on future events;

(B) describe the interaction of characters including their relationships and the changes they undergo; and

(C) identify whether the narrator or speaker of a story is first or third person.

(9) Reading/Comprehension of Literary Text/Literary Nonfiction. Students understand, make inferences and draw conclusions about the varied structural patterns and features of literary nonfiction and respond by providing evidence from text to support their understanding. Students are expected to explain the difference in point of view between a biography and autobiography.

(10) Reading/Comprehension of Literary Text/Sensory Language. Students understand, make inferences and draw conclusions about how an author's sensory language creates imagery in literary text and provide evidence from text to support their understanding. Students are expected to identify language that creates a graphic visual experience and appeals to the senses.

(11) Reading/Comprehension of Text/Independent Reading. Students read independently for sustained periods of time and produce evidence of their reading. Students are expected to read independently for a sustained period of time and paraphrase what the reading was about, maintaining meaning and logical order (e.g., generate a reading log or journal; participate in book talks).

(12) Reading/Comprehension of Informational Text/Culture and History. Students analyze, make inferences and draw conclusions about the author's purpose in cultural, historical, and contemporary contexts and provide evidence from the text to support their understanding. Students are expected to identify the topic and locate the author's stated purposes in writing the text.

(13) Reading/Comprehension of Informational Text/Expository Text. Students analyze, make inferences and draw conclusions about expository text and provide evidence from text to support their understanding. Students are expected to:

(A) identify the details or facts that support the main idea;

(B) draw conclusions from the facts presented in text and support those assertions with textual evidence;

(C) identify explicit cause and effect relationships among ideas in texts; and

(D) use text features (e.g., bold print, captions, key words, italics) to locate information and make and verify predictions about contents of text.

(14) Reading/Comprehension of Informational Text/Persuasive Text. Students analyze, make inferences and draw conclusions about persuasive text and provide evidence from text to support their analysis. Students are expected to identify what the author is trying to persuade the reader to think or do.

(15) Reading/Comprehension of Informational Text/Procedural Texts. Students understand how to glean and use information in procedural texts and documents. Students are expected to:

(A) follow and explain a set of written multi-step directions; and

(B) locate and use specific information in graphic features of text.

(16) Reading/Media Literacy. Students use comprehension skills to analyze how words, images, graphics, and sounds work together in various forms to impact meaning. Students will continue to apply earlier standards with greater depth in increasingly more complex texts. Students are expected to:

(A) understand how communication changes when moving from one genre of media to another;

(B) explain how various design techniques used in media influence the message (e.g., shape, color, sound); and

(C) compare various written conventions used for digital media (e.g., language in an informal e-mail vs. language in a web-based news article).

(17) Writing/Writing Process. Students use elements of the writing process (planning, drafting, revising, editing, and publishing) to compose text. Students are expected to:

(A) plan a first draft by selecting a genre appropriate for conveying the intended meaning to an audience and generating ideas through a range of strategies (e.g., brainstorming, graphic organizers, logs, journals);

(B) develop drafts by categorizing ideas and organizing them into paragraphs;

(C) revise drafts for coherence, organization, use of simple and compound sentences, and audience;

(D) edit drafts for grammar, mechanics, and spelling using a teacher-developed rubric; and

(E) publish written work for a specific audience.

(18) Writing/Literary Texts. Students write literary texts to express their ideas and feelings about real or imagined people, events, and ideas. Students are expected to:

(A) write imaginative stories that build the plot to a climax and contain details about the characters and setting; and

(B) write poems that convey sensory details using the conventions of poetry (e.g., rhyme, meter, patterns of verse).

(19) Writing. Students write about their own experiences. Students are expected to write about important personal experiences.

(20) Writing/Expository and Procedural Texts. Students write expository and procedural or work-related texts to communicate ideas and information to specific audiences for specific purposes. Students are expected to:

(A) create brief compositions that:

(i) establish a central idea in a topic sentence;

(ii) include supporting sentences with simple facts, details, and explanations; and

(iii) contain a concluding statement;

(B) write letters whose language is tailored to the audience and purpose (e.g., a thank you note to a friend) and that use appropriate conventions (e.g., date, salutation, closing); and

(C) write responses to literary or expository texts that demonstrate an understanding of the text.

(21) Writing/Persuasive Texts. Students write persuasive texts to influence the attitudes or actions of a specific audience on specific issues. Students are expected to write persuasive essays for appropriate audiences that establish a position and use supporting details.

(22) Oral and Written Conventions/Conventions. Students understand the function of and use the conventions of academic language when speaking and writing. Students continue to apply earlier standards with greater complexity. Students are expected to:

(A) use and understand the function of the following parts of speech in the context of reading, writing, and speaking:

(i) regular and irregular verbs (past, present, future, and perfect tenses in the indicative mode);

(ii) nouns (singular/plural, common/proper);

(iii) adjectives (e.g., descriptive: dorado, rectangular; limiting: este, ese, aquel);

(iv) articles (e.g., un, una, lo, la, el, los, las);

(v) adverbs (e.g., time: luego, antes; manner: cuidadosamente);

(vi) prepositions and prepositional phrases;

(vii) possessive pronouns (e.g., su, sus, mi, mis, suyo);

(viii) coordinating conjunctions (e.g., y, o, pero);

(ix) time-order transition words and transitions that indicate a conclusion (e.g., finalmente, por último);

(B) use the complete subject and the complete predicate in a sentence;

(C) use complete simple and compound sentences; and

(D) identify, read, and write abbreviations (e.g., Ave, Dra., Atte.).

(23) Oral and Written Conventions/Handwriting, Capitalization, and Punctuation. Students write legibly and use appropriate

capitalization and punctuation conventions in their compositions. Students are expected to:

(A) write legibly in cursive script with spacing between words in a sentence;

(B) use capitalization for:

(i) geographical names and places;

(ii) historical periods; and

(iii) official titles of people;

(C) recognize and use punctuation marks including commas; and

(D) use correct mechanics including paragraph indentations or "sangrías."

(24) Oral and Written Conventions/Spelling. Students spell correctly. Students are expected to:

(A) spell words with increased accuracy using orthographic rules, including:

(i) words that use syllables with hard /r/ spelled as "r" or "rr," as in ratón and carro;

(ii) words that use syllables with soft /r/ spelled as "r" and always between two vowels, as in pero and perro;

(iii) words that use syllables with silent "h" (e.g., ahora, almohada);

(iv) words that use syllables que-, qui-, as in queso and quito; gue-, gui-, as in guiso and juguete; and güe-, güi-, as in paragüero and agüita;

(v) words that have the same sound represented by different letters (e.g., "r" and "rr," as in ratón and perro; "ll" and "y," as in llave and yate; "g" and "j," as in gigante and jirafa; "c," "k," and "q," as in casa, kilo, and quince; "c," "s," and "z," as in cereal, semilla, and zapato; "j" and "x," as in cojín and México; "i" and "y," as in imán and doy; "b" and "v," as in burro and vela); and

(vi) words using "n" before "v" (e.g., invitación), "m" before "b" (e.g., cambiar), and "m" before "p" (e.g., comprar);

(B) spell words with consonant blends with increased accuracy (e.g., bra/bra-zo-, glo/glo-bo-);

(C) spell with increased accuracy the plural form of words ending in "z" by replacing the "z" with "c" before adding -es (e.g., capaz, capaces; raíz, raíces);

(D) use knowledge of syllabic sounds, word parts, word segmentation, and syllabication to spell;

(E) write with increased accuracy using accent marks, including:

(i) words that have a prosodic or orthographic accent on the last syllable (palabras agudas) (e.g., feliz, canción); and

(ii) words that have a prosodic or orthographic accent on the second-to-last syllable (palabras graves) (e.g., casa, árbol);

(F) become familiar with words that have an orthographic accent on the third-to-last syllable (palabras esdrújulas) (e.g., último, cómico, mecánico);

(G) become familiar with the concept of hiatus and diphthongs and the implications for orthographic accents (e.g., le-er, rí-o; quie-ro, vio);

(H) use with increased accuracy accents on words commonly used in questions and exclamations (e.g., *cuál, dónde, cómo*);

(I) differentiate the meaning or function of a word based on the diacritical accent (e.g., *se/sé, el/él, mas/más*);

(J) mark accents appropriately when conjugating verbs in simple and imperfect past, perfect, conditional, and future tenses (e.g., *corrió, jugó, tenía, gustaría, vendrá*); and

(K) use print and electronic resources to find and check correct spellings.

(25) **Research/Research Plan.** Students ask open-ended research questions and develop a plan for answering them. Students are expected to:

(A) generate research topics from personal interests or by brainstorming with others, narrow to one topic, and formulate open-ended questions about the major research topic; and

(B) generate a research plan for gathering relevant information (e.g., surveys, interviews, encyclopedias) about the major research question.

(26) **Research/Gathering Sources.** Students determine, locate, and explore the full range of relevant sources addressing a research question and systematically record the information they gather. Students are expected to:

(A) follow the research plan to collect information from multiple sources of information, both oral and written, including:

(i) student-initiated surveys, on-site inspections, and interviews;

(ii) data from experts, reference texts, and online searches; and

(iii) visual sources of information (e.g., maps, timelines, graphs) where appropriate;

(B) use skimming and scanning techniques to identify data by looking at text features (e.g., bold print, captions, key words, italics);

(C) take simple notes and sort evidence into provided categories or an organizer;

(D) identify the author, title, publisher, and publication year of sources; and

(E) differentiate between paraphrasing and plagiarism and identify the importance of citing valid and reliable sources.

(27) **Research/Synthesizing Information.** Students clarify research questions and evaluate and synthesize collected information. Students are expected to improve the focus of research as a result of consulting expert sources (e.g., reference librarians and local experts on the topic).

(28) **Research/Organizing and Presenting Ideas.** Students organize and present their ideas and information according to the purpose of the research and their audience. Students are expected to draw conclusions through a brief written explanation and create a works-cited page from notes, including the author, title, publisher, and publication year for each source used.

(29) **Listening and Speaking/Listening.** Students use comprehension skills to listen attentively to others in formal and informal settings. Students continue to apply earlier standards with greater complexity. Students are expected to:

(A) listen attentively to speakers, ask relevant questions, and make pertinent comments; and

(B) follow, restate, and give oral instructions that involve a series of related sequences of action.

(30) **Listening and Speaking/Speaking.** Students speak clearly and to the point, using the conventions of language. Students continue to apply earlier standards with greater complexity. Students are expected to speak coherently about the topic under discussion, employing eye contact, speaking rate, volume, enunciation, and the conventions of language to communicate ideas effectively.

(31) **Listening and Speaking/Teamwork.** Students work productively with others in teams. Students continue to apply earlier standards with greater complexity. Students are expected to participate in teacher- and student-led discussions by posing and answering questions with appropriate detail and by providing suggestions that build upon the ideas of others.

§128.15. *Spanish Language Arts and Reading, Grade 4, Beginning with School Year 2009-2010.*

(a) Introduction.

(1) The Spanish Language Arts and Reading Texas Essential Knowledge and Skills (TEKS) reflect language arts standards that are authentic to the Spanish language and Spanish literacy, not mere translations from English. The Spanish Language Arts and Reading TEKS are organized into the following strands: Reading, where students read and understand a wide variety of literary and informational texts; Writing, where students compose a variety of written texts with a clear controlling idea, coherent organization, and sufficient detail; Research, where students are expected to know how to locate a range of relevant sources and evaluate, synthesize, and present ideas and information; Listening and Speaking, where students listen and respond to the ideas of others while contributing their own ideas in conversations and in groups; and Oral and Written Conventions, where students learn how to use the oral and written conventions of the Spanish language in speaking and writing. The standards are cumulative--students will continue to address earlier standards as needed while they attend to standards for their grade. In fourth grade, students will engage in activities that build on their prior knowledge and skills in order to strengthen their reading, writing, and oral language skills. Students should read, write, and be read to on a daily basis.

(2) Research consistently shows that literacy development in the student's native language facilitates learning in English (Collier & Thomas, 1997; Cummins, 2001). Students can develop cognition, learn, and achieve best when they can understand the language of instruction (August, Calderon, & Carlo, 2003). Students who have strong literacy skills in their primary language can be expected to transfer those skills to English and *progress rapidly* in learning in English. Although English and Spanish look very similar on the surface (i.e., similar alphabets; directionality; cognates) the conventions of each language presuppose the reading process in that language. Consequently, systematic instruction in the appropriate sequence of skills is critical. For this reason, the Spanish Language Arts and Reading TEKS reflect language arts standards that are authentic to the Spanish language and not mere translations from English.

(A) Spanish, as opposed to English, has a closer letter-sound relationship and clearly defined syllable boundaries. The syllable in Spanish is a more critical unit of phonological awareness than in English because of the consistent phoneme-grapheme correspondence. Syllables are important units for Spanish because of their strong effect in visual word recognition (Carreiras et al., 1993) and their major role in predicting Spanish reading success. In addition, Spanish presents a much higher level of orthographic transparency than English

and does not rely on sight words for decoding. This orthographic transparency accelerates the decoding process, and the focus quickly moves to fluency and comprehension. Spanish uses frequency words that are identified by the rate of occurrence in grade appropriate text and used to build on fluency and comprehension. However, in English, "sight" words are used because of words that are not decodable such as "are" or "one." In Spanish, decoding issues are not as prevalent as issues of comprehension. These specific features of the Spanish language will influence reading methodology and development.

(B) Spanish instruction maximizes access to English content. Students with strong literacy skills in Spanish phonemic awareness, phonics, vocabulary, and reading comprehension can be expected to transfer those skills to English. The "transfer" of knowledge and skills from one language to another refers to the metalinguistic and metacognitive processes and awareness that students gain in developing literacy in two languages. Current research on bilingual instruction (e.g., August & Shanahan, 2006; Genesse et al., 2006) shows how students use native literacy knowledge when learning to read and write in another language.

(C) The effective transfer of skills transpires as students develop their metalinguistic skills and as they engage in a contrastive analysis of the Spanish and English languages (Cummins, 2007). Transfer matters occur within fundamentals of language that are common to Spanish and English; within fundamentals that are similar, but not exact in both languages; and in fundamentals specific to each language and not applicable to the other language. The strength of learning through formal instruction in Spanish determines the extent of transfer in English (August, Calderon, & Carlo, 2000; Slavin & Calderon, 2001; Garcia, 2001). In other words, for transfer to occur, comprehension of the "rules" and the realization of their applicability to the new language specific tasks are necessary.

(D) The concept of transfer necessitates the use of some of both languages in which both (Spanish and English) *co-exist with flexibility*. As a result of working within two language systems, students' metalinguistic and metacognitive skills are enhanced when they learn about the similarities and differences between languages. This is *reliant* on the type of bilingual program model being used (See Texas Education Code, §29.066).

(3) To meet Public Education Goal 1 of the Texas Education Code, §4.002, which states, "The students in the public education system will demonstrate exemplary performance in the reading and writing of the English language," students will accomplish the essential knowledge, skills, and student expectations at Grade 4 as described in subsection (b) of this section.

(4) To meet Texas Education Code, §28.002(h), which states, "... each school district shall foster the continuation of the tradition of teaching United States and Texas history and the free enterprise system in regular subject matter and in reading courses and in the adoption of textbooks," students will be provided oral and written narratives as well as other informational texts that can help them to become thoughtful, active citizens who appreciate the basic democratic values of our state and nation.

(b) Knowledge and skills.

(1) Reading/Fluency. Students read grade-level text with fluency and comprehension. Students are expected to read aloud grade-level stories with accuracy, expression, appropriate phrasing, and comprehension.

(2) Reading/Vocabulary Development. Students understand new vocabulary and use it when reading and writing. Students are expected to:

(A) determine the meaning of grade-level academic Spanish words derived from Latin, Greek, or other linguistic roots and affixes;

(B) use the context of the sentence (e.g., in-sentence example or definition) to determine the meaning of unfamiliar words or multiple meaning words;

(C) complete analogies using knowledge of antonyms and synonyms (e.g., boy:girl as male:\_\_\_ or girl:woman as boy:\_\_\_);

(D) identify the meaning of common idioms; and

(E) use a dictionary or glossary to determine the meanings, spelling, and syllabication of unknown words.

(3) Reading/Comprehension of Literary Text/Theme and Genre. Students analyze, make inferences and draw conclusions about theme and genre in different cultural, historical, and contemporary contexts and provide evidence from the text to support their understanding. Students are expected to:

(A) summarize and explain the lesson or message of a work of fiction as its theme; and

(B) compare and contrast the adventures or exploits of characters (e.g., the trickster) in traditional and classical literature.

(4) Reading/Comprehension of Literary Text/Poetry. Students understand, make inferences and draw conclusions about the structure and elements of poetry and provide evidence from text to support their understanding. Students are expected to explain how the structural elements of poetry (e.g., rhyme, meter, stanzas, line breaks) relate to form (e.g., lyrical poetry, free verse).

(5) Reading/Comprehension of Literary Text/Drama. Students understand, make inferences and draw conclusions about the structure and elements of drama and provide evidence from text to support their understanding. Students are expected to describe the structural elements particular to dramatic literature.

(6) Reading/Comprehension of Literary Text/Fiction. Students understand, make inferences and draw conclusions about the structure and elements of fiction and provide evidence from text to support their understanding. Students are expected to:

(A) sequence and summarize the plot's main events and explain their influence on future events;

(B) describe the interaction of characters including their relationships and the changes they undergo; and

(C) identify whether the narrator or speaker of a story is first or third person.

(7) Reading/Comprehension of Literary Text/Literary Nonfiction. Students understand, make inferences and draw conclusions about the varied structural patterns and features of literary nonfiction and provide evidence from text to support their understanding. Students are expected to identify similarities and differences between the events and characters' experiences in a fictional work and the actual events and experiences described in an author's biography or autobiography.

(8) Reading/Comprehension of Literary Text/Sensory Language. Students understand, make inferences and draw conclusions about how an author's sensory language creates imagery in literary text and provide evidence from text to support their understanding. Students are expected to identify the author's use of similes and metaphors to produce imagery.

(9) Reading/Comprehension of Text/Independent Reading. Students read independently for sustained periods of time and produce evidence of their reading. Students are expected to read independently for a sustained period of time and paraphrase what the reading was about, maintaining meaning and logical order (e.g., generate a reading log or journal; participate in book talks).

(10) Reading/Comprehension of Informational Text/Culture and History. Students analyze, make inferences and draw conclusions about the author's purpose in cultural, historical, and contemporary contexts and provide evidence from the text to support their understanding. Students are expected to explain the difference between a stated and an implied purpose for an expository text.

(11) Reading/Comprehension of Informational Text/Expository Text. Students analyze, make inferences and draw conclusions about expository text and provide evidence from text to support their understanding. Students are expected to:

(A) summarize the main idea and supporting details in text in ways that maintain meaning;

(B) distinguish fact from opinion in a text and explain how to verify what is a fact;

(C) describe explicit and implicit relationships among ideas in texts organized by cause-and-effect, sequence, or comparison; and

(D) use multiple text features (e.g., guide words, topic and concluding sentences) to gain an overview of the contents of text and to locate information.

(12) Reading/Comprehension of Informational Text/Persuasive Text. Students analyze, make inferences and draw conclusions about persuasive text and provide evidence from text to support their analysis. Students are expected to explain how an author uses language to present information to influence what the reader thinks or does.

(13) Reading/Comprehension of Informational Text/Procedural Texts. Students understand how to glean and use information in procedural texts and documents. Students are expected to:

(A) determine the sequence of activities needed to carry out a procedure (e.g., following a recipe); and

(B) explain factual information presented graphically (e.g., charts, diagrams, graphs, illustrations).

(14) Reading/Media Literacy. Students use comprehension skills to analyze how words, images, graphics, and sounds work together in various forms to impact meaning. Students continue to apply earlier standards with greater depth in increasingly more complex texts. Students are expected to:

(A) explain the positive and negative impacts of advertisement techniques used in various genres of media to impact consumer behavior;

(B) explain how various design techniques used in media influence the message (e.g., pacing, close-ups, sound effects); and

(C) compare various written conventions used for digital media (e.g., language in an informal e-mail vs. language in a web-based news article).

(15) Writing/Writing Process. Students use elements of the writing process (planning, drafting, revising, editing, and publishing) to compose text. Students are expected to:

(A) plan a first draft by selecting a genre appropriate for conveying the intended meaning to an audience and generating ideas

through a range of strategies (e.g., brainstorming, graphic organizers, logs, journals);

(B) develop drafts by categorizing ideas and organizing them into paragraphs;

(C) revise drafts for coherence, organization, use of simple and compound sentences, and audience;

(D) edit drafts for grammar, mechanics, and spelling using a teacher-developed rubric; and

(E) revise final draft in response to feedback from peers and teacher and publish written work for a specific audience.

(16) Writing/Literary Texts. Students write literary texts to express their ideas and feelings about real or imagined people, events, and ideas. Students are expected to:

(A) write imaginative stories that build the plot to a climax and contain details about the characters and setting; and

(B) write poems that convey sensory details using the conventions of poetry (e.g., rhyme, meter, patterns of verse).

(17) Writing. Students write about their own experiences. Students are expected to write about important personal experiences.

(18) Writing/Expository and Procedural Texts. Students write expository and procedural or work-related texts to communicate ideas and information to specific audiences for specific purposes. Students are expected to:

(A) create brief compositions that:

(i) establish a central idea in a topic sentence;

(ii) include supporting sentences with simple facts, details, and explanations; and

(iii) contain a concluding statement;

(B) write letters whose language is tailored to the audience and purpose (e.g., a thank you note to a friend) and that use appropriate conventions (e.g., date, salutation, closing); and

(C) write responses to literary or expository texts and provide evidence from the text to demonstrate understanding.

(19) Writing/Persuasive Texts. Students write persuasive texts to influence the attitudes or actions of a specific audience on specific issues. Students are expected to write persuasive essays for appropriate audiences that establish a position and use supporting details.

(20) Oral and Written Conventions/Conventions. Students understand the function of and use the conventions of academic language when speaking and writing. Students continue to apply earlier standards with greater complexity. Students are expected to:

(A) use and understand the function of the following parts of speech in the context of reading, writing, and speaking:

(i) regular and irregular verbs (past, present, future, and perfect tenses in the indicative mode);

(ii) nouns (singular/plural, common/proper);

(iii) adjectives (e.g., descriptive, including adjective phrases: *vestido de domingo*) and their comparative and superlative forms (e.g., *más que*, *la más*);

(iv) adverbs (e.g., frequency: *usualmente*, *a veces*; intensity: *casi*, *mucho*);

(v) prepositions and prepositional phrases to convey location, time, direction, or to provide details;

- (vi) reflexive pronouns (e.g., me, te, se, nos);
- (vii) correlative conjunctions (e.g., o/o, ni/ni); and
- (viii) time-order transition words and transitions that indicate a conclusion;

(B) use the complete subject and the complete predicate in a sentence; and

(C) use complete simple and compound sentences with correct subject-verb agreement.

(21) Oral and Written Conventions/Handwriting, Capitalization, and Punctuation. Students write legibly and use appropriate capitalization and punctuation conventions in their compositions. Students are expected to:

(A) write legibly by selecting cursive script or manuscript printing as appropriate;

(B) use capitalization for:

- (i) historical events and documents; and
- (ii) the first words of titles of books, stories, and essays;

(C) recognize and use punctuation marks including commas in compound sentences; colons, semi-colons, ellipses, the hyphen, and em dash; and

(D) identify and read abbreviations (e.g., Sr., Atte.).

(22) Oral and Written Conventions/Spelling. Students spell correctly. Students are expected to:

(A) write with increasing accuracy using accent marks including:

(i) words that have a prosodic or orthographic accent on the last syllable (palabras agudas) (e.g., feliz, canción);

(ii) words that have a prosodic or orthographic accent on the second-to-last syllable (palabras graves) (e.g., casa, árbol); and

(iii) words that have an orthographic accent on the third-to-last syllable (palabras esdrújulas) (e.g., último, cómico, mecánico);

(B) spell words with hiatus and diphthongs (e.g., le-er, rí-o, quie-ro, vio);

(C) spell base words and roots with affixes (e.g., ex-, pre-, post-, -able);

(D) spell words with:

- (i) Greek roots (e.g., tele-, foto-, grafo-, metro-);
- (ii) Latin roots (e.g., spec, scribe, rupt, port, dict);
- (iii) Greek suffixes (e.g., -ología, -fobia, -ismo, -ista); and

(iv) Latin derived suffixes (e.g., -able, -ible, -ancia);

(E) differentiate the meaning or function of a word based on the diacritical accent (e.g., dé, de; tú, tu);

(F) mark accents appropriately when conjugating verbs in simple and imperfect past, perfect, conditional, and future tenses (e.g., corrió, jugó, tenía, gustaría, vendrá); and

(G) use spelling patterns, rules, and print and electronic resources to determine and check correct spellings.

(23) Research/Research Plan. Students ask open-ended research questions and develop a plan for answering them. Students are expected to:

(A) generate research topics from personal interests or by brainstorming with others, narrow to one topic, and formulate open-ended questions about the major research topic; and

(B) generate a research plan for gathering relevant information (e.g., surveys, interviews, encyclopedias) about the major research question.

(24) Research/Gathering Sources. Students determine, locate, and explore the full range of relevant sources addressing a research question and systematically record the information they gather. Students are expected to:

(A) follow the research plan to collect information from multiple sources of information both oral and written, including:

(i) student-initiated surveys, on-site inspections, and interviews;

(ii) data from experts, reference texts, and online searches; and

(iii) visual sources of information (e.g., maps, timelines, graphs) where appropriate;

(B) use skimming and scanning techniques to identify data by looking at text features (e.g., bold print, italics);

(C) take simple notes and sort evidence into provided categories or an organizer;

(D) identify the author, title, publisher, and publication year of sources; and

(E) differentiate between paraphrasing and plagiarism and identify the importance of citing valid and reliable sources.

(25) Research/Synthesizing Information. Students clarify research questions and evaluate and synthesize collected information. Students are expected to improve the focus of research as a result of consulting expert sources (e.g., reference librarians and local experts on the topic).

(26) Research/Organizing and Presenting Ideas. Students organize and present their ideas and information according to the purpose of the research and their audience. Students are expected to draw conclusions through a brief written explanation and create a works-cited page from notes, including the author, title, publisher, and publication year for each source used.

(27) Listening and Speaking/Listening. Students use comprehension skills to listen attentively to others in formal and informal settings. Students continue to apply earlier standards with greater complexity. Students are expected to:

(A) listen attentively to speakers, ask relevant questions, and make pertinent comments; and

(B) follow, restate, and give oral instructions that involve a series of related sequences of action.

(28) Listening and Speaking/Speaking. Students speak clearly and to the point, using the conventions of language. Students continue to apply earlier standards with greater complexity. Students are expected to express an opinion supported by accurate information, employing eye contact, speaking rate, volume, and enunciation, and the conventions of language to communicate ideas effectively.

(29) Listening and Speaking/Teamwork. Students work productively with others in teams. Students continue to apply earlier standards with greater complexity. Students are expected to participate in teacher- and student-led discussions by posing and answering questions with appropriate detail and by providing suggestions that build upon the ideas of others.

§128.16. *Spanish Language Arts and Reading, Grade 5, Beginning with School Year 2009-2010.*

(a) Introduction.

(1) The Spanish Language Arts and Reading Texas Essential Knowledge and Skills (TEKS) are organized into the following strands: Reading, where students read and understand a wide variety of literary and informational texts; Writing, where students compose a variety of written texts with a clear controlling idea, coherent organization, and sufficient detail; Research, where students are expected to know how to locate a range of relevant sources and evaluate, synthesize, and present ideas and information; Listening and Speaking, where students listen and respond to the ideas of others while contributing their own ideas in conversations and in groups; and Oral and Written Conventions, where students learn how to use the oral and written conventions of the Spanish language in speaking and writing. The standards are cumulative--students will continue to address earlier standards as needed while they attend to standards for their grade. In fifth grade, students will engage in activities that build on their prior knowledge and skills in order to strengthen their reading, writing, and oral language skills. Students should read, write, and be read to on a daily basis.

(2) Research consistently shows that literacy development in the student's native language facilitates learning in English (Collier & Thomas, 1997; Cummins, 2001). Students can develop cognition, learn, and achieve best when they can understand the language of instruction (August, Calderon, & Carlo, 2003). Students who have strong literacy skills in their primary language can be expected to transfer those skills to English and *progress rapidly* in learning in English. Although English and Spanish look very similar on the surface (i.e., similar alphabets; directionality; cognates) the conventions of each language presuppose the reading process in that language. Consequently, systematic instruction in the appropriate sequence of skills is critical. For this reason, the Spanish Language Arts and Reading TEKS reflect language arts standards that are authentic to the Spanish language and not mere translations from English.

(A) Spanish, as opposed to English, has a closer letter-sound relationship and clearly defined syllable boundaries. The syllable in Spanish is a more critical unit of phonological awareness than in English because of the consistent phoneme-grapheme correspondence. Syllables are important units for Spanish because of their strong effect in visual word recognition (Carreiras et al., 1993) and their major role in predicting Spanish reading success. In addition, Spanish presents a much higher level of orthographic transparency than English and does not rely on sight words for decoding. This orthographic transparency accelerates the decoding process and the focus quickly moves to fluency and comprehension. Spanish uses frequency words that are identified by the rate of occurrence in grade appropriate text and used to build on fluency and comprehension. However, in English, "sight" words are used because of words that are not decodable such as "are" or "one." In Spanish, decoding issues are not as prevalent as issues of comprehension. These specific features of the Spanish language will influence reading methodology and development.

(B) Spanish instruction maximizes access to English content. Students with strong literacy skills in Spanish phonemic awareness, phonics, vocabulary, and reading comprehension can

be expected to transfer those skills to English. The "transfer" of knowledge and skills from one language to another refers to the metalinguistic and metacognitive processes and awareness that students gain in developing literacy in two languages. Current research on bilingual instruction (e.g., August & Shanahan, 2006; Genesse et al., 2006) shows how students use native literacy knowledge when learning to read and write in another language.

(C) The effective transfer of skills transpires as students develop their metalinguistic skills and as they engage in a contrastive analysis of the Spanish and English languages (Cummins, 2007). Transfer matters occur within fundamentals of language that are common to Spanish and English; within fundamentals that are similar, but not exact in both languages; and in fundamentals specific to each language and not applicable to the other language. The strength of learning through formal instruction in Spanish determines the extent of transfer in English (August, Calderon, & Carlo, 2000; Slavin & Calderon, 2001; Garcia, 2001). In other words, for transfer to occur, comprehension of the "rules" and the realization of their applicability to the new language specific tasks are necessary.

(D) The concept of transfer necessitates the use of both languages in which both (Spanish and English) *co-exist with flexibility*. As a result of working within two language systems, students' metalinguistic and metacognitive skills are enhanced when they learn about the similarities and differences between languages. This is *reliant* on the type of bilingual program model being used (See Texas Education Code, §29.066).

(3) To meet Public Education Goal 1 of the Texas Education Code, §4.002, which states, "The students in the public education system will demonstrate exemplary performance in the reading and writing of the English language," students will accomplish the essential knowledge, skills, and student expectations at Grade 5 as described in subsection (b) of this section.

(4) To meet Texas Education Code, §28.002(h), which states, "... each school district shall foster the continuation of the tradition of teaching United States and Texas history and the free enterprise system in regular subject matter and in reading courses and in the adoption of textbooks," students will be provided oral and written narratives as well as other informational texts that can help them to become thoughtful, active citizens who appreciate the basic democratic values of our state and nation.

(b) Knowledge and skills.

(1) Reading/Fluency. Students read grade-level text with fluency and comprehension. Students are expected to read aloud grade-level stories with accuracy, expression, appropriate phrasing, and comprehension.

(2) Reading/Vocabulary Development. Students understand new vocabulary and use it when reading and writing. Students are expected to:

(A) determine the meaning of grade-level academic Spanish words derived from Latin, Greek, or other linguistic roots and affixes;

(B) use context (e.g., in-sentence restatement) to determine or clarify the meaning of unfamiliar or multiple meaning words;

(C) produce analogies with known antonyms and synonyms;

(D) identify and explain the meaning of common idioms, adages, and other sayings; and

(E) use a dictionary, a glossary, or a thesaurus (printed or electronic) to determine the meanings, syllabication, spelling, alternate word choices, and parts of speech of words.

(3) Reading/Comprehension of Literary Text/Theme and Genre. Students analyze, make inferences and draw conclusions about theme and genre in different cultural, historical, and contemporary contexts and provide evidence from the text to support their understanding. Students are expected to:

(A) compare and contrast the themes or moral lessons of several works of fiction from various cultures;

(B) describe the phenomena explained in origin myths from various cultures; and

(C) explain the effect of a historical event or movement on the theme of a work of literature.

(4) Reading/Comprehension of Literary Text/Poetry. Students understand, make inferences and draw conclusions about the structure and elements of poetry and provide evidence from text to support their understanding. Students are expected to analyze how poets use sound effects (e.g., alliteration, internal rhyme, onomatopoeia, rhyme scheme) to reinforce meaning in poems.

(5) Reading/Comprehension of Literary Text/Drama. Students understand, make inferences and draw conclusions about the structure and elements of drama and provide evidence from text to support their understanding. Students are expected to analyze the similarities and differences between an original text and its dramatic adaptation.

(6) Reading/Comprehension of Literary Text/Fiction. Students understand, make inferences and draw conclusions about the structure and elements of fiction and provide evidence from text to support their understanding. Students are expected to:

(A) describe incidents that advance the story or novel, explaining how each incident gives rise to or foreshadows future events;

(B) explain the roles and functions of characters in various plots, including their relationships and conflicts; and

(C) explain different forms of third-person points of view in stories.

(7) Reading/Comprehension of Literary Text/Literary Nonfiction. Students understand, make inferences and draw conclusions about the varied structural patterns and features of literary nonfiction and provide evidence from text to support their understanding. Students are expected to identify the literary language and devices used in biographies and autobiographies, including how authors present major events in a person's life.

(8) Reading/Comprehension of Literary Text/Sensory Language. Students understand, make inferences and draw conclusions about how an author's sensory language creates imagery in literary text and provide evidence from text to support their understanding. Students are expected to evaluate the impact of sensory details, imagery, and figurative language in literary text.

(9) Reading/Comprehension of Text/Independent Reading. Students read independently for sustained periods of time and produce evidence of their reading. Students are expected to read independently for a sustained period of time and summarize or paraphrase what the reading was about, maintaining meaning and logical order (e.g., generate a reading log or journal; participate in book talks).

(10) Reading/Comprehension of Informational Text/Culture and History. Students analyze, make inferences and draw conclusions about the author's purpose in cultural, historical, and contemporary contexts and provide evidence from the text, including culturally relevant texts, to support their understanding. Students are expected to draw conclusions from the information presented by an author and evaluate how well the author's purpose was achieved.

(11) Reading/Comprehension of Informational Text/Expository Text. Students analyze, make inferences and draw conclusions about expository text and provide evidence from text to support their understanding. Students are expected to:

(A) summarize the main ideas and supporting details in a text in ways that maintain meaning and logical order;

(B) determine the facts in text and verify them through established methods;

(C) analyze how the organizational pattern of a text (e.g., cause-and-effect, compare-and-contrast, sequential order, logical order, classification schemes) influences the relationships among the ideas;

(D) use multiple text features and graphics to gain an overview of the contents of text and to locate information; and

(E) synthesize and make logical connections between ideas within a text and across two or three texts representing similar or different genres.

(12) Reading/Comprehension of Informational Text/Persuasive Text. Students analyze, make inferences and draw conclusions about persuasive text and provide evidence from text to support their analysis. Students are expected to:

(A) identify the author's viewpoint or position and explain the basic relationships among ideas (e.g., parallelism, comparison, causality) in the argument; and

(B) recognize exaggerated, contradictory, or misleading statements in text.

(13) Reading/Comprehension of Informational Text/Procedural Texts. Students understand how to glean and use information in procedural texts and documents. Students are expected to:

(A) interpret details from procedural text to complete a task, solve a problem, or perform procedures; and

(B) interpret factual or quantitative information presented in maps, charts, illustrations, graphs, timelines, tables, and diagrams.

(14) Reading/Media Literacy. Students use comprehension skills to analyze how words, images, graphics, and sounds work together in various forms to impact meaning. Students continue to apply earlier standards with greater depth in increasingly more complex texts. Students are expected to:

(A) explain how messages conveyed in various forms of media are presented differently (e.g., documentaries, online information, televised news);

(B) consider the difference in techniques used in media (e.g., commercials, documentaries, news);

(C) identify the point of view of media presentations; and

(D) analyze various digital media venues for levels of formality and informality.



(15) **Writing/Writing Process.** Students use elements of the writing process (planning, drafting, revising, editing, and publishing) to compose text. Students are expected to:

(A) plan a first draft by selecting a genre appropriate for conveying the intended meaning to an audience, determining appropriate topics through a range of strategies (e.g., discussion, background reading, personal interests, interviews), and developing a thesis or controlling idea;

(B) develop drafts by choosing an appropriate organizational strategy (e.g., sequence of events, cause-effect, compare-contrast) and building on ideas to create a focused, organized, and coherent piece of writing;

(C) revise drafts to clarify meaning, enhance style, include simple and compound sentences, and improve transitions by adding, deleting, combining, and rearranging sentences or larger units of text after rethinking how well questions of purpose, audience, and genre have been addressed;

(D) edit drafts for grammar, mechanics, and spelling; and

(E) revise final draft in response to feedback from peers and teacher and publish written work for appropriate audiences.

(16) **Writing/Literary Texts.** Students write literary texts to express their ideas and feelings about real or imagined people, events, and ideas. Students are expected to:

(A) write imaginative stories that include:

(i) a clearly defined focus, plot, and point of view;

(ii) a specific, believable setting created through the use of sensory details; and

(iii) dialogue that develops the story; and

(B) write poems using:

(i) poetic techniques (e.g., alliteration, onomatopoeia);

(ii) figurative language (e.g., similes, metaphors); and

(iii) graphic elements (e.g., capital letters, line length).

(17) **Writing.** Students write about their own experiences. Students are expected to write a personal narrative that conveys thoughts and feelings about an experience.

(18) **Writing/Expository and Procedural Texts.** Students write expository and procedural or work-related texts to communicate ideas and information to specific audiences for specific purposes. Students are expected to:

(A) create multi-paragraph essays to convey information about the topic that:

(i) present effective introductions and concluding paragraphs;

(ii) guide and inform the reader's understanding of key ideas and evidence;

(iii) include specific facts, details, and examples in an appropriately organized structure; and

(iv) use a variety of sentence structures and transitions to link paragraphs;

(B) write formal and informal letters that convey ideas, include important information, demonstrate a sense of closure, and use appropriate conventions (e.g., date, salutation, closing); and

(C) write responses to literary or expository texts and provide evidence from the text to demonstrate understanding.

(19) **Writing/Persuasive Texts.** Students write persuasive texts to influence the attitudes or actions of a specific audience on specific issues. Students are expected to write persuasive essays for appropriate audiences that establish a position and include sound reasoning, detailed and relevant evidence, and consideration of alternatives.

(20) **Oral and Written Conventions/Conventions.** Students understand the function of and use the conventions of academic language when speaking and writing. Students continue to apply earlier standards with greater complexity. Students are expected to:

(A) use and understand the function of the following parts of speech in the context of reading, writing, and speaking:

(i) regular and irregular verbs (past, present, future, and perfect tenses in the indicative mode);

(ii) collective nouns (e.g., manada, rebaño);

(iii) adjectives (e.g., descriptive, including those expressing origin (gentilicios): auto *francés*, dólar *americano*) and their comparative and superlative forms (e.g., bueno, mejor, la mejor);

(iv) adverbs (e.g., frequency: usualmente, a veces; intensity: casi, mucho);

(v) prepositions and prepositional phrases to convey location, time, direction, or to provide details;

(vi) indefinite pronouns (e.g., todos, juntos, nada, cualquier);

(vii) subordinating conjunctions (e.g., mientras, porque, aunque, si); and

(viii) transitional words (e.g., también, por lo tanto);

(B) become familiar with regular and irregular verbs in the present and past tenses in the subjunctive mode (e.g., que diga; que dijera);

(C) use the complete subject and the complete predicate in a sentence;

(D) use complete simple and compound sentences with correct subject-verb agreement; and

(E) identify and read abbreviations (e.g., Sr., Atte.).

(21) **Oral and Written Conventions/Handwriting, Capitalization, and Punctuation.** Students write legibly and use appropriate capitalization and punctuation conventions in their compositions. Students are expected to:

(A) use capitalization for:

(i) abbreviations;

(ii) initials and acronyms; and

(iii) organizations;

(B) recognize and use punctuation marks including:

(i) commas in compound sentences; and

(ii) proper punctuation and spacing for quotations and em dash; and

(C) use proper mechanics, including italics for titles of books.

(22) Oral and Written Conventions/Spelling. Students spell correctly. Students are expected to:

(A) spell words with more advanced orthographic patterns and rules, including:

(i) words that have a prosodic or orthographic accent on the last syllable (palabras agudas) (e.g., feliz, canción);

(ii) words that have a prosodic or orthographic accent on the second-to-last syllable (palabras graves) (e.g., casa, árbol);

(iii) words that have an orthographic accent on the third-to-last syllable (palabras esdrújulas) (e.g., último, cómico, mecánico); and

(iv) words that have a prosodic or orthographic accent on the fourth-to-last syllable (palabras sobresdrújulas);

(B) mark accents appropriately when conjugating verbs in simple and imperfect past, perfect, conditional, and future tenses (e.g., corrió, jugó, tenía, gustaría, vendrá);

(C) spell words with:

(i) Greek roots (e.g., tele-, foto-, grafo-, metro-);

(ii) Latin roots (e.g., spec, scrib, rupt, port, dict);

(iii) Greek suffixes (e.g., -ología, -fobia, -ismo, -ista); and

(iv) Latin derived suffixes (e.g., -able, -ible, -ancia);

(D) correctly spell words containing hiatus and diphthongs (e.g., le-er, rí-o, quie-ro, vio);

(E) differentiate between commonly confused terms (e.g., porque, por qué; asimismo, así mismo; sino, si no; también, tan bien);

(F) use spelling patterns, rules, and print and electronic resources to determine and check correct spellings; and

(G) know how to use the spell-check function in word processing while understanding its limitations.

(23) Research/Research Plan. Students ask open-ended research questions and develop a plan for answering them. Students are expected to:

(A) brainstorm, consult with others, decide upon a topic, and formulate open-ended questions to address the major research topic; and

(B) generate a research plan for gathering relevant information about the major research question.

(24) Research/Gathering Sources. Students determine, locate, and explore the full range of relevant sources addressing a research question and systematically record the information they gather. Students are expected to:

(A) follow the research plan to collect data from a range of print and electronic resources in Spanish (e.g., reference texts, periodicals, web pages, online sources) and data from experts;

(B) differentiate between primary and secondary sources;

(C) record data, utilizing available technology (e.g., word processors) in order to see the relationships between ideas, and

convert graphic/visual data (e.g., charts, diagrams, timelines) into written notes;

(D) identify the source of notes (e.g., author, title, page number) and record bibliographic information concerning those sources according to a standard format; and

(E) differentiate between paraphrasing and plagiarism and identify the importance of citing valid and reliable sources.

(25) Research/Synthesizing Information. Students clarify research questions and evaluate and synthesize collected information. Students are expected to:

(A) refine the major research question, if necessary, guided by the answers to a secondary set of questions; and

(B) evaluate the relevance, validity, and reliability of sources for the research.

(26) Research/Organizing and Presenting Ideas. Students organize and present their ideas and information according to the purpose of the research and their audience. Students are expected to synthesize the research into a written or an oral presentation that:

(A) compiles important information from multiple sources;

(B) develops a topic sentence, summarizes findings, and uses evidence to support conclusions;

(C) presents the findings in a consistent format; and

(D) uses quotations to support ideas and an appropriate form of documentation to acknowledge sources (e.g., bibliography, works cited).

(27) Listening and Speaking/Listening. Students use comprehension skills to listen attentively to others in formal and informal settings. Students continue to apply earlier standards with greater complexity. Students are expected to:

(A) listen to and interpret a speaker's messages (both verbal and nonverbal) and ask questions to clarify the speaker's purpose or perspective;

(B) follow, restate, and give oral instructions that include multiple action steps; and

(C) determine both main and supporting ideas in the speaker's message.

(28) Listening and Speaking/Speaking. Students speak clearly and to the point, using the conventions of language. Students continue to apply earlier standards with greater complexity. Students are expected to give organized presentations employing eye contact, speaking rate, volume, enunciation, natural gestures, and conventions of language to communicate ideas effectively.

(29) Listening and Speaking/Teamwork. Students work productively with others in teams. Students continue to apply earlier standards with greater complexity. Students are expected to participate in student-led discussions by eliciting and considering suggestions from other group members and by identifying points of agreement and disagreement.

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 November 6, 2008.

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**SUBCHAPTER B. MIDDLE SCHOOL**

**19 TAC §§128.17, 128.18, 128.21**

The new sections and amendment are adopted under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements, §28.002, which authorizes the SBOE to by rule identify the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating textbooks and addressed on the assessment instruments, and §28.005 and §29.051, which establishes bilingual education and special language programs in the public schools to ensure students' reasonable proficiency in the English language and ability to achieve academic success.

The new sections and amendment implement the Texas Education Code, §§7.102(c)(4), 28.002, 28.005, and 29.051.

*§128.18. Spanish Language Arts and Reading, Grade 6, Beginning with School Year 2009-2010.*

(a) Introduction.

(1) The Spanish Language Arts and Reading Texas Essential Knowledge and Skills (TEKS) reflect language arts standards that are authentic to the Spanish language and Spanish literacy, not mere translations from English. The Spanish Language Arts and Reading TEKS are organized into the following strands: Reading, where students read and understand a wide variety of literary and informational texts; Writing, where students compose a variety of written texts with a clear controlling idea, coherent organization, and sufficient detail; Research, where students are expected to know how to locate a range of relevant sources and evaluate, synthesize, and present ideas and information; Listening and Speaking, where students listen and respond to the ideas of others while contributing their own ideas in conversations and in groups; and Oral and Written Conventions, where students learn how to use the oral and written conventions of the Spanish language in speaking and writing. The standards are cumulative--students will continue to address earlier standards as needed while they attend to standards for their grade. In sixth grade, students will engage in activities that build on their prior knowledge and skills in order to strengthen their reading, writing, and oral language skills. Students should read, write, and be read to on a daily basis.

(2) Research consistently shows that literacy development in the student's native language facilitates learning in English (Collier & Thomas, 1997; Cummins, 2001). Students can develop cognition, learn, and achieve best when they can understand the language of instruction (August, Calderon, & Carlo, 2003). Students who have strong literacy skills in their primary language can be expected to transfer those skills to English and *progress rapidly* in learning in English. Although English and Spanish look very similar on the surface (i.e., similar alphabets; directionality; cognates) the conventions of each language presuppose the reading process in that language. Consequently, systematic instruction in the appropriate sequence of skills is critical. For this reason, the Spanish Language Arts and Reading TEKS reflect

language arts standards that are authentic to the Spanish language and not mere translations from English.

(A) Spanish, as opposed to English, has a closer letter-sound relationship and clearly defined syllable boundaries. The syllable in Spanish is a more critical unit of phonological awareness than in English because of the consistent phoneme-grapheme correspondence. Syllables are important units for Spanish because of their strong effect in visual word recognition (Carreiras et al., 1993) and their major role in predicting Spanish reading success. In addition, Spanish presents a much higher level of orthographic transparency than English and does not rely on sight words for decoding. This orthographic transparency accelerates the decoding process and the focus quickly moves to fluency and comprehension. Spanish uses frequency words that are identified by the rate of occurrence in grade appropriate text and used to build on fluency and comprehension. However, in English, "sight" words are used because of words that are not decodable such as "are" or "one." In Spanish, decoding issues are not as prevalent as issues of comprehension. These specific features of the Spanish language will influence reading methodology and development.

(B) Spanish instruction maximizes access to English content. Students with strong literacy skills in Spanish phonemic awareness, phonics, vocabulary, and reading comprehension can be expected to transfer those skills to English. The "transfer" of knowledge and skills from one language to another refers to the metalinguistic and metacognitive processes and awareness that students gain in developing literacy in two languages. Current research on bilingual instruction (e.g., August & Shanahan, 2006; Genesse et al., 2006) shows how students use native literacy knowledge when learning to read and write in another language.

(C) The effective transfer of skills transpires as students develop their metalinguistic skills and as they engage in a contrastive analysis of the Spanish and English languages (Cummins, 2007). Transfer matters occur within fundamentals of language that are common to Spanish and English; within fundamentals that are similar, but not exact in both languages; and in fundamentals specific to each language and not applicable to the other language. The strength of learning through formal instruction in Spanish determines the extent of transfer in English (August, Calderon, & Carlo, 2000; Slavin & Calderon, 2001; Garcia, 2001). In other words, for transfer to occur, comprehension of the "rules" and the realization of their applicability to the new language specific tasks are necessary.

(D) The concept of transfer necessitates the use of both languages in which both (Spanish and English) *co-exist with flexibility*. As a result of working within two language systems, students' metalinguistic and metacognitive skills are enhanced when they learn about the similarities and differences between languages. This is *reliant* on the type of bilingual program model being used (See Texas Education Code, §29.066).

(3) To meet Public Education Goal 1 of the Texas Education Code, §4.002, which states, "The students in the public education system will demonstrate exemplary performance in the reading and writing of the English language," students will accomplish the essential knowledge, skills, and student expectations at Grade 6 as described in subsection (b) of this section.

(4) To meet Texas Education Code, §28.002(h), which states, "... each school district shall foster the continuation of the tradition of teaching United States and Texas history and the free enterprise system in regular subject matter and in reading courses and in the adoption of textbooks," students will be provided oral and written narratives as well as other informational texts that can help

them to become thoughtful, active citizens who appreciate the basic democratic values of our state and nation.

(b) Knowledge and skills.

(1) Reading/Fluency. Students read grade-level text with fluency and comprehension. Students are expected to:

(A) read aloud grade-level text with accuracy, expression, appropriate phrasing, and comprehension; and

(B) use prosody when reading aloud grade-level text based on the reading purpose and the nature of the text.

(2) Reading/Vocabulary Development. Students understand new vocabulary and use it when reading and writing. Students are expected to:

(A) determine the meaning of grade-level academic Spanish words derived from Latin, Greek, or other linguistic roots and affixes;

(B) use context (e.g., cause and effect or compare and contrast organizational text structures) to determine or clarify the meaning of unfamiliar or multiple meaning words;

(C) complete analogies that describe part to whole or whole to part (e.g., motor:carro como aire: \_\_\_\_ or carro:motor como llanta: \_\_\_\_); and

(D) use a dictionary, a glossary, or a thesaurus (printed or electronic) to determine the meanings, syllabication, spelling, alternate word choices, and parts of speech of words.

(3) Reading/Comprehension of Literary Text/Theme and Genre. Students analyze, make inferences and draw conclusions about theme and genre in different cultural, historical, and contemporary contexts and provide evidence from the text to support their understanding. Students are expected to:

(A) infer the implicit theme of a work of fiction, distinguishing theme from the topic;

(B) analyze the function of stylistic elements (e.g., magic helper, rule of three) in traditional and classical literature from various cultures; and

(C) compare and contrast the historical and cultural settings of two literary works.

(4) Reading/Comprehension of Literary Text/Poetry. Students understand, make inferences and draw conclusions about the structure and elements of poetry and provide evidence from text to support their understanding. Students are expected to explain how figurative language (e.g., personification, metaphors, similes, hyperbole) contributes to the meaning of a poem.

(5) Reading/Comprehension of Literary Text/Drama. Students understand, make inferences and draw conclusions about the structure and elements of drama and provide evidence from text to support their understanding. Students are expected to explain the similarities and differences in the setting, characters, and plot of a play, including original works in Spanish, and those in a film based upon the same story line.

(6) Reading/Comprehension of Literary Text/Fiction. Students understand, make inferences and draw conclusions about the structure and elements of fiction and provide evidence from text to support their understanding. Students are expected to:

(A) summarize the elements of plot development (e.g., rising action, turning point, climax, falling action, denouement) in various works of fiction;

(B) recognize dialect and conversational voice and explain how authors use dialect to convey character; and

(C) describe different forms of point-of-view, including first- and third-person.

(7) Reading/Comprehension of Literary Text/Literary Nonfiction. Students understand, make inferences and draw conclusions about the varied structural patterns and features of literary nonfiction and provide evidence from text to support their understanding. Students are expected to identify the literary language and devices used in memoirs and personal narratives and compare their characteristics with those of an autobiography.

(8) Reading/Comprehension of Literary Text/Sensory Language. Students understand, make inferences and draw conclusions about how an author's sensory language creates imagery in literary text and provide evidence from text to support their understanding. Students are expected to explain how authors create meaning through stylistic elements and figurative language emphasizing the use of personification, hyperbole, and refrains.

(9) Reading/Comprehension of Informational Text/Culture and History. Students analyze, make inferences and draw conclusions about the author's purpose in cultural, historical, and contemporary contexts and provide evidence from the text, including culturally relevant texts, to support their understanding. Students are expected to compare and contrast the stated or implied purposes of different authors writing on the same topic.

(10) Reading/Comprehension of Informational Text/Expository Text. Students analyze, make inferences and draw conclusions about expository text and provide evidence from text to support their understanding. Students are expected to:

(A) summarize the main ideas and supporting details in text, demonstrating an understanding that a summary does not include opinions;

(B) explain whether facts included in an argument are used for or against an issue;

(C) explain how different organizational patterns (e.g., proposition-and-support, problem-and-solution) develop the main idea and the author's viewpoint; and

(D) synthesize and make logical connections between ideas within a text and across two or three texts representing similar or different genres.

(11) Reading/Comprehension of Informational Text/Persuasive Text. Students analyze, make inferences and draw conclusions about persuasive text and provide evidence from text to support their analysis. Students are expected to:

(A) compare and contrast the structure and viewpoints of two different authors writing for the same purpose, noting the stated claim and supporting evidence; and

(B) identify simply faulty reasoning used in persuasive texts.

(12) Reading/Comprehension of Informational Text/Procedural Texts. Students understand how to glean and use information in procedural texts and documents. Students are expected to:

(A) follow multi-tasked instructions to complete a task, solve a problem, or perform procedures; and

(B) interpret factual, quantitative, or technical information presented in maps, charts, illustrations, graphs, timelines, tables, and diagrams.

(13) Reading/Media Literacy. Students use comprehension skills to analyze how words, images, graphics, and sounds work together in various forms to impact meaning. Students will continue to apply earlier standards with greater depth in increasingly more complex texts. Students are expected to:

(A) explain messages conveyed in various forms of media;

(B) recognize how various techniques influence viewers' emotions;

(C) critique persuasive techniques (e.g., testimonials, bandwagon appeal) used in media messages; and

(D) analyze various digital media venues for levels of formality and informality.

(14) Writing/Writing Process. Students use elements of the writing process (planning, drafting, revising, editing, and publishing) to compose text. Students are expected to:

(A) plan a first draft by selecting a genre appropriate for conveying the intended meaning to an audience, determining appropriate topics through a range of strategies (e.g., discussion, background reading, personal interests, interviews), and developing a thesis or controlling idea;

(B) develop drafts by choosing an appropriate organizational strategy (e.g., sequence of events, cause-effect, compare-contrast) and building on ideas to create a focused, organized, and coherent piece of writing;

(C) revise drafts to clarify meaning, enhance style, include simple and compound sentences, and improve transitions by adding, deleting, combining, and rearranging sentences or larger units of text after rethinking how well questions of purpose, audience, and genre have been addressed;

(D) edit drafts for grammar, mechanics, and spelling; and

(E) revise final draft in response to feedback from peers and teacher and publish written work for appropriate audiences.

(15) Writing/Literary Texts. Students write literary texts to express their ideas and feelings about real or imagined people, events, and ideas. Students are expected to:

(A) write imaginative stories that include:

(i) a clearly defined focus, plot, and point of view;

(ii) a specific, believable setting created through the use of sensory details; and

(iii) dialogue that develops the story; and

(B) write poems using:

(i) poetic techniques (e.g., alliteration, onomatopoeia);

(ii) figurative language (e.g., similes, metaphors); and

(iii) graphic elements (e.g., capital letters, line length).

(16) Writing. Students write about their own experiences. Students are expected to write a personal narrative that has a clearly defined focus and communicates the importance of or reasons for actions and/or consequences.

(17) Writing/Expository and Procedural Texts. Students write expository and procedural or work-related texts to communicate ideas and information to specific audiences for specific purposes. Students are expected to:

(A) create multi-paragraph essays to convey information about a topic that:

(i) present effective introductions and concluding paragraphs;

(ii) guide and inform the reader's understanding of key ideas and evidence;

(iii) include specific facts, details, and examples in an appropriately organized structure; and

(iv) use a variety of sentence structures and transitions to link paragraphs;

(B) write informal letters that convey ideas, include important information, demonstrate a sense of closure, and use appropriate conventions (e.g., date, salutation, closing);

(C) write responses to literary or expository texts and provide evidence from the text to demonstrate understanding; and

(D) produce a multimedia presentation involving text and graphics using available technology.

(18) Writing/Persuasive Texts. Students write persuasive texts to influence the attitudes or actions of a specific audience on specific issues. Students are expected to write persuasive essays for appropriate audiences that establish a position and include sound reasoning, detailed and relevant evidence, and consideration of alternatives.

(19) Oral and Written Conventions/Conventions. Students understand the function of and use the conventions of academic language when speaking and writing. Students will continue to apply earlier standards with greater complexity. Students are expected to:

(A) use and understand the function of the following parts of speech in the context of reading, writing, and speaking:

(i) regular and irregular verbs (past, present, future, and perfect tenses in the indicative mode);

(ii) non-count nouns (e.g., cardúmen, jaulfa);

(iii) predicate adjectives (Ella es *inteligente*.) and their comparative forms (e.g., muy, más);

(iv) conjunctive adverbs (e.g., consecuentemente, además, de hecho);

(v) prepositions and prepositional phrases to convey location, time, direction, or to provide details;

(vi) indefinite pronouns (e.g., todos, juntos, nada, cualquier);

(vii) subordinating conjunctions (e.g., mientras, porque, aunque, si); and

(viii) transitional words and phrases that demonstrate an understanding of the function of the transition related to the organization of the writing (e.g., por el contrario, además de);

(B) become familiar with regular and irregular verbs in the present and past tenses in the subjunctive mode (e.g., que haya, que hubiera);

(C) differentiate between the active and passive voice and know how to use them both; and

(D) use complete simple and compound sentences with correct subject-verb agreement.

(20) Oral and Written Conventions/Handwriting, Capitalization, and Punctuation. Students write legibly and use appropriate capitalization and punctuation conventions in their compositions. Students are expected to:

(A) use capitalization for:

- (i) abbreviations;
- (ii) initials and acronyms; and
- (iii) organizations;

(B) recognize and use punctuation marks including:

- (i) commas in compound sentences;
- (ii) proper punctuation and spacing for quotations and em dash; and
- (iii) parentheses, brackets, and ellipses (to indicate omissions and interruptions or incomplete statements); and

(C) use proper mechanics, including italics for titles of books.

(21) Oral and Written Conventions/Spelling. Students spell correctly. Students are expected to:

(A) spell words with more advanced orthographic patterns and rules, including:

- (i) words that have a prosodic or orthographic accent on the last syllable (palabras agudas) (e.g., feliz, canción);
- (ii) words that have a prosodic or orthographic accent on the second-to-last syllable (palabras graves) (e.g., casa, árbol);
- (iii) words that have an orthographic accent on the third-to-last syllable (palabras esdrújulas) (e.g., último, cómico, mecánico); and
- (iv) words that have a prosodic or orthographic accent on the fourth-to-last syllable (palabras sobresdrújulas);

(B) mark accents appropriately when conjugating verbs in simple and imperfect past, perfect, conditional, and future tenses (e.g., corrió, jugó, tenía, gustaría, vendrá);

(C) spell words with:

- (i) Greek roots (e.g., tele-, foto-, grafo-, metro-);
- (ii) Latin roots (e.g., spec, scribe, rupt, port, dict);
- (iii) Greek suffixes (e.g., -ología, -fobia, -ismo, -ista); and
- (iv) Latin derived suffixes (e.g., -able, -ible, -ancia);

(D) correctly spell words containing hiatus and diphthongs (le-er, rí-o, quie-ro, vio);

(E) differentiate between commonly confused terms (e.g., porque, por qué; tampoco, tan poco; mediodía, medio día; quehacer, que hacer);

(F) use spelling patterns, rules, and print and electronic resources to determine and check correct spellings; and

(G) know how to use the spell-check function in word processing while understanding its limitations.

(22) Research/Research Plan. Students ask open-ended research questions and develop a plan for answering them. Students are expected to:

(A) brainstorm, consult with others, decide upon a topic, and formulate open-ended questions to address the major research topic; and

(B) generate a research plan for gathering relevant information about the major research question.

(23) Research/Gathering Sources. Students determine, locate, and explore the full range of relevant sources addressing a research question and systematically record the information they gather. Students are expected to:

(A) follow the research plan to collect data from a range of print and electronic resources in Spanish (e.g., reference texts, periodicals, web pages, online sources) and data from experts;

(B) differentiate between primary and secondary sources;

(C) record data, utilizing available technology (e.g., word processors) in order to see the relationships between ideas, and convert graphic/visual data (e.g., charts, diagrams, timelines) into written notes;

(D) identify the source of notes (e.g., author, title, page number) and record bibliographic information concerning those sources according to a standard format; and

(E) differentiate between paraphrasing and plagiarism and identify the importance of citing valid and reliable sources.

(24) Research/Synthesizing Information. Students clarify research questions and evaluate and synthesize collected information. Students are expected to:

(A) refine the major research question, if necessary, guided by the answers to a secondary set of questions; and

(B) evaluate the relevance and reliability of sources for the research.

(25) Research/Organizing and Presenting Ideas. Students organize and present their ideas and information according to the purpose of the research and their audience. Students are expected to synthesize the research into a written or an oral presentation that:

(A) compiles important information from multiple sources;

(B) develops a topic sentence, summarizes findings, and uses evidence to support conclusions;

(C) presents the findings in a consistent format; and

(D) uses quotations to support ideas and an appropriate form of documentation to acknowledge sources (e.g., bibliography, works cited).

(26) Listening and Speaking/Listening. Students will use comprehension skills to listen attentively to others in formal and informal settings. Students will continue to apply earlier standards with greater complexity. Students are expected to:

(A) listen to and interpret a speaker's messages (both verbal and nonverbal) and ask questions to clarify the speaker's purpose and perspective;

(B) follow and give oral instructions that include multiple action steps; and

(C) paraphrase the major ideas and supporting evidence in formal and informal presentations.

(27) Listening and Speaking/Speaking. Students speak clearly and to the point, using the conventions of language. Students will continue to apply earlier standards with greater complexity. Students are expected to give an organized presentation with a specific point of view, employing eye contact, speaking rate, volume, enunciation, natural gestures, and conventions of language to communicate ideas effectively.

(28) Listening and Speaking/Teamwork. Students work productively with others in teams. Students will continue to apply earlier standards with greater complexity. Students are expected to participate in student-led discussions by eliciting and considering suggestions from other group members and by identifying points of agreement and disagreement.

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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Director, Policy Coordination

Texas Education Agency

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For further information, please call: (512) 475-1497



### 19 TAC §§128.23 - 128.26

The repeals are adopted under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements, §28.002, which authorizes the SBOE to by rule identify the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating textbooks and addressed on the assessment instruments, and §28.005 and §29.051, which establishes bilingual education and special language programs in the public schools to ensure students' reasonable proficiency in the English language and ability to achieve academic success.

The repeals implement the Texas Education Code, §7.102(c)(4), 28.002, 28.005, and 29.051.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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**SUBCHAPTER C. HIGH SCHOOL**

### 19 TAC §§128.30 - 128.32, 128.41

The new sections and amendment are adopted under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; §28.002, which authorizes the SBOE to by rule identify the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating textbooks and addressed on the assessment instruments; §28.025, which authorizes the SBOE to by rule determine curriculum requirements for the minimum, recommended, and advanced high school programs that are consistent with the required curriculum under §28.002; and §28.005 and §29.051, which establishes bilingual education and special language programs in the public schools to ensure students' reasonable proficiency in the English language and ability to achieve academic success.

The new sections and amendment implement the Texas Education Code, §§7.102(c)(4), 28.002, 28.005, 28.025, and 29.051.

*§128.31. English I for Speakers of Other Languages (One Credit), Beginning with School Year 2009-2010.*

(a) Introduction.

(1) The essential knowledge and skills as well as the student expectations for English I for Speakers of Other Languages (ESOL I) are described in §74.4 of this title (relating to English Language Proficiency Standards) as well as subsection (b) of this section and are identical to the knowledge and skills and student expectations in Chapter 110 of this title (relating to Texas Essential Knowledge and Skills for English Language Arts and Reading) with additional expectations for English language learners (ELLs).

(2) ESOL I may be substituted for English I as provided by Chapter 74, Subchapter B, of this title (relating to Graduation Requirements). All expectations apply to ESOL I students; however, it is imperative to recognize critical processes and features of second language acquisition and to provide appropriate instruction to enable students to meet these standards.

(3) ELLs are expected to meet standards in a second language that many monolingual English speakers find difficult to meet in their native language. In addition, ELLs are acquiring English at the same time they are learning content in English. ELLs' abilities to meet these standards will be influenced by their proficiency in English. While ELLs can analyze, synthesize, and evaluate, their level of English proficiency may impede their ability to demonstrate this knowledge during the initial stages of English language acquisition. For this reason, comprehension of text requires additional scaffolds that include adapted text (e.g., appropriate for student proficiency level; translations), pictures, realia, glossaries, bilingual dictionaries, thesaurus, and other modes of comprehensible input. ELLs can and should be encouraged to use their knowledge of their first language (e.g., cognates) to enhance their vocabulary development, and vocabulary needs to be in the context of connected discourse so that it is meaningful. Strategic use of the student's first language is important to ensure linguistic, affective, cognitive, and academic development in English.

(4) Research consistently shows that a strong foundation in the native language of an ELL facilitates learning in English (Collier & Thomas, 1997; Cummins, 2001). Students can develop cognition, learn, and achieve best when they can understand the language of instruction (August, Calderon, & Carlo, 2003). Students can be expected

to transfer those skills to English and progress rapidly in learning in English.

(5) For newcomers in secondary schooling, the challenge then is not only learning English, but learning in English. ELLs are challenged in working with linguistic, cognitive, and academic development in all of their coursework and in a new language. Some newcomers exhibit additional first language and/or academic needs due to their previous educational experiences that may include interrupted and/or limited schooling. Strategic use of the student's first language is important to ensure linguistic, affective, cognitive, and academic development in English, especially for students who are newcomers and at beginning levels of English language proficiency. Their academic success depends on their ability to use academic language.

(6) Second language acquisition is a complex process that even under optimal conditions takes a long time (Collier, 1997). It is important to understand that limited knowledge of English structure and vocabulary is neither related to the students' intellectual capabilities nor their ability to use higher-order thinking skills. The development of receptive (listening/reading) and expressive (speaking/writing) skills in second language learners may be at different stages. In some instances, second language learners undergo silent periods of varying durations when they first begin to learn a new language. Students often understand more than they can produce and may repeat words in sentences that they do not entirely understand. Second language learners may also draw upon the resources of their language and culture as they acquire a new language and culture.

(7) In order for ELLs to be successful, they must acquire both social and academic language proficiency in English. Social language proficiency in English consists of the English needed for daily social interactions. Academic language proficiency consists of the English needed to think critically, understand and learn new concepts, process complex academic material, and interact and communicate in English academic settings.

(8) Academic language is a major factor in academic success. Academic language and grammatical structures are used across all subject areas and is specific to the content area, such as language arts, mathematics, science, and social studies. Current research stresses the importance of effectively integrating second language acquisition with quality content area education in order to ensure that ELLs acquire social and academic language proficiency in English, learn the knowledge and skills, and reach their full academic potential. This must also be provided in a manner that is linguistically accommodated (contextualized, communicated, sequenced, and scaffolded) commensurate with the student's levels of English language proficiency to ensure that the student learns the knowledge and skills in the required curriculum.

(9) ELLs require focused, targeted, and systematic second language acquisition to provide them with the foundation of English language vocabulary, grammar, syntax, and English mechanics necessary to support content-based instruction and accelerated learning of English. Literacy development across the content areas is essential in building academic skills in a second language and can accelerate the learning of both English language skills and higher-order thinking skills.

(10) ELL students are at different stages of language acquisition. Proficiency levels are not grade specific: Beginning, Intermediate, Advanced, and Advanced High. The ELL student may exhibit different proficiency levels within the four language components: listening, speaking, reading, and writing. A student may exhibit oral skills at the advanced level, reading skills at the intermediate level, and writing skills at the beginning level. Understanding the level of English language proficiency of the student is critical in order for the

student to have access to the curriculum. The proficiency level of the student determines the accommodations in language that must be made (e.g., adapted text appropriate for student proficiency level; translations) as well as, determines additional scaffolds (e.g., pictures, realia, glossaries, bilingual dictionaries, thesaurus) in order to learn the academic content. Any combination of the language components is possible and is affected by opportunities for interaction in and outside of school. For further guidance in second language acquisition, refer to the English language proficiency standards (ELPS) described in §74.4 of this title.

(A) Beginning: Students associate utterances with meaning as they make inferences based on actions, visuals, text, tone of voice, and inflections. Receptive language with some comprehension is acquired earlier than oral production. Beginning students produce spoken English with increasing accuracy and fluency to convey appropriate meaning. They read English using graphophonic cues, syntax, visuals, the context of the text, and their prior knowledge of language and structure of text.

(B) Intermediate: Students use the listening process to improve comprehension and oral skills in English. Through listening and speaking in meaningful interactions, they clarify, distinguish, and evaluate ideas and responses in a variety of situations. Intermediate students participate successfully in academic, social, and work contexts in English using the process of speaking to create, clarify, critique, and evaluate ideas and responses. Intermediate students read English using and applying developmental vocabulary to increase comprehension and produce written text to address a variety of audiences and purposes.

(C) Advanced: Students, through developmental listening skills, actively expand their vocabulary to evaluate and analyze spoken English for a variety of situations and purposes. These students participate in a variety of situations using spoken English to create, clarify, critique, and evaluate ideas and responses. Advanced students continually develop reading skills for increasing reading proficiency in content area texts for a variety of purposes and generate written text for different audiences in a variety of modes to convey appropriate meaning according to their level of proficiency.

(D) Advanced High: Students' reading, speaking, and writing abilities are comparable to those of their native English speaking peers. They understand grade appropriate English as it is used in academic and social settings. These students use language skills on their grade level in the academic subject areas with minimal interruptions and they use abstract and content based vocabulary effectively. Advanced High students continually use the English language to build additional foundational reading skills such as fluency and prosody as well as higher-order comprehension skills. These students have a strong command of English language structures necessary to address writing at appropriate grade levels.

(11) Students enrolled in ESOL I continue to increase and refine their communication skills. High school students are expected to plan, draft, and complete written compositions on a regular basis. Students edit their papers for clarity, engaging language, and the correct use of the conventions and mechanics of written English and, with increasing accuracy, produce final, error-free drafts. In English I, students practice all forms of writing. An emphasis is placed on organizing logical arguments with clearly expressed related definitions, thesis, and evidence. Students write to persuade and to report and describe. English I students read extensively in multiple genres from world literature such as reading selected stories, dramas, novels, and poetry originally written in English or translated to English from oriental, classical Greek, European, African, South American, and North American cultures. Students learn literary forms and terms associated with selections



being read. Students interpret the possible influences of the historical context on a literary work.

(12) The knowledge and skills and/or student expectations that are applicable specifically to ELLs are indicated in §74.4 of this title as well as in subsection (b) of this section.

(13) To meet Public Education Goal 1 of the Texas Education Code, §4.002, which states, "The students in the public education system will demonstrate exemplary performance in the reading and writing of the English language," students will accomplish the essential knowledge and skills as well as the student expectations in English I as described in subsection (b) of this section.

(14) To meet Texas Education Code, §28.002(h), which states, "... each school district shall foster the continuation of the tradition of teaching United States and Texas history and the free enterprise system in regular subject matter and in reading courses and in the adoption of textbooks," students will be provided oral and written narratives as well as other informational texts that can help them to become thoughtful, active citizens who appreciate the basic democratic values of our state and nation.

(b) Knowledge and skills.

(1) Reading/Vocabulary Development. Students understand new vocabulary and use it when reading and writing. Students are expected to:

(A) determine the meaning of grade-level technical academic English words in multiple content areas (e.g., science, mathematics, social studies, the arts) derived from Latin, Greek, or other linguistic roots and affixes;

(B) analyze textual context (within a sentence and in larger sections of text) to distinguish between the denotative and connotative meanings of words;

(C) produce analogies that describe a function of an object or its description;

(D) describe the origins and meanings of foreign words or phrases used frequently in written English (e.g., *caveat emptor*, *carte blanche*, *tete a tete*, *pas de deux*, *bon appetit*, *quid pro quo*); and

(E) use a dictionary, a glossary, or a thesaurus (printed or electronic) to determine or confirm the meanings of words and phrases, including their connotations and denotations, and their etymology.

(2) Reading/Comprehension of Literary Text/Theme and Genre. Students analyze, make inferences and draw conclusions about theme and genre in different cultural, historical, and contemporary contexts and provide evidence from the text to support their understanding. Students are expected to:

(A) analyze how the genre of texts with similar themes shapes meaning;

(B) analyze the influence of mythic, classical and traditional literature on 20th and 21st century literature; and

(C) relate the figurative language of a literary work to its historical and cultural setting.

(3) Reading/Comprehension of Literary Text/Poetry. Students understand, make inferences and draw conclusions about the structure and elements of poetry and provide evidence from text to support their understanding. Students are expected to analyze the effects of diction and imagery (e.g., controlling images, figurative language, understatement, overstatement, irony, paradox) in poetry.

(4) Reading/Comprehension of Literary Text/Drama. Students understand, make inferences and draw conclusions about the structure and elements of drama and provide evidence from text to support their understanding. Students are expected to explain how dramatic conventions (e.g., monologues, soliloquies, dramatic irony) enhance dramatic text.

(5) Reading/Comprehension of Literary Text/Fiction. Students understand, make inferences and draw conclusions about the structure and elements of fiction and provide evidence from text to support their understanding. Students are expected to:

(A) analyze non-linear plot development (e.g., flashbacks, foreshadowing, sub-plots, parallel plot structures) and compare it to linear plot development;

(B) analyze how authors develop complex yet believable characters in works of fiction through a range of literary devices, including character foils;

(C) analyze the way in which a work of fiction is shaped by the narrator's point of view; and

(D) demonstrate familiarity with works by authors from non-English-speaking literary traditions with emphasis on classical literature.

(6) Reading/Comprehension of Literary Text/Literary Nonfiction. Students understand, make inferences and draw conclusions about the varied structural patterns and features of literary nonfiction and provide evidence from text to support their understanding. Students are expected to analyze how literary essays interweave personal examples and ideas with factual information to explain, present a perspective, or describe a situation or event.

(7) Reading/Comprehension of Literary Text/Sensory Language. Students understand, make inferences and draw conclusions about how an author's sensory language creates imagery in literary text and provide evidence from text to support their understanding. Students are expected to explain the role of irony, sarcasm, and paradox in literary works.

(8) Reading/Comprehension of Informational Text/Culture and History. Students analyze, make inferences and draw conclusions about the author's purpose in cultural, historical, and contemporary contexts and provide evidence from the text to support their understanding. Students are expected to explain the controlling idea and specific purpose of an expository text and distinguish the most important from the less important details that support the author's purpose.

(9) Reading/Comprehension of Informational Text/Expository Text. Students analyze, make inferences and draw conclusions about expository text and provide evidence from text to support their understanding. Students are expected to:

(A) summarize text and distinguish between a summary that captures the main ideas and elements of a text and a critique that takes a position and expresses an opinion;

(B) differentiate between opinions that are substantiated and unsubstantiated in the text;

(C) make subtle inferences and draw complex conclusions about the ideas in text and their organizational patterns; and

(D) synthesize and make logical connections between ideas and details in several texts selected to reflect a range of viewpoints on the same topic and support those findings with textual evidence.

(10) Reading/Comprehension of Informational Text/Persuasive Text. Students analyze, make inferences and draw conclusions

about persuasive text and provide evidence from text to support their analysis. Students are expected to:

(A) analyze the relevance, quality, and credibility of evidence given to support or oppose an argument for a specific audience; and

(B) analyze famous speeches for the rhetorical structures and devices used to convince the reader of the authors' propositions.

(11) Reading/Comprehension of Informational Text/Procedural Texts. Students understand how to glean and use information in procedural texts and documents. Students are expected to:

(A) analyze the clarity of the objective(s) of procedural text (e.g., consider reading instructions for software, warranties, consumer publications); and

(B) analyze factual, quantitative, or technical data presented in multiple graphical sources.

(12) Reading/Media Literacy. Students use comprehension skills to analyze how words, images, graphics, and sounds work together in various forms to impact meaning. Students will continue to apply earlier standards with greater depth in increasingly more complex texts. Students are expected to:

(A) compare and contrast how events are presented and information is communicated by visual images (e.g., graphic art, illustrations, news photographs) versus non-visual texts;

(B) analyze how messages in media are conveyed through visual and sound techniques (e.g., editing, reaction shots, sequencing, background music);

(C) compare and contrast coverage of the same event in various media (e.g., newspapers, television, documentaries, blogs, Internet); and

(D) evaluate changes in formality and tone within the same medium for specific audiences and purposes.

(13) Writing/Writing Process. Students use elements of the writing process (planning, drafting, revising, editing, and publishing) to compose text. Students are expected to:

(A) plan a first draft by selecting the correct genre for conveying the intended meaning to multiple audiences, determining appropriate topics through a range of strategies (e.g., discussion, background reading, personal interests, interviews), and developing a thesis or controlling idea;

(B) structure ideas in a sustained and persuasive way (e.g., using outlines, note taking, graphic organizers, lists) and develop drafts in timed and open-ended situations that include transitions and the rhetorical devices used to convey meaning;

(C) revise drafts to improve style, word choice, figurative language, sentence variety, and subtlety of meaning after rethinking how well questions of purpose, audience, and genre have been addressed;

(D) edit drafts for grammar, mechanics, and spelling; and

(E) revise final draft in response to feedback from peers and teacher and publish written work for appropriate audiences.

(14) Writing/Literary Texts. Students write literary texts to express their ideas and feelings about real or imagined people, events, and ideas. Students are responsible for at least two forms of literary writing. Students are expected to:

(A) write an engaging story with a well-developed conflict and resolution, interesting and believable characters, and a range of literary strategies (e.g., dialogue, suspense) and devices to enhance the plot;

(B) write a poem using a variety of poetic techniques (e.g., structural elements, figurative language) and a variety of poetic forms (e.g., sonnets, ballads); and

(C) write a script with an explicit or implicit theme and details that contribute to a definite mood or tone.

(15) Writing/Expository and Procedural Texts. Students write expository and procedural or work-related texts to communicate ideas and information to specific audiences for specific purposes. Students are expected to:

(A) write an analytical essay of sufficient length that includes:

(i) effective introductory and concluding paragraphs and a variety of sentence structures;

(ii) rhetorical devices and transitions between paragraphs;

(iii) a controlling idea or thesis;

(iv) an organizing structure appropriate to purpose, audience, and context; and

(v) relevant information and valid inferences;

(B) write procedural or work-related documents (e.g., instructions, e-mails, correspondence, memos, project plans) that include:

(i) organized and accurately conveyed information;

(ii) reader-friendly formatting techniques;

(C) write an interpretative response to an expository or a literary text (e.g., essay or review) that:

(i) extends beyond a summary and literal analysis;

(ii) addresses the writing skills for an analytical essay and provides evidence from the text using embedded quotations; and

(iii) analyzes the aesthetic effects of an author's use of stylistic or rhetorical devices; and

(D) produce a multimedia presentation (e.g., documentary, class newspaper, docudrama, infomercial, visual or textual parodies, theatrical production) with graphics, images, and sound that conveys a distinctive point of view and appeals to a specific audience.

(16) Writing/Persuasive Texts. Students write persuasive texts to influence the attitudes or actions of a specific audience on specific issues. Students are expected to write an argumentative essay to the appropriate audience that includes:

(A) a clear thesis or position based on logical reasons supported by precise and relevant evidence;

(B) consideration of the whole range of information and views on the topic and accurate and honest representation of these views;

(C) counter-arguments based on evidence to anticipate and address objections;

(D) an organizing structure appropriate to the purpose, audience, and context; and

(E) an analysis of the relative value of specific data, facts, and ideas.

(17) Oral and Written Conventions/Conventions. Students understand the function of and use the conventions of academic language when speaking and writing. Students will continue to apply earlier standards with greater complexity. Students are expected to:

(A) use and understand the function of the following parts of speech in the context of reading, writing, and speaking:

(i) more complex active and passive tenses and verbals (gerunds, infinitives, participles);

(ii) restrictive and nonrestrictive relative clauses; and

(iii) reciprocal pronouns (e.g., each other, one another);

(B) identify and use the subjunctive mood to express doubts, wishes, and possibilities; and

(C) use a variety of correctly structured sentences (e.g., compound, complex, compound-complex).

(18) Oral and Written Conventions/Handwriting, Capitalization, and Punctuation. Students write legibly and use appropriate capitalization and punctuation conventions in their compositions. Students are expected to:

(A) use conventions of capitalization; and

(B) use correct punctuation marks including:

(i) quotation marks to indicate sarcasm or irony;

(ii) comma placement in nonrestrictive phrases, clauses, and contrasting expressions; and

(iii) dashes to emphasize parenthetical information.

(19) Oral and Written Conventions/Spelling. Students spell correctly. Students are expected to spell correctly, including using various resources to determine and check correct spellings.

(20) Research/Research Plan. Students ask open-ended research questions and develop a plan for answering them. Students are expected to:

(A) brainstorm, consult with others, decide upon a topic, and formulate a major research question to address the major research topic; and

(B) formulate a plan for engaging in research on a complex, multi-faceted topic.

(21) Research/Gathering Sources. Students determine, locate, and explore the full range of relevant sources addressing a research question and systematically record the information they gather. Students are expected to:

(A) follow the research plan to compile data from authoritative sources in a manner that identifies the major issues and debates within the field of inquiry;

(B) organize information gathered from multiple sources to create a variety of graphics and forms (e.g., notes, learning logs); and

(C) paraphrase, summarize, quote, and accurately cite all researched information according to a standard format (e.g., author, title, page number).

(22) Research/Synthesizing Information. Students clarify research questions and evaluate and synthesize collected information. Students are expected to:

(A) modify the major research question as necessary to refocus the research plan;

(B) evaluate the relevance of information to the topic and determine the reliability, validity, and accuracy of sources (including Internet sources) by examining their authority and objectivity; and

(C) critique the research process at each step to implement changes as the need occurs and is identified.

(23) Research/Organizing and Presenting Ideas. Students organize and present their ideas and information according to the purpose of the research and their audience. Students are expected to synthesize the research into a written or an oral presentation that:

(A) marshals evidence in support of a clear thesis statement and related claims;

(B) provides an analysis for the audience that reflects a logical progression of ideas and a clearly stated point of view;

(C) uses graphics and illustrations to help explain concepts where appropriate;

(D) uses a variety of evaluative tools (e.g., self-made rubrics, peer reviews, teacher and expert evaluations) to examine the quality of the research; and

(E) uses a style manual (e.g., *Modern Language Association, Chicago Manual of Style*) to document sources and format written materials.

(24) Listening and Speaking/Listening. Students will use comprehension skills to listen attentively to others in formal and informal settings. Students will continue to apply earlier standards with greater complexity. Students are expected to:

(A) listen responsively to a speaker by taking notes that summarize, synthesize, or highlight the speaker's ideas for critical reflection and by asking questions related to the content for clarification and elaboration;

(B) follow and give complex oral instructions to perform specific tasks, answer questions, solve problems, and complete processes; and

(C) evaluate the effectiveness of a speaker's main and supporting ideas.

(25) Listening and Speaking/Speaking. Students speak clearly and to the point, using the conventions of language. Students will continue to apply earlier standards with greater complexity. Students are expected to give presentations using informal, formal, and technical language effectively to meet the needs of audience, purpose, and occasion, employing eye contact, speaking rate (e.g., pauses for effect), volume, enunciation, purposeful gestures, and conventions of language to communicate ideas effectively.

(26) Listening and Speaking/Teamwork. Students work productively with others in teams. Students will continue to apply earlier standards with greater complexity. Students are expected to participate productively in teams, building on the ideas of others, contributing relevant information, developing a plan for consensus-building, and setting ground rules for decision-making.

(27) Second language acquisition/learning strategies. The ESOL I student uses language learning strategies to develop an awareness of his/her own learning processes in language arts and all content areas. The following expectations apply to the second language learner at his/her level of proficiency in English. Students are expected to:

(A) use prior knowledge and experiences to understand meanings in English;

(B) monitor oral and written language production and employ self-corrective techniques or other resources;

(C) use strategic learning techniques such as concept mapping, drawing, memorizing, comparing, contrasting, and reviewing to acquire basic and grade-level vocabulary;

(D) speak using learning strategies such as requesting assistance, employing non-verbal cues, and using synonyms and circumlocution (conveying ideas by defining or describing when exact English words are not known);

(E) internalize new basic and academic language by using and reusing it in meaningful ways in speaking and writing activities that build concept and language attainment;

(F) use accessible language and learn new and essential language in the process;

(G) demonstrate an increasing ability to distinguish between formal and informal English and an increasing knowledge of when to use each one commensurate with grade-level learning expectations;

(H) develop and expand repertoire of learning strategies such as reasoning inductively or deductively, looking for patterns in language, and analyzing sayings and expressions commensurate with grade-level learning expectations; and

(I) make connections across content areas and use and reuse language and concepts in different ways.

(28) Second language acquisition/listening. The ESOL I student listens to a variety of speakers, including teachers, peers, and electronic media, to gain an increasing level of comprehension and appreciation for newly acquired language in language arts and all content areas. The following expectations apply to the second language learner at his/her level of proficiency in English. Students are expected to:

(A) distinguish sounds and intonation patterns of English with increasing ease;

(B) recognize elements of the English sound system in newly acquired vocabulary such as long and short vowels, silent letters, and consonant clusters;

(C) learn new language structures, expressions, and basic and academic vocabulary heard during classroom instruction and interactions;

(D) monitor understanding of spoken language during classroom instruction and interactions and seek clarification as needed;

(E) use visual, contextual, and linguistic support to enhance and confirm understanding of increasingly complex and elaborated spoken language;

(F) listen to and derive meaning from a variety of media such as audio tape, video, DVD, and CD ROM to build and reinforce concept and language attainment;

(G) understand the general meaning, main points, and important details of spoken language ranging from situations in which topics, language, and contexts are familiar to unfamiliar;

(H) understand implicit ideas and information in increasingly complex spoken language commensurate with grade-level learning expectations;

(I) demonstrate listening comprehension of increasingly complex spoken English by following directions, retelling or summarizing spoken messages, responding to questions and requests, collaborating with peers, and taking notes commensurate with content and grade-level needs;

(J) understand basic structures, expressions, and vocabulary such as school environment, greetings, questions, and directions;

(K) analyze and evaluate spoken discourse for appropriateness of purpose with a variety of audiences such as formal, consultative, casual, and intimate language registers; and

(L) infer meaning by making associations of utterances with actions, visuals, and the context of the situation.

(29) Second language acquisition/speaking. The ESOL I student speaks in a variety of modes for a variety of purposes with an awareness of different language registers (formal/informal) using developmental vocabulary with increasing fluency and accuracy in language arts and all content areas. The following expectations apply to the second language learner at his/her level of proficiency in English. Students are expected to:

(A) practice producing sounds of newly acquired vocabulary such as long and short vowels, silent letters, and consonant clusters to pronounce English words in a manner that is increasingly comprehensible;

(B) expand and internalize initial English vocabulary by learning and using high-frequency English words necessary for identifying and describing people, places, objects, events, and basic concepts such as numbers, days of the week, food, occupations, and time by retelling simple stories and basic information represented or supported by pictures, and by learning and using routine language needed for classroom communication;

(C) speak using a variety of grammatical structures, sentence lengths, sentence types, and connecting words with increasing accuracy and ease as more English is acquired;

(D) speak using grade-level content area vocabulary in context to internalize new English words and build academic language proficiency;

(E) share information in cooperative learning interactions;

(F) ask and give information ranging from using a very limited bank of high-frequency, high-need, concrete vocabulary, including key words and expressions needed for basic communication in academic and social contexts such as directions and address as well as name, age, and nationality, to using abstract and content-based vocabulary during extended speaking assignments;

(G) express opinions, ideas, and feelings ranging from communicating single words and short phrases to participating in extended discussions on a variety of social and grade-appropriate academic topics;

(H) narrate, describe, and explain with increasing specificity and detail as more English is acquired;

(I) adapt spoken language appropriately for formal and informal purposes;

(J) respond orally to information presented in a wide variety of print, electronic, audio, and visual media to build and reinforce concept and language attainment;

(K) share prior knowledge with peers and others to facilitate communication and to foster respect for others; and

(L) describe the immediate surroundings such as classroom, school, and home.

(30) Second language acquisition/reading. The ESOL I student reads a variety of texts for a variety of purposes with an increasing level of comprehension in language arts and all content areas. The following expectations apply to the second language learner at his/her level of proficiency in English. Students are expected to:

(A) learn relationships between sounds and letters of the English language and decode (sound out) words using a combination of skills such as recognizing sound-letter relationships and identifying cognates, affixes, roots, and base words;

(B) recognize directionality of English reading such as left to right and top to bottom;

(C) develop basic sight vocabulary, derive meaning of environmental print, and comprehend English vocabulary and language structures used routinely in written classroom materials;

(D) use prereading supports such as graphic organizers, illustrations, and pre-taught topic-related vocabulary and other pre-reading activities to enhance comprehension of written text;

(E) read linguistically accommodated content area material with a decreasing need for linguistic accommodations as more English is learned;

(F) use visual and contextual support and support from peers and teachers to read grade-appropriate content area text, enhance and confirm understanding, and develop vocabulary, grasp of language structures, and background knowledge needed to comprehend increasingly challenging language;

(G) demonstrate comprehension of increasingly complex English by participating in shared reading, retelling or summarizing material, responding to questions, and taking notes commensurate with content area and grade level needs;

(H) read silently with increasing ease for longer periods;

(I) demonstrate English comprehension and expand reading skills by employing basic reading skills such as demonstrating understanding of supporting ideas and details in text and graphic sources, summarizing text, and distinguishing main ideas from details commensurate with content area needs;

(J) demonstrate English comprehension and expand reading skills by employing inferential skills such as predicting, making connections between ideas, drawing inferences and conclusions from text and graphic sources, and finding supporting text evidence commensurate with content area needs;

(K) demonstrate English comprehension and expand reading skills by employing analytical skills such as evaluating written information and performing critical analyses commensurate with content area and grade-level needs;

(L) read authentic literature and use kinesthetic visual support to develop vocabulary, structures, and build background knowledge needed to comprehend increasingly-challenging language;

(M) use verbal cueing strategies such as pauses and exaggerated intonation for key words and non-verbal cueing strategies such as facial expressions and gestures to enhance the reading experience; and

(N) retell, role-play, and/or visually illustrate the order of events.

(31) Second language acquisition/writing. The ESOL I student writes in a variety of forms with increasing accuracy to effectively address a specific purpose and audience in language arts and all content areas. The following expectations apply to the second language learner at his/her level of proficiency in English. Students are expected to:

(A) learn relationships between sounds and letters of the English language to represent sounds when writing in English;

(B) write using newly acquired basic vocabulary and content-based grade-level vocabulary;

(C) spell familiar English words with increasing accuracy and employ English spelling patterns and rules with increasing accuracy as more English is acquired;

(D) edit writing for standard grammar and usage, including subject-verb agreement, pronoun agreement, and appropriate verb tenses commensurate with grade-level expectations as more English is acquired;

(E) employ increasingly complex grammatical structures in content area writing commensurate with grade-level expectations such as:

(i) using correct verbs, tenses, auxiliaries, and pronouns/antecedents;

(ii) using nominative, objective, and possessive case (apostrophe *s*) correctly;

(iii) demonstrating knowledge of parts of speech; and

(iv) using negatives and contractions correctly;

(F) write using a variety of grade-appropriate sentence lengths, patterns, and connecting words to combine phrases, clauses, and sentences in increasingly accurate ways as more English is acquired;

(G) narrate, describe, and explain with increasing specificity and detail to fulfill content area writing needs as more English is acquired;

(H) use basic capitalization and punctuation correctly such as capitalizing names and first letters in sentences and using periods, question marks, and exclamation points;

(I) use graphic organizers as pre-writing activity to demonstrate prior knowledge, to add new information, and to prepare to write;

(J) write with more proficient use of orthographic patterns such as digraphs and consonant blends with the initial *s-* and rules such as "qu" together, consonant doubling, dropping final "e," and changing "y" to "i"; and

(K) develop drafts by categorizing ideas, organizing them into sentences and paragraphs, and blending paragraphs within larger units of text.

§128.32. *English II for Speakers of Other Languages (One Credit), Beginning with School Year 2009-2010.*

(a) Introduction.

(1) The essential knowledge and skills as well as the student expectations for English II for Speakers of Other Languages (ESOL II) are described in §74.4 of this title (relating to English Language Proficiency Standards) as well as subsection (b) of this section and are identical to the knowledge and skills and student expectations in Chapter 110 of this title (relating to Texas Essential Knowledge and Skills for English Language Arts and Reading) with additional expectations for English language learners (ELLs).

(2) ESOL II may be substituted for English II as provided by Chapter 74, Subchapter B, of this title (relating to Graduation Requirements). All expectations apply to ESOL II students; however, it is imperative to recognize critical processes and features of second language acquisition and to provide appropriate instruction to enable students to meet these standards.

(3) ELLs are expected to meet standards in a second language that many monolingual English speakers find difficult to meet in their native language. In addition, ELLs are acquiring English at the same time they are learning content in English. ELLs' abilities to meet these standards will be influenced by their proficiency in English. While ELLs can analyze, synthesize, and evaluate, their level of English proficiency may impede their ability to demonstrate this knowledge during the initial stages of English language acquisition. For this reason, comprehension of text requires additional scaffolds that include adapted text (e.g., appropriate for student proficiency level; translations), pictures, realia, glossaries, bilingual dictionaries, thesaurus, and other modes of comprehensible input. ELL students can and should be encouraged to use their knowledge of their first language (e.g., cognates) to enhance their vocabulary development, and vocabulary needs to be in the context of connected discourse so that it is meaningful. Strategic use of the student's first language is important to ensure linguistic, affective, cognitive, and academic development in English.

(4) Research consistently shows that a strong foundation in the native language of an ELL facilitates learning in English (Collier & Thomas, 1997; Cummins, 2001). Students can develop cognition, learn, and achieve best when they can understand the language of instruction (August, Calderon, & Carlo, 2003). Students can be expected to transfer those skills to English and progress rapidly in learning in English.

(5) For newcomers in secondary schooling, the challenge then is not only learning English, but learning in English. ELLs are challenged in working with linguistic, cognitive, and academic development in all of their coursework and in a new language. Some newcomers exhibit additional first language and/or academic needs due to their previous educational experiences that may include interrupted and/or limited schooling. Strategic use of the student's first language is important to ensure linguistic, affective, cognitive, and academic development in English, especially for students who are newcomers and at beginning levels of English language proficiency. Their academic success depends on their ability to use academic language.

(6) Second language acquisition is a complex process that even under optimal conditions takes a long time (Collier, 1997). It is important to understand that limited knowledge of English structure and vocabulary is neither related to the students' intellectual capabilities nor their ability to use higher-order thinking skills. The development of receptive (listening/reading) and expressive (speaking/writing) skills in second language learners may be at different stages. In some instances, second language learners undergo silent periods of varying durations when they first begin to learn a new language. Students often understand more than they can produce and may repeat words in sentences that they do not entirely understand. Second language learners

may also draw upon the resources of their language and culture as they acquire a new language and culture.

(7) In order for ELLs to be successful, they must acquire both social and academic language proficiency in English. Social language proficiency in English consists of the English needed for daily social interactions. Academic language proficiency consists of the English needed to think critically, understand and learn new concepts, process complex academic material, and interact and communicate in English academic settings.

(8) Academic language is a major factor in academic success. Academic language and grammatical structures are used across all subject areas and is specific to the content area, such as language arts, mathematics, science, and social studies. Current research stresses the importance of effectively integrating second language acquisition with quality content area education in order to ensure that ELLs acquire social and academic language proficiency in English, learn the knowledge and skills, and reach their full academic potential. This must also be provided in a manner that is linguistically accommodated (contextualized, communicated, sequenced, and scaffolded) commensurate with the student's levels of English language proficiency to ensure that the student learns the knowledge and skills in the required curriculum.

(9) ELLs require focused, targeted, and systematic second language acquisition to provide them with the foundation of English language vocabulary, grammar, syntax, and English mechanics necessary to support content-based instruction and accelerated learning of English. Literacy development across the content areas is essential in building academic skills in a second language and can accelerate the learning of both English language skills and higher-order thinking skills.

(10) ELL students are at different stages of language acquisition. Proficiency levels are not grade specific: Beginning, Intermediate, Advanced, and Advanced High. The ELL student may exhibit different proficiency levels within the four language components: listening, speaking, reading, and writing. A student may exhibit oral skills at the advanced level, reading skills at the intermediate level, and writing skills at the beginning level. Understanding the level of English language proficiency of the student is critical in order for the student to have access to the curriculum. The proficiency level of the student determines the accommodations in language that must be made (e.g., adapted text appropriate for student proficiency level; translations) as well as, determines additional scaffolds (e.g., pictures, realia, glossaries, bilingual dictionaries, thesaurus) in order to learn the academic content. Any combination of the language components is possible and is affected by opportunities for interaction in and outside of school. For further guidance in second language acquisition, refer to the English language proficiency standards (ELPS) described in §74.4 of this title.

(A) Beginning: Students associate utterances with meaning as they make inferences based on actions, visuals, text, tone of voice, and inflections. Receptive language with some comprehension is acquired earlier than oral production. Beginning students produce spoken English with increasing accuracy and fluency to convey appropriate meaning. They read English using graphophonic cues, syntax, visuals, the context of the text, and their prior knowledge of language and structure of text.

(B) Intermediate: Students use the listening process to improve comprehension and oral skills in English. Through listening and speaking in meaningful interactions, they clarify, distinguish, and evaluate ideas and responses in a variety of situations. Intermediate students participate successfully in academic, social, and work contexts in English using the process of speaking to create, clarify, critique, and

evaluate ideas and responses. Intermediate students read English using and applying developmental vocabulary to increase comprehension and produce written text to address a variety of audiences and purposes.

(C) Advanced: Students, through developmental listening skills, actively expand their vocabulary to evaluate and analyze spoken English for a variety of situations and purposes. These students participate in a variety of situations using spoken English to create, clarify, critique, and evaluate ideas and responses. Advanced students continually develop reading skills for increasing reading proficiency in content area texts for a variety of purposes and generate written text for different audiences in a variety of modes to convey appropriate meaning according to their level of proficiency.

(D) Advanced High: Students' reading, speaking, and writing abilities are comparable to those of their native English speaking peers. They understand grade appropriate English as it is used in academic and social settings. These students use language skills on their grade level in the academic subject areas with minimal interruptions and they use abstract and content based vocabulary effectively. Advanced High students continually use the English language to build additional foundational reading skills such as fluency and prosody as well as higher-order comprehension skills. These students have a strong command of English language structures necessary to address writing at appropriate grade levels.

(11) Students enrolled in ESOL II continue to increase and refine their communication skills. High school students are expected to plan, draft, and complete written compositions on a regular basis. Students edit their papers for clarity, engaging language, and the correct use of the conventions and mechanics of written English and, with increasing accuracy, produce final, error-free drafts. In English II, students practice all forms of writing. An emphasis is placed on organizing logical arguments with clearly expressed related definitions, thesis, and evidence. Students write to persuade and to report and describe. English II students read extensively in multiple genres from world literature such as reading selected stories, dramas, novels, and poetry originally written in English or translated to English from oriental, classical Greek, European, African, South American, and North American cultures. Students learn literary forms and terms associated with selections being read. Students interpret the possible influences of the historical context on a literary work.

(12) The knowledge and skills and/or student expectations that are applicable specifically to ELLs are indicated in §74.4 of this title as well as in subsection (b) of this section.

(13) To meet Public Education Goal 1 of the Texas Education Code, §4.002, which states, "The students in the public education system will demonstrate exemplary performance in the reading and writing of the English language," students will accomplish the essential knowledge and skills as well as the student expectations in English II as described in subsection (b) of this section.

(14) To meet Texas Education Code, §28.002(h), which states, "... each school district shall foster the continuation of the tradition of teaching United States and Texas history and the free enterprise system in regular subject matter and in reading courses and in the adoption of textbooks," students will be provided oral and written narratives as well as other informational texts that can help them to become thoughtful, active citizens who appreciate the basic democratic values of our state and nation.

(b) Knowledge and skills.

(1) Reading/Vocabulary Development. Students understand new vocabulary and use it when reading and writing. Students are expected to:

(A) determine the meaning of grade-level technical academic English words in multiple content areas (e.g., science, mathematics, social studies, the arts) derived from Latin, Greek, or other linguistic roots and affixes;

(B) analyze textual context (within a sentence and in larger sections of text) to distinguish between the denotative and connotative meanings of words;

(C) infer word meaning through the identification and analysis of analogies and other word relationships;

(D) show the relationship between the origins and meaning of foreign words or phrases used frequently in written English and historical events or developments (e.g., *glasnost*, *avant-garde*, *coup d'état*); and

(E) use a dictionary, a glossary, or a thesaurus (printed or electronic) to determine or confirm the meanings of words and phrases, including their connotations and denotations, and their etymology.

(2) Reading/Comprehension of Literary Text/Theme and Genre. Students analyze, make inferences and draw conclusions about theme and genre in different cultural, historical, and contemporary contexts and provide evidence from the text to support their understanding. Students are expected to:

(A) compare and contrast differences in similar themes expressed in different time periods;

(B) analyze archetypes (e.g., journey of a hero, tragic flaw) in mythic, traditional and classical literature; and

(C) relate the figurative language of a literary work to its historical and cultural setting.

(3) Reading/Comprehension of Literary Text/Poetry. Students understand, make inferences and draw conclusions about the structure and elements of poetry and provide evidence from text to support their understanding. Students are expected to analyze the structure or prosody (e.g., meter, rhyme scheme) and graphic elements (e.g., line length, punctuation, word position) in poetry.

(4) Reading/Comprehension of Literary Text/Drama. Students understand, make inferences and draw conclusions about the structure and elements of drama and provide evidence from text to support their understanding. Students are expected to analyze how archetypes and motifs in drama affect the plot of plays.

(5) Reading/Comprehension of Literary Text/Fiction. Students understand, make inferences and draw conclusions about the structure and elements of fiction and provide evidence from text to support their understanding. Students are expected to:

(A) analyze isolated scenes and their contribution to the success of the plot as a whole in a variety of works of fiction;

(B) analyze differences in the characters' moral dilemmas in works of fiction across different countries or cultures;

(C) evaluate the connection between forms of narration (e.g., unreliable, omniscient) and tone in works of fiction; and

(D) demonstrate familiarity with works by authors from non-English-speaking literary traditions with emphasis on 20th century world literature.

(6) Reading/Comprehension of Literary Text/Literary Nonfiction. Students understand, make inferences and draw conclusions about the varied structural patterns and features of literary nonfiction and provide evidence from text to support their understand-

ing. Students are expected to evaluate the role of syntax and diction and the effect of voice, tone, and imagery on a speech, literary essay, or other forms of literary nonfiction.

(7) Reading/Comprehension of Literary Text/Sensory Language. Students understand, make inferences and draw conclusions about how an author's sensory language creates imagery in literary text and provide evidence from text to support their understanding. Students are expected to explain the function of symbolism, allegory, and allusions in literary works.

(8) Reading/Comprehension of Informational Text/Culture and History. Students analyze, make inferences and draw conclusions about the author's purpose in cultural, historical, and contemporary contexts and provide evidence from the text to support their understanding. Students are expected to analyze the controlling idea and specific purpose of a passage and the textual elements that support and elaborate it, including both the most important details and the less important details.

(9) Reading/Comprehension of Informational Text/Expository Text. Students analyze, make inferences and draw conclusions about expository text and provide evidence from text to support their understanding. Students are expected to:

(A) summarize text and distinguish between a summary and a critique and identify non-essential information in a summary and unsubstantiated opinions in a critique;

(B) distinguish among different kinds of evidence (e.g., logical, empirical, anecdotal) used to support conclusions and arguments in texts;

(C) make and defend subtle inferences and complex conclusions about the ideas in text and their organizational patterns; and

(D) synthesize and make logical connections between ideas and details in several texts selected to reflect a range of viewpoints on the same topic and support those findings with textual evidence.

(10) Reading/Comprehension of Informational Text/Persuasive Text. Students analyze, make inferences and draw conclusions about persuasive text and provide evidence from text to support their analysis. Students are expected to:

(A) explain shifts in perspective in arguments about the same topic and evaluate the accuracy of the evidence used to support the different viewpoints within those arguments; and

(B) analyze contemporary political debates for such rhetorical and logical fallacies as appeals to commonly held opinions, false dilemmas, appeals to pity, and personal attacks.

(11) Reading/Comprehension of Informational Text/Procedural Texts. Students understand how to glean and use information in procedural texts and documents. Students are expected to:

(A) evaluate text for the clarity of its graphics and its visual appeal; and

(B) synthesize information from multiple graphical sources to draw conclusions about the ideas presented (e.g., maps, charts, schematics).

(12) Reading/Media Literacy. Students use comprehension skills to analyze how words, images, graphics, and sounds work together in various forms to impact meaning. Students will continue to apply earlier standards with greater depth in increasingly more complex texts. Students are expected to:

(A) evaluate how messages presented in media reflect social and cultural views in ways different from traditional texts;

(B) analyze how messages in media are conveyed through visual and sound techniques (e.g., editing, reaction shots, sequencing, background music);

(C) examine how individual perception or bias in coverage of the same event influences the audience; and

(D) evaluate changes in formality and tone within the same medium for specific audiences and purposes.

(13) Writing/Writing Process. Students use elements of the writing process (planning, drafting, revising, editing, and publishing) to compose text. Students are expected to:

(A) plan a first draft by selecting the correct genre for conveying the intended meaning to multiple audiences, determining appropriate topics through a range of strategies (e.g., discussion, background reading, personal interests, interviews), and developing a thesis or controlling idea;

(B) structure ideas in a sustained and persuasive way (e.g., using outlines, note taking, graphic organizers, lists) and develop drafts in timed and open-ended situations that include transitions and rhetorical devices used to convey meaning;

(C) revise drafts to improve style, word choice, figurative language, sentence variety, and subtlety of meaning after rethinking how well questions of purpose, audience, and genre have been addressed;

(D) edit drafts for grammar, mechanics, and spelling;

(E) revise final draft in response to feedback from peers and teacher and publish written work for appropriate audiences.

(14) Writing/Literary Texts. Students write literary texts to express their ideas and feelings about real or imagined people, events, and ideas. Students are responsible for at least two forms of literary writing. Students are expected to:

(A) write an engaging story with a well-developed conflict and resolution, interesting and believable characters, a range of literary strategies (e.g., dialogue, suspense) and devices to enhance the plot, and sensory details that define the mood or tone;

(B) write a poem using a variety of poetic techniques (e.g., structural elements, figurative language) and a variety of poetic forms (e.g., sonnets, ballads); and

(C) write a script with an explicit or implicit theme and details that contribute to a definite mood or tone.

(15) Writing/Expository and Procedural Texts. Students write expository and procedural or work-related texts to communicate ideas and information to specific audiences for specific purposes. Students are expected to:

(A) write an analytical essay of sufficient length that includes:

(i) effective introductory and concluding paragraphs and a variety of sentence structures;

(ii) rhetorical devices and transitions between paragraphs;

(iii) a thesis or controlling idea;

(iv) an organizing structure appropriate to purpose, audience, and context;



(v) relevant evidence and well-chosen details; and  
(vi) distinctions about the relative value of specific data, facts, and ideas that support the thesis statement;

(B) write procedural or work-related documents (e.g., instructions, e-mails, correspondence, memos, project plans) that include:

- (i) organized and accurately conveyed information;
- (ii) reader-friendly formatting techniques; and
- (iii) anticipation of readers' questions;

(C) write an interpretative response to an expository or a literary text (e.g., essay or review) that:

- (i) extends beyond a summary and literal analysis;
- (ii) addresses the writing skills for an analytical essay and provides evidence from the text using embedded quotations; and
- (iii) analyzes the aesthetic effects of an author's use of stylistic and rhetorical devices; and

(D) produce a multimedia presentation (e.g., documentary, class newspaper, docudrama, infomercial, visual or textual parodies, theatrical production) with graphics, images, and sound that conveys a distinctive point of view and appeals to a specific audience.

(16) Writing/Persuasive Texts. Students write persuasive texts to influence the attitudes or actions of a specific audience on specific issues. Students are expected to write an argumentative essay to the appropriate audience that includes:

- (A) a clear thesis or position based on logical reasons supported by precise and relevant evidence;
- (B) consideration of the whole range of information and views on the topic and accurate and honest representation of these views (i.e., in the author's own words and not out of context);
- (C) counter-arguments based on evidence to anticipate and address objections;
- (D) an organizing structure appropriate to the purpose, audience, and context;
- (E) an analysis of the relative value of specific data, facts, and ideas; and
- (F) a range of appropriate appeals (e.g., descriptions, anecdotes, case studies, analogies, illustrations).

(17) Oral and Written Conventions/Conventions. Students understand the function of and use the conventions of academic language when speaking and writing. Students will continue to apply earlier standards with greater complexity. Students are expected to:

- (A) use and understand the function of the following parts of speech in the context of reading, writing, and speaking:
  - (i) more complex active and passive tenses and verbals (gerunds, infinitives, participles);
  - (ii) restrictive and nonrestrictive relative clauses; and
  - (iii) reciprocal pronouns (e.g., each other, one another);
- (B) identify and use the subjunctive mood to express doubts, wishes, and possibilities; and

(C) use a variety of correctly structured sentences (e.g., compound, complex, compound-complex).

(18) Oral and Written Conventions/Handwriting, Capitalization, and Punctuation. Students write legibly and use appropriate capitalization and punctuation conventions in their compositions. Students are expected to:

- (A) use conventions of capitalization; and
- (B) use correct punctuation marks including:
  - (i) comma placement in nonrestrictive phrases, clauses, and contrasting expressions;
  - (ii) quotation marks to indicate sarcasm or irony; and
  - (iii) dashes to emphasize parenthetical information.

(19) Oral and Written Conventions/Spelling. Students spell correctly. Students are expected to spell correctly, including using various resources to determine and check correct spellings.

(20) Research/Research Plan. Students ask open-ended research questions and develop a plan for answering them. Students are expected to:

- (A) brainstorm, consult with others, decide upon a topic, and formulate a major research question to address the major research topic; and
- (B) formulate a plan for engaging in research on a complex, multi-faceted topic.

(21) Research/Gathering Sources. Students determine, locate, and explore the full range of relevant sources addressing a research question and systematically record the information they gather. Students are expected to:

- (A) follow the research plan to compile data from authoritative sources in a manner that identifies the major issues and debates within the field of inquiry;
- (B) organize information gathered from multiple sources to create a variety of graphics and forms (e.g., notes, learning logs); and
- (C) paraphrase, summarize, quote, and accurately cite all researched information according to a standard format (e.g., author, title, page number).

(22) Research/Synthesizing Information. Students clarify research questions and evaluate and synthesize collected information. Students are expected to:

- (A) modify the major research question as necessary to refocus the research plan;
- (B) evaluate the relevance of information to the topic and determine the reliability, validity, and accuracy of sources (including Internet sources) by examining their authority and objectivity; and
- (C) critique the research process at each step to implement changes as the need occurs and is identified.

(23) Research/Organizing and Presenting Ideas. Students organize and present their ideas and information according to the purpose of the research and their audience. Students are expected to synthesize the research into a written or an oral presentation that:

- (A) marshals evidence in support of a clear thesis statement and related claims;

(B) provides an analysis for the audience that reflects a logical progression of ideas and a clearly stated point of view;

(C) uses graphics and illustrations to help explain concepts where appropriate;

(D) uses a variety of evaluative tools (e.g., self-made rubrics, peer reviews, teacher and expert evaluations) to examine the quality of the research; and

(E) uses a style manual (e.g., *Modern Language Association, Chicago Manual of Style*) to document sources and format written materials.

(24) Listening and Speaking/Listening. Students will use comprehension skills to listen attentively to others in formal and informal settings. Students will continue to apply earlier standards with greater complexity. Students are expected to:

(A) listen responsively to a speaker by taking notes that summarize, synthesize, or highlight the speaker's ideas for critical reflection and by asking questions related to the content for clarification and elaboration;

(B) follow and give complex oral instructions to perform specific tasks, answer questions, solve problems, and complete processes; and

(C) evaluate how the style and structure of a speech support or undermine its purpose or meaning.

(25) Listening and Speaking/Speaking. Students speak clearly and to the point, using the conventions of language. Students will continue to apply earlier standards with greater complexity. Students are expected to advance a coherent argument that incorporates a clear thesis and a logical progression of valid evidence from reliable sources and that employs eye contact, speaking rate (e.g., pauses for effect), volume, enunciation, purposeful gestures, and conventions of language to communicate ideas effectively.

(26) Listening and Speaking/Teamwork. Students work productively with others in teams. Students will continue to apply earlier standards with greater complexity. Students are expected to participate productively in teams, building on the ideas of others, contributing relevant information, developing a plan for consensus-building, and setting ground rules for decision-making.

(27) Second language acquisition/learning strategies. The ESOL II student uses language learning strategies to develop an awareness of his/her own learning processes in language arts and all content areas. The following expectations apply to the second language learner at his/her level of proficiency in English. Students are expected to:

(A) use prior knowledge and experiences to understand meanings in English;

(B) monitor oral and written language production and employ self-corrective techniques or other resources;

(C) use strategic learning techniques such as concept mapping, drawing, memorizing, comparing, contrasting, and reviewing to acquire basic and grade-level vocabulary;

(D) speak using learning strategies such as requesting assistance, employing non-verbal cues, and using synonyms and circumlocution (conveying ideas by defining or describing when exact English words are not known);

(E) internalize new basic and academic language by using and reusing it in meaningful ways in speaking and writing activities that build concept and language attainment;

(F) use accessible language and learn new and essential language in the process;

(G) demonstrate an increasing ability to distinguish between formal and informal English and an increasing knowledge of when to use each one commensurate with grade-level learning expectations;

(H) develop and expand repertoire of learning strategies such as reasoning inductively or deductively, looking for patterns in language, and analyzing sayings and expressions commensurate with grade-level learning expectations; and

(I) make connections across content areas and use and reuse language and concepts in different ways.

(28) Second language acquisition/listening. The ESOL II student listens to a variety of speakers, including teachers, peers, and electronic media, to gain an increasing level of comprehension and appreciation for newly acquired language in language arts and all content areas. The following expectations apply to the second language learner at his/her level of proficiency in English. Students are expected to:

(A) distinguish sounds and intonation patterns of English with increasing ease;

(B) recognize elements of the English sound system in newly acquired vocabulary such as long and short vowels, silent letters, and consonant clusters;

(C) learn new language structures, expressions, and basic and academic vocabulary heard during classroom instruction and interactions;

(D) monitor understanding of spoken language during classroom instruction and interactions and seek clarification as needed;

(E) use visual, contextual, and linguistic support to enhance and confirm understanding of increasingly complex and elaborated spoken language;

(F) listen to and derive meaning from a variety of media such as audio tape, video, DVD, and CD ROM to build and reinforce concept and language attainment;

(G) understand the general meaning, main points, and important details of spoken language ranging from situations in which topics, language, and contexts are familiar to unfamiliar;

(H) understand implicit ideas and information in increasingly complex spoken language commensurate with grade-level learning expectations;

(I) demonstrate listening comprehension of increasingly complex spoken English by following directions, retelling or summarizing spoken messages, responding to questions and requests, collaborating with peers, and taking notes commensurate with content and grade-level needs;

(J) understand basic structures, expressions, and vocabulary such as school environment, greetings, questions, and directions;

(K) analyze and evaluate spoken discourse for appropriateness of purpose with a variety of audiences such as formal, consultative, casual, and intimate language registers; and

(L) infer meaning by making associations of utterances with actions, visuals, and the context of the situation.

(29) Second language acquisition/speaking. The ESOL II student speaks in a variety of modes for a variety of purposes with an awareness of different language registers (formal/informal) using developmental vocabulary with increasing fluency and accuracy in lan-

guage arts and all content areas. The following expectations apply to the second language learner at his/her level of proficiency in English. Students are expected to:

(A) practice producing sounds of newly acquired vocabulary such as long and short vowels, silent letters, and consonant clusters to pronounce English words in a manner that is increasingly comprehensible;

(B) expand and internalize initial English vocabulary by learning and using high-frequency English words necessary for identifying and describing people, places, objects, events, and basic concepts such as numbers, days of the week, food, occupations, and time by retelling simple stories and basic information represented or supported by pictures, and by learning and using routine language needed for classroom communication;

(C) speak using a variety of grammatical structures, sentence lengths, sentence types, and connecting words with increasing accuracy and ease as more English is acquired;

(D) speak using grade-level content area vocabulary in context to internalize new English words and build academic language proficiency;

(E) share information in cooperative learning interactions;

(F) ask and give information ranging from using a very limited bank of high-frequency, high-need, concrete vocabulary, including key words and expressions needed for basic communication in academic and social contexts such as directions and address as well as name, age, and nationality, to using abstract and content-based vocabulary during extended speaking assignments;

(G) express opinions, ideas, and feelings ranging from communicating single words and short phrases to participating in extended discussions on a variety of social and grade-appropriate academic topics;

(H) narrate, describe, and explain with increasing specificity and detail as more English is acquired;

(I) adapt spoken language appropriately for formal and informal purposes;

(J) respond orally to information presented in a wide variety of print, electronic, audio, and visual media to build and reinforce concept and language attainment;

(K) share prior knowledge with peers and others to facilitate communication and to foster respect for others; and

(L) describe the immediate surroundings such as classroom, school, and home.

(30) Second language acquisition/reading. The ESOL II student reads a variety of texts for a variety of purposes with an increasing level of comprehension in language arts and all content areas. The following expectations apply to the second language learner at his/her level of proficiency in English. Students are expected to:

(A) learn relationships between sounds and letters of the English language and decode (sound out) words using a combination of skills such as recognizing sound-letter relationships and identifying cognates, affixes, roots, and base words;

(B) recognize directionality of English reading such as left to right and top to bottom;

(C) develop basic sight vocabulary, derive meaning of environmental print, and comprehend English vocabulary and language structures used routinely in written classroom materials;

(D) use prereading supports such as graphic organizers, illustrations, and pre-taught topic-related vocabulary and other prereading activities to enhance comprehension of written text;

(E) read linguistically accommodated content area material with a decreasing need for linguistic accommodations as more English is learned;

(F) use visual and contextual support and support from peers and teachers to read grade-appropriate content area text, enhance and confirm understanding, and develop vocabulary, grasp of language structures, and background knowledge needed to comprehend increasingly challenging language;

(G) demonstrate comprehension of increasingly complex English by participating in shared reading, retelling or summarizing material, responding to questions, and taking notes commensurate with content area and grade level needs;

(H) read silently with increasing ease for longer periods;

(I) demonstrate English comprehension and expand reading skills by employing basic reading skills such as demonstrating understanding of supporting ideas and details in text and graphic sources, summarizing text, and distinguishing main ideas from details commensurate with content area needs;

(J) demonstrate English comprehension and expand reading skills by employing inferential skills such as predicting, making connections between ideas, drawing inferences and conclusions from text and graphic sources, and finding supporting text evidence commensurate with content area needs;

(K) demonstrate English comprehension and expand reading skills by employing analytical skills such as evaluating written information and performing critical analyses commensurate with content area and grade-level needs;

(L) read authentic literature and use kinesthetic visual support to develop vocabulary, structures, and build background knowledge needed to comprehend increasingly-challenging language;

(M) use verbal cueing strategies such as pauses and exaggerated intonation for key words and non-verbal cueing strategies such as facial expressions and gestures to enhance the reading experience; and

(N) retell, role-play, and/or visually illustrate the order of events.

(31) Second language acquisition/writing. The ESOL II student writes in a variety of forms with increasing accuracy to effectively address a specific purpose and audience in language arts and all content areas. The following expectations apply to the second language learner at his/her level of proficiency in English. Students are expected to:

(A) learn relationships between sounds and letters of the English language to represent sounds when writing in English;

(B) write using newly acquired basic vocabulary and content-based grade-level vocabulary;

(C) spell familiar English words with increasing accuracy and employ English spelling patterns and rules with increasing accuracy as more English is acquired;

(D) edit writing for standard grammar and usage, including subject-verb agreement, pronoun agreement, and appropriate verb tenses commensurate with grade-level expectations as more English is acquired;

(E) employ increasingly complex grammatical structures in content area writing commensurate with grade-level expectations such as:

(i) using correct verbs, tenses, auxiliaries, and pronouns/antecedents;

(ii) using nominative, objective, and possessive case (apostrophe *s*) correctly;

(iii) demonstrating knowledge of parts of speech; and

(iv) using negatives and contractions correctly;

(F) write using a variety of grade-appropriate sentence lengths, patterns, and connecting words to combine phrases, clauses, and sentences in increasingly accurate ways as more English is acquired;

(G) narrate, describe, and explain with increasing specificity and detail to fulfill content area writing needs as more English is acquired;

(H) use basic capitalization and punctuation correctly such as capitalizing names and first letters in sentences and using periods, question marks, and exclamation points;

(I) use graphic organizers as pre-writing activity to demonstrate prior knowledge, to add new information, and to prepare to write;

(J) write with more proficient use of orthographic patterns such as digraphs and consonant blends with the initial *s-* and rules such as "qu" together, consonant doubling, dropping final "e," and changing "y" to "i"; and

(K) develop drafts by categorizing ideas, organizing them into sentences and paragraphs, and blending paragraphs within larger units of text.

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 November 6, 2008.

TRD-200805845

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Effective date: November 26, 2008

Proposal publication date: August 15, 2008

For further information, please call: (512) 475-1497



## 19 TAC §§128.44 - 128.66

The repeals are adopted under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; §28.002, which authorizes the SBOE to by rule identify the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating text-

books and addressed on the assessment instruments; §28.025, which authorizes the SBOE to by rule determine curriculum requirements for the minimum, recommended, and advanced high school programs that are consistent with the required curriculum under §28.002; and §28.005 and §29.051, which establishes bilingual education and special language programs in the public schools to ensure students' reasonable proficiency in the English language and ability to achieve academic success.

The repeals implement the Texas Education Code, §§7.102(c)(4), 28.002, 28.005, 28.025, and 29.051.

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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Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

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## TITLE 25. HEALTH SERVICES

### PART 1. DEPARTMENT OF STATE HEALTH SERVICES

#### CHAPTER 31. NUTRITION SERVICES SUBCHAPTER C. SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS, AND CHILDREN (WIC)

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts an amendment to §31.30 and the repeal of §§31.32 - 31.36, concerning the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). The amendment is adopted with changes to the proposed text as published in the August 22, 2008, issue of the *Texas Register* (33 TexReg 6703). The repeals are adopted without changes and, therefore, the sections will not be republished.

#### BACKGROUND AND PURPOSE

Under federal enabling legislation, the WIC Program is funded entirely by a combination of federal grant funds and by rebates from manufacturers of infant formula and infant cereal that can only be expended to defray WIC food costs. The United States Department of Agriculture (USDA) awards federal grant funds to the department to administer the programs, provided the department does so in accordance with federal law and regulations and in accordance with the department's annual submission of a state plan approved by USDA. USDA deems the following types of changes to be substantive amendments to the state plan that require federal approval: rule or policy changes initiated by legislation, USDA, or the state agency; changes affecting client or vendor services and benefits; changes in the monitoring/oversight of vendors and local agencies; any other

operational changes aimed at improving or enhancing program delivery or accountability; and changes in related State procedures.

Revisions to these rules are adopted primarily to comply with federal regulations governing the WIC program in 7 Code of Federal Regulations (CFR), Part 246, and to improve administrative efficiency and effectiveness.

#### SECTION-BY-SECTION SUMMARY

The amendment to §31.30 conforms to federal regulations governing the WIC Program at 7 CFR, §246.7(h)(2) and 7 CFR, §246.12(u)(2)(i), concerning mandatory disqualification of WIC clients for fraud or abuse if no administrative hearing is requested. In addition, the department may authorize the Office of Inspector General, Health and Human Services Commission, to perform recovery actions on its behalf.

Repeal of §§31.32 - 31.36 eliminates redundancy and improves administrative efficiency, because it is not legally necessary to adopt provisions in rule that govern WIC vendors and local agencies, since the provisions can be included and enforced by reference in the contracts and agreements executed annually between the department and local agencies and vendors.

#### COMMENTS

The department, on behalf of the commission, did not receive any public comments regarding the proposed rules during the comment period.

However, department staff provided comments and made minor editorial changes in §31.30(d) and (h)(2) to enhance the clarity of the section.

#### 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.

#### 25 TAC §31.30

#### STATUTORY AUTHORITY

The amendment is adopted under 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.

#### §31.30. *Participant Fraud and Abuse.*

(a) Participants and parents, guardians, client-designated proxies, state agency-appointed proxies, or caretakers of participants identified and documented as having abused the WIC Program shall be sanctioned.

(b) If the state agency or the Office of Inspector General, Health and Human Services Commission, determines that a participant or parent, guardian, client-designated proxy, state agency-appointed proxy, or caretaker of a participant has received benefits unlawfully due to WIC Program abuse, including but not limited to dual participation, the matter may be referred for criminal prosecution.

(c) Program violations means any intentional act of an applicant, participant, parent, guardian or caretaker of an infant or child applicant or participant, client-designated proxy, or state agency-designated proxy that violates Federal or State statutes, regulations, rules,

policies or procedures governing the WIC Program. Violations include, but are not limited to, intentionally making a false or misleading statement; intentionally misrepresenting, concealing, or withholding facts to obtain benefits; exchanging food instruments or food for cash, credit, non-food items, or unauthorized foods, including foods in excess of that authorized; threatening to harm or physically harming local agency, vendor or state agency staff; and simultaneous participation in the Program in one or more than one WIC clinic or participation in the Commodity Supplemental Food Program during the same period of time.

(d) The state agency, or local agency as directed by the state agency, shall initiate sanctions which may include disqualification from the Program for up to one year.

(e) Upon a final determination by the Office of the Inspector General, Health and Human Services Commission, that a program violation has occurred, the following mandatory disqualifications shall apply.

(1) For an offense where a claim of \$100 or more is assessed, the participant shall be disqualified for one year.

(2) For an offense where a participant illegally received benefits at more than one WIC office and the state agency or the Office of the Inspector General, Health and Human Services Commission, assesses a claim for such dual participation, the participant shall be disqualified for one year.

(3) When the state agency or the Office of the Inspector General, Health and Human Services Commission, assesses a second or subsequent claim of any amount, the participant shall be disqualified for one year.

(f) If after finding that a program violation has occurred, the Office of Inspector General, Health and Human Services Commission, further determines that the program violation does not warrant a one year mandatory disqualification, the following sanctions shall apply.

(1) When a participant or a parent, guardian, client-designated proxy, state agency-appointed proxy, or caretaker of a participant exchanges food instruments or food for cash or credit, the participant shall be disqualified for a period of six months for a first offense and 12 months for a second or subsequent offense.

(2) When a participant or a parent, guardian, client-designated proxy, state agency-appointed proxy, or caretaker of a participant exchanges food instruments or food for firearms, explosives, ammunition, controlled substances, alcohol, or tobacco products, the participant shall be disqualified for a period of six months for a first offense and 12 months for a second or subsequent offense.

(3) When a participant or a parent, guardian, client-designated proxy, state agency-appointed proxy, or caretaker of a participant exchanges food instruments or food for non-food items not listed in paragraph (2) of this subsection, the participant shall receive a warning for the first offense and shall be disqualified for a period of 12 months for a second or subsequent offense.

(4) When a participant or a parent, guardian, client-designated proxy, state agency-appointed proxy, or caretaker of a participant exchanges food instruments or food for unauthorized food including foods in excess of that authorized, the participant shall receive a warning for the first offense to and shall be disqualified for a period of 12 months for a second or subsequent offense.

(5) When a participant or a parent, guardian, client-designated proxy, state agency-appointed proxy, or caretaker of a participant threatens to harm local agency, vendor, or state agency staff, the partic-

ipant shall be disqualified for a period of six months for a first offense and 12 months for a second or subsequent offense.

(6) When a participant or a parent, guardian, client-designated proxy, state agency-appointed proxy, or caretaker of a participant physically harms local agency, vendor, or state agency staff, the participant shall be disqualified for a period of 12 months for a first offense and 12 months for a second or subsequent offense.

(g) Exceptions to disqualification:

(1) The state agency may decide not to impose a disqualification if, for violations which resulted in a claim assessed by the state agency against the participant, parent, guardian, client designated proxy, state agency-appointed proxy, or caretaker of a participant, full restitution is made within 30 days of receipt of a letter demanding repayment or a repayment schedule is agreed on.

(2) The state agency may permit a disqualified participant to reapply for the program before the end of a disqualification period if, in the case of a violation where a claim was assessed by the state agency against the participant or parent, guardian, client-designated proxy, state-agency appointed proxy, or caretaker of a participant, full restitution is made or a repayment schedule is agreed upon.

(3) The state agency may issue a waiver to appoint a person as a special proxy to transact food instruments and receive nutrition education for an infant, child, or participant under age 18 when the infant, child, or participant under age 18 will incur a serious health risk from the suspension of benefits.

(h) The state agency may attempt to recover, in cash, the value of the benefits received by a participant or the parent, guardian, client-designated proxy, state agency-appointed proxy or caretaker of a participant as a result of participant abuse. The state agency may request and authorize the Office of the Inspector General, Health and Human Services Commission, to perform this recovery on its behalf.

(1) The state agency or the Office of the Inspector General, Health and Human Services Commission, may determine the amount of the benefits improperly received by a participant through an independent review of local agency records and such other procedures as the state agency considers necessary under the specific circumstances. The state agency may request and authorize the Office of the Inspector General, Health and Human Services Commission, to perform this recovery on its behalf.

(2) In cases involving criminal prosecutions for violations of law, repayment of cash value of benefits improperly received may become a part of any restitution agreement with the prosecutor and approved by the court. In such cases, the participant shall not have the right to a fair hearing by the department.

(3) In cases involving an administrative claim but no criminal prosecution, the Office of the Inspector General, Health and Human Services Commission, shall notify the participant or parent, caretaker, or guardian of a participant in writing that a financial claim has been established and shall request repayment of an amount equal to the value of the benefits improperly received. The written notification shall include the reasons for the claim, the value of the benefits improperly received, the participant's right to a fair hearing, and shall state that the participant or parent, caretaker, or guardian of a participant may be subject to disqualification.

(i) Collection of a financial claim assessed against a participant by offset of future benefits is not authorized.

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 November 10, 2008.

TRD-200805881

Lisa Hernandez  
General Counsel

Department of State Health Services

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Proposal publication date: August 22, 2008

For further information, please call: (512) 458-7111 x6972



## 25 TAC §§31.32 - 31.36

### STATUTORY AUTHORITY

The repeals are adopted under 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.

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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Lisa Hernandez  
General Counsel

Department of State Health Services

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## TITLE 30. ENVIRONMENTAL QUALITY

### PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

#### CHAPTER 321. CONTROL OF CERTAIN ACTIVITIES BY RULE

#### SUBCHAPTER P. RECLAIMED WATER PRODUCTION FACILITIES

**30 TAC §§321.301, 321.303, 321.305, 321.307, 321.309, 321.311, 321.313, 321.315, 321.317, 321.319, 321.321, 321.323, 321.325**

The Texas Commission on Environmental Quality (commission) adopts new §§321.301, 321.303, 321.305, 321.307, 321.309, 321.311, 321.313, 321.315, 321.317, 321.319, 321.321, 321.323, and 321.325.

Sections 321.301, 321.305, 321.307, 321.309, 321.311, 321.313, 321.317, 321.321, 321.323, and 321.325 are adopted *without changes* to the proposed text as published in the June

20, 2008, issue of the *Texas Register* (33 Tex Reg 4809) and will not be republished.

Sections 321.303, 321.315 and 321.319 are adopted *with changes* to the proposed text and will be republished.

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The commission adopted rule language to authorize the construction and operation of reclaimed water production facilities in response to a petition to initiate rulemaking. The rule provides a streamlined process to authorize the construction and operation of reclaimed water production facilities at a location other than a permitted domestic wastewater treatment facility.

The rule applies to permitted wastewater treatment facility owners who wish to produce reclaimed water at a site other than the permitted domestic wastewater treatment facility. The rule provides wastewater treatment facility owners with a streamlined process to obtain authorization to construct and operate reclaimed water production facilities. These facilities would be located near reclaimed water users and would save the cost of transporting or piping reclaimed water from the permitted wastewater treatment facility to these users.

#### SECTION BY SECTION DISCUSSION

Adopted new §321.301, Purpose and Applicability, explains that the purpose of the adopted rule is to provide a mechanism for owners of domestic wastewater treatment facilities to treat wastewater closer to reclaimed water users. The applicability portion provides that the owner of the reclaimed water production facility is required to be the same person as the owner of the permitted domestic wastewater treatment facility. This requirement ensures that there is no opportunity for the operation of the reclaimed water production facility to interfere with the operation of the permitted wastewater treatment facility. The applicability also provides that the authorization is automatically cancelled if the wastewater discharge permit is not in effect. The domestic wastewater treatment facility must be authorized for the treatment and disposal of domestic wastewater since reclaimed water will be sent through the collection system to the domestic wastewater treatment facility during times when there is no demand from the reclaimed water user.

Adopted new §321.303, Definitions, incorporates, by reference, the definitions in 30 TAC Chapter 210, Use of Reclaimed Water, 30 TAC Chapter 305, Consolidated Permits, and includes definitions for specific terms that apply to this subchapter. The definitions section ensures that the regulated community and the public are aware of the specific terminology used in this subchapter. In response to a comment by the City of Dallas, the list of apparatuses used as examples of treatment units in paragraph (3), (aeration basins, splitter boxes, bar screens, clarifiers, on-site lift stations) was deleted to avoid the possible interpretation that the list was exhaustive. The list was intended as examples of treatment units, not as all possible treatment units.

Adopted new §321.305, General Requirements, provides that the applicant must have a domestic wastewater permit and the reclaimed water production facility authorization does not alter the permitted flow or effluent limits of the permitted domestic wastewater treatment facility. The flow or effluent limits of a permitted wastewater facility may be changed only by amending the permit. In addition, the applicant is required to have an authorization to reuse reclaimed water or apply for authorization concurrently under Chapter 210. The applicant must have au-

thorization for the use of the reclaimed water for the reclaimed water production facility authorization to be useful.

Adopted new §321.307, Restrictions, prohibits the owner of a reclaimed water production facility from accepting any trucked or hauled wastes and from discharging wastewater or pollutants into water in the state. These provisions will prevent operational problems at the facility and will protect the quality of the reclaimed water, human health, and the environment. The adopted rule also prohibits the reclaimed water production facility from exceeding the hydraulic capacity or being authorized at a flow rate that could cause interference with the domestic wastewater treatment facility. This requirement ensures that the permitted wastewater treatment facility is able to continue to operate in a manner that protects human health and the environment.

Adopted new §321.309, Application Requirements, includes requirements for the application for reclaimed water production facilities so that the executive director has all the information necessary to evaluate the application and requires the application to comply with other commission rules.

Adopted new §321.311, Application Review, describes the process the executive director will use to: review the application; notify the applicant to publish notice (if required); and return the application if insufficient information is submitted by the applicant.

Adopted new §321.313, Authorization, includes specific requirements, including, design criteria, a prohibition of issuing an authorization to applicants with a poor compliance history rating, and provisions for filing a motion to overturn the executive director's final action on an authorization. The design criteria ensure that the facility is designed and constructed to protect human health and the environment over the life span of the facility. Applicants with poor compliance histories may not be authorized under this streamlined process; however, they may apply for an individual domestic wastewater permit to authorize the reclaimed water production facility. The motion to overturn provides a mechanism for the applicant, public interest counsel or other person to request the commission to review a reclaimed water production facility authorization.

Adopted new §321.315, Design Requirements, requires reclaimed water production facilities to meet the design criteria according to the requirements of 30 TAC Chapter 217, Design Criteria for Domestic Wastewater Treatment Systems, with minor exceptions, and to convey all wastewater to the domestic wastewater treatment facility when not in operation. The rule requires reclaimed water production facilities to be designed and operated to minimize odor.

Adopted new §321.317, Buffer Zone Requirements, includes general site selection requirements to protect groundwater and surface water and specific requirements relating to unsuitable site characteristics. The adopted rule includes two options for meeting buffer zone requirements: enhanced buffer zone and standard buffer zone requirements. If the owner requests authorization using the enhanced buffer zone, the reclaimed water production facility must meet one of three buffer zone options: placing the treatment units within a building with a 150-foot buffer zone; placing the treatment units within a building with air exhaust systems and odor control technology with a 50-foot buffer zone; or an extended 300-foot buffer zone. The enhanced buffer zone ensures that under normal operating conditions, odor from the facility should not reach adjoining property. If the owner requests authorization without an enhanced buffer zone

designation, the reclaimed water production facility must have a buffer zone of 150 feet from the nearest property line. The applicant may meet these requirements by ownership or by legal restriction of the buffer zone area.

Adopted new §321.319, Public Notice Requirements, includes notice requirements, both published and posted, for reclaimed water production facilities that do not meet the enhanced buffer zone designation. The owner of a reclaimed water production facility that meets the enhanced buffer zone designation is not required to publish notice or post signage.

Adopted new §321.321, Additional Reclaimed Water Production Facility Requirements, includes operator requirements for the reclaimed water production facility and notification requirements for the applicant. This requirement ensures that the operator of the reclaimed water production facility has the training and knowledge necessary to properly operate the facility. This section also requires the applicant to notify the executive director at least 45 days prior to completion and at least 45 days prior to operation of a reclaimed water production facility. This requirement ensures that the executive director has opportunities to inspect the reclaimed water production facility during construction and prior to operation.

Adopted new §321.323, Enforcement, includes enforcement criteria for reclaimed water production facilities. The rule is consistent with other commission enforcement procedures.

Adopted new §321.325, Fees, includes application fees for reclaimed water production facilities. The adopted rule includes an application fee of \$300 and an annual water quality fee of \$800 for a constructed facility or \$400 for a facility that has not been constructed.

#### FINAL REGULATORY IMPACT ANALYSIS

The commission reviewed this rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225, because it does not meet the criteria for a "major environmental rule" as identified in that statute. A major environmental rule is defined as 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. This rulemaking does not adversely affect, in a material way, the economy, a section of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The rule is not a major environmental rule because the specific intent of the rule is to provide owners of domestic wastewater treatment facilities with the ability to construct reclaimed water production facilities to produce reclaimed water at a site other than a permitted domestic wastewater treatment facility. Protection of the environment and reducing risks to human health is not the specific intent; however, environmental protection and protection of human health may be a consequence of the rule. Moreover, because the rule will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state it is not a major environmental rule. Under Texas Government Code, §2001.0225, only a major environmental rule requires a regulatory impact analysis. Because the adopted rule does not constitute a major environmental rule,

a regulatory impact analysis is not required. The commission solicited public comment regarding this draft regulatory impact analysis determination. No comments were received on the draft regulatory impact analysis determination.

#### TAKINGS IMPACT ASSESSMENT

The commission performed an assessment of these rules in accordance with Texas Government Code, §2007.043. The specific purpose of the rulemaking is to provide owners of domestic wastewater treatment facilities with the ability to construct reclaimed water production facilities to produce reclaimed water at a site other than a permitted domestic wastewater treatment facility. Promulgation and enforcement of these rules will constitute neither a statutory nor a constitutional taking of private real property. This rulemaking will impose no burdens on private real property because the adopted rule neither relates to, nor has any impact on the use or enjoyment of private real property, and there is no reduction in value of the property as a result of this rulemaking.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the adopted rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(4), concerning rules subject to the Texas Coastal Management Program (CMP), and will, therefore, require that goals and policies of the 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 editorial and 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 of the rules with the CMP. No comments were received regarding the consistency of the rules with the CMP.

#### PUBLIC COMMENT

The commission offered a public hearing on this proposal in Austin on July 15, 2008, at the commission's central office located at 12100 Park 35 Circle. The comment period closed on July 21, 2008. No comments were received at the hearing.

The commission received timely comments which expressed support for the rulemaking from the City of Fort Worth, the City of Midland, Malcolm Pirnie, Inc., the North Texas Municipal Water District, the San Antonio River Authority, the Texas Association of Clean Water Agencies, the Texas Water Conservation Association, and the Water Environment Association of Texas. The commission also received a late comment from the San Antonio Water System, which also expressed support for the rulemaking. In addition, the City of Dallas and the City of Midland provided specific comments on the rulemaking.

#### RESPONSE TO COMMENTS

##### §321.303(3)

##### Comment

The City of Dallas commented that the list of treatment units included in the definition of treatment unit is inadequate to describe many new treatment technologies such as membrane bioreactors but instead includes common treatment units typically present in activated sludge facilities. The City of Dallas requests that additional wording is added to the definition to



allow for new treatment technologies or other treatment units not listed to be used in these reclaimed water production facilities.

#### Response

The commission agrees that the list of treatment units included in the definition (aeration basins, splitter boxes, bar screens, clarifiers, on-site lift stations) was not inclusive of newer treatment technologies and could have been interpreted as an inclusive list. The commission deleted the list of treatment units from the definition of treatment unit.

#### §329.315(a)

#### Comment

The City of Dallas comments that the requirements in 30 TAC Chapter 317, Design Criteria for Sewerage Systems, are inadequate for newer wastewater treatment technologies, such as membrane bioreactor facilities, that will likely be used for these reclaimed water production facilities.

#### Response

The commission agrees with this comment and has changed the design criteria requirements for these facilities to the requirements in Chapter 217, Design Criteria for Domestic Wastewater Treatment Systems. These rules became effective on August 28, 2008 and include criteria for membrane bioreactor facilities and other newer wastewater treatment technologies.

#### §321.319(b)

#### Comment

The City of Midland provided comments in response to the commission's request for input concerning the need to post signage at the reclaimed water production facility site during the application review period. The City of Midland stated that a requirement to post signage is not necessary since most of the reclaimed water production facilities that will be constructed pursuant to these rules will be within the jurisdiction of municipalities and subject to land use regulations, and therefore, adequate site notice and signage will be addressed locally. However, the City of Midland is not opposed to including signage requirements in the rule during the application period and has provided proposed signage language for consideration.

#### Response

The commission appreciates the comment. The rule includes new §321.319(b) with signage requirements for applicants that do not qualify for an enhanced buffer zone designation.

#### §321.321(a)

#### Comment

The City of Dallas requested that although the rules do not prohibit the operator of the reclaimed water production facility to operate more than one facility, the rules would be clearer if this was stated.

#### Response

The commission does not agree that the rules need to be revised to state that the operator may be able to operate more than one wastewater treatment facility. Operators or wastewater facility operations companies are regulated by Chapter 30, Subchapter J, Wastewater Operators And Operations Companies. These rules do not prohibit an operator or a wastewater operations company from operating more than one facility.

#### §321.321(b)

#### Comment

The City of Dallas comments that the operator of the reclaimed water production facility should not be required to be at the same level of license or at a higher level of license than the operator of the permitted domestic wastewater treatment facility. The reclaimed water production facility is likely to be located a significant distance from the permitted domestic wastewater treatment facility and therefore it is unlikely that both the facilities will have the same individual as their operator. The City of Dallas comments that a lower classification operator for the reclaimed water production facility than for the permitted domestic wastewater treatment facility may be sufficient.

#### Response

The commission does not agree that a lower classification operator for the reclaimed water production facility than for the permitted domestic wastewater treatment facility is sufficient. The requirement states that the operator of the reclaimed water production facility must hold the same or higher level license as the operator of the associated wastewater treatment facility. A higher classification of operator at the reclaimed water production facility is an option but is not required. The reclaimed water production facility must be operated in a manner that does not affect permitted flow or effluent limits or cause operational interference or a permit violation.

#### STATUTORY AUTHORITY

The new sections are adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; §5.102, which establishes the commission's general authority to carry out its jurisdiction; §5.103(a) and §5.105, which provide the commission with the authority to adopt rules and policies necessary to carry out its powers and duties under the TWC and other laws of the state; §5.120, which states the commission shall administer the law so as to promote the judicious use and maximum conservation and protection of the quality of the environment and the natural resources of the state; §5.701 which authorizes the commission to charge fees; §7.002, which authorizes the commission to enforce the TWC; §26.011, which provides the commission with the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state; and §26.027, which authorizes the commission to issue permits and amendments to permits for the discharge of waste or pollutants into or adjacent to water in the state.

The adopted new sections would implement TWC, §§5.013, 5.102, 5.103(a), 5.105, 5.120, 5.701, 7.002, 26.011, and 26.027.

#### §321.303. Definitions.

All definitions in Texas Water Code, §26.001 and 30 TAC Chapters 210 and 305 of this title (relating to Use of Reclaimed Water, and Consolidated Permits) shall apply to this subchapter and are incorporated by reference. Specific definitions of words or phrases used in this subchapter are as follows:

(1) Authorization--a written document issued by the commission allowing an owner to construct and operate a reclaimed water production facility in accordance with the provisions of this subchapter.

(2) Reclaimed Water Production Facility--a domestic wastewater treatment facility authorized in accordance with this

subchapter that treats municipal wastewater for reuse on an as-needed basis and is located at a different location from the permitted domestic wastewater treatment facility.

(3) Treatment unit--Any apparatus necessary for treating wastewater located at the reclaimed water production facility.

*§321.315. Design Requirements.*

(a) Plans and specifications for a reclaimed water production facility must meet the design criteria and the operation, maintenance, and safety requirements in Chapter 217 of this title (relating to Design Criteria for Wastewater Treatment Systems) except for redundant treatment units or processes, including power supplies, if the design incorporates sufficient provisions to ensure the effluent quality meets the required limits in the event of a failure of a power supply or a treatment unit or process.

(b) The reclaimed water production facility must be designed to convey all wastewater to the domestic wastewater treatment facility any time the facility is not in operation.

(c) The reclaimed water production facility must be designed to convey all sludge received or produced by the facility to the domestic wastewater treatment facility. Sludge may be held in an aerated storage vessel for discharge to the collection system if the entire sludge contents are completely discharged at least once within every 24-hour period.

(d) The reclaimed water production facility must be designed and operated to minimize odor and other nuisance conditions.

(e) The following treatment processes and units are prohibited:

- (1) unaerated primary treatment units (including Imhoff tanks and primary clarifiers);
- (2) trickling filters;
- (3) pond or lagoon treatment systems;
- (4) flow equalization basins; and
- (5) unenclosed screenings storage containers.

*§321.319. Public Notice Requirements.*

(a) Public notice is not required if an applicant for a reclaimed water production facility qualifies for an enhanced buffer zone designation in accordance with §321.317(d) of this title (relating to Buffer Zone Requirements).

(b) An applicant for a reclaimed water production facility that does not qualify for an enhanced buffer zone designation shall place a sign at the proposed site during the public comment period as defined in subsection (c)(3) of this section.

(1) The sign must include no less than two-inch, black, block-lettering on a white background. The sign must include the following information:

- (A) the legal name and address of the applicant;
- (B) notice that the applicant has applied for authorization to construct a reclaimed water production facility at the site;
- (C) how the public may provide comments to the TCEQ; and
- (D) where copies of the application, executive director's technical summary, and draft authorization may be reviewed.

(2) The sign placed at the site shall be located at or near the site main entrance, provided that the sign is legible from the public street. If the sign would not be legible from the public street, then the

sign shall be placed within ten feet of a property line paralleling a public street.

(A) The executive director may approve variations if the applicant has demonstrated that it is not practical to comply with the specific sign-posting requirements.

(B) Alternative sign-posting plans proposed by the applicant must be at least as effective in providing notice to the public.

(C) The executive director must approve the variations before signs are posted.

(c) An applicant for a reclaimed water production facility that does not qualify for an enhanced buffer zone designation shall publish notice of the executive director's preliminary determination on the application at least once in a newspaper of general circulation in the county where the reclaimed water production facility is located or adopted to be located. The notice shall be published at the applicant's expense.

(1) The applicant must publish notice no later than 30 days after receiving instructions to publish notice from the Texas Commission on Environmental Quality's (TCEQ's) Office of the Chief Clerk. The notice must include:

- (A) the legal name of the applicant and the address of the applicant;
- (B) a brief summary of the information included in the application;
- (C) the location of the reclaimed water production facility;
- (D) the location and mailing address where the public may provide comments to the TCEQ;
- (E) the public location or the publicly accessible internet Web site where copies of the application, executive director's technical summary, and authorization may be reviewed;
- (F) an opportunity for the public to submit comments on the application and executive director's technical summary; and
- (G) instructions to the public on how to request a public meeting for a new reclaimed water production facility.

(2) The applicant must file with the Office of the Chief Clerk no later than 30 days after receiving the instruction to publish the notice of the executive director's preliminary determination on the application, and if applicable the notice of public meeting:

- (A) a signed affidavit from the publisher acknowledging that the notice was published and the date of publication; and
- (B) a copy of the newspaper clipping.

(3) The public comment period begins on the first date the notice is published and ends 30 days later unless a public meeting is held. If a public meeting is held, the public comment period ends either 30 days after the initial notice is published or at the conclusion of the public meeting, whichever is later.

(4) The public may submit written comments to the Office of the Chief Clerk during the comment period detailing how the application for the reclaimed water production facility fails to meet the technical requirements or conditions of this rule. The executive director will consider all comments received during the comment period.

(5) The public may submit a written request for a public meeting to the Office of the Chief Clerk during the comment period.

(A) The executive director will determine if there is significant interest to hold a public meeting.

(B) If the executive director determines that there is significant interest to hold a public meeting:

(i) TCEQ staff will facilitate the meeting; and

(ii) the applicant will:

(I) arrange accommodations for the public meeting to be held in the county where the reclaimed water production facility will be located; and

(II) publish notice of the public meeting in the same newspaper as the initial notice was published at least 30 days prior to the meeting.

(iii) At the public meeting the applicant will:

(I) describe the adopted reclaimed water production facility and provide maps and other facility data; and

(II) provide a sign-in sheet for attendees to register their names and addresses and furnish the sheet to the executive director.

(B) A public meeting held under this rule is not an evidentiary proceeding.

(6) The TCEQ Office of the Chief Clerk will mail the executive director's decision and final technical summary on which the decision was based to the applicant, persons whose names and addresses appear legibly on the sign-in sheet from the public meeting, and persons who submitted written comments.

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 November 7, 2008.

TRD-200805851

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Effective date: November 27, 2008

Proposal publication date: June 20, 2008

For further information, please call: (512) 239-0177



## **TITLE 40. SOCIAL SERVICES AND ASSISTANCE**

### **PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES**

#### **CHAPTER 2. MENTAL RETARDATION AUTHORITY RESPONSIBILITIES**

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts new §§2.301 - 2.303, 2.305, 2.307, 2.309, 2.311, 2.313, and 2.315, and the repeal of §§2.351 - 2.373, in Chapter 2, Mental Retardation Authority Responsibilities, without changes to the proposed text published in the August 1, 2008, issue of the *Texas Register* (33 TexReg 6075).

The new sections and the repeal are adopted to establish rules governing the role and responsibilities of a mental retardation authority (MRA), as required by Texas Health and Safety Code, §533.0355, amended by House Bill 2439, Section 2, 80th Legislature, Regular Session, 2007. The adopted rules incorporate current MRA practices and procedures and include certain provisions regarding quality assurance and the health, safety, and rights of individuals currently addressed in the repealed rules.

DADS received no comments regarding adoption of the new sections and the repeal.

#### **SUBCHAPTER G. ROLE AND RESPONSIBILITIES OF AN MRA**

##### **40 TAC §§2.301 - 2.303, 2.305, 2.307, 2.309, 2.311, 2.313, 2.315**

The new sections are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Health and Safety Code, §533.0355, which provides that the HHSC executive commissioner shall adopt rules establishing the role and responsibilities of local mental retardation authorities; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

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 November 10, 2008.

TRD-200805877

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Effective date: December 1, 2008

Proposal publication date: August 1, 2008

For further information, please call: (512) 438-3734



#### **SUBCHAPTER H. STANDARDS AND QUALITY ASSURANCE FOR MENTAL RETARDATION COMMUNITY SERVICES AND SUPPORTS**

##### **40 TAC §§2.351 - 2.373**

The repeal is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Health and Safety Code, §533.0355, which provides that the HHSC executive commissioner shall adopt rules establishing the role and responsibilities of local mental retardation authorities; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services

Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

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 November 10, 2008.

TRD-200805878

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Effective date: December 1, 2008

Proposal publication date: August 1, 2008

For further information, please call: (512) 438-3734



## CHAPTER 16. PILOT PROGRAM TO INCREASE THE USE OF ADVANCE DIRECTIVES IN NURSING FACILITIES AND INTERMEDIATE CARE FACILITIES FOR PERSONS WITH MENTAL RETARDATION

### 40 TAC §§16.1 - 16.4

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts new §§16.1 - 16.4 in Chapter 16, Pilot Program to Increase the Use of Advance Directives in Nursing Facilities and Intermediate Care Facilities for Persons with Mental Retardation, without changes to the proposed text as published in the August 1, 2008, issue of the *Texas Register* (33 TexReg 6084).

The new sections are adopted to establish rules governing a pilot program to increase the use of advance directives in intermedi-

ate care facilities for persons with mental retardation and nursing facilities by educating residents and their families about advanced care planning, as directed by Senate Bill 27, 80th Legislature, Regular Session, 2007. The pilot program implements an educational process that includes (1) the legal issues associated with advanced directives; (2) the health care choices available to a person with terminal or irreversible condition; (3) the proper completion of advanced directives; and (4) the importance of discussing advanced directives with family, friends, advisors, and healthcare professionals.

DADS received no comments regarding adoption of the new sections.

The new sections are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

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 November 10, 2008.

TRD-200805876

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Effective date: December 1, 2008

Proposal publication date: August 1, 2008

For further information, please call: (512) 438-3734



# 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

State Board of Dental Examiners

### Title 22, Part 5

The Texas State Board of Dental Examiners (Board) files this notice of intention to review 22 TAC Chapter 100, General Provisions. This review is pursuant to §2001.039 of the Texas Government Code, pertaining to agency review of existing rules.

Comments relating to whether these rules should be repealed, readopted, or readopted with changes must be received within 30 days, and may be submitted to Sherri Sanders Meek, Executive Director, Texas State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512) 475-0972.

To ensure consideration, comments must clearly specify the particular section of the rule to which they apply. General comments should be labeled as such. Comments should include proposed alternative language as appropriate.

Chapter 100. General Provisions.

§100.1. Introduction.

§100.2. Purpose and Functions.

§100.3. Organization and Structure.

§100.4. Officers.

§100.5. Meetings.

§100.10. Executive Director.

§100.20. Final Board Decisions in Contested Cases.

TRD-200805848

Sherri Sanders Meek

Executive Director

State Board of Dental Examiners

Filed: November 7, 2008



The Texas State Board of Dental Examiners (Board) files this notice of intention to review 22 TAC Chapter 119, Special Areas of Dental Practice. This review is pursuant to §2001.039 of the Texas Government Code, pertaining to agency review of existing rules.

Comments relating to whether these rules should be repealed, readopted, or readopted with changes must be received within 30 days, and may be submitted to Sherri Sanders Meek, Executive Director, Texas State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512) 475-0972.

To ensure consideration, comments must clearly specify the particular section of the rule to which they apply. General comments should be labeled as such. Comments should include proposed alternative language as appropriate.

Chapter 119. Special Areas of Dental Practice.

§119.1. Dental Public Health.

§119.2. Endodontics.

§119.3. Oral and Maxillofacial Pathology.

§119.4. Oral and Maxillofacial Surgery.

§119.5. Orthodontics and Dentofacial Orthopedics.

§119.6. Pediatric Dentistry.

§119.7. Periodontics.

§119.8. Prosthodontics.

TRD-200805849

Sherri Sanders Meek

Executive Director

State Board of Dental Examiners

Filed: November 7, 2008



The Texas State Board of Dental Examiners (Board) files this notice of intention to review 22 TAC Chapter 125, Applications for Special Consideration or Exception to Board Rules. This review is pursuant to §2001.039 of the Texas Government Code, pertaining to agency review of existing rules.

Comments relating to whether this rule should be repealed, readopted, or readopted with changes must be received within 30 days, and may be submitted to Sherri Sanders Meek, Executive Director, Texas State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512) 475-0972.

To ensure consideration, comments must clearly specify the particular section of the rule to which they apply. General comments should be labeled as such. Comments should include proposed alternative language as appropriate.

Chapter 125. Applications for Special Consideration or Exception to Board Rules.

§125.1. Board to Rule on Requests for Exceptions to Rules.

TRD-200805850

Sherri Sanders Meek  
Executive Director  
State Board of Dental Examiners  
Filed: November 7, 2008

◆       ◆       ◆

## Adopted Rule Review

Texas Department of Savings and Mortgage Lending

### Title 7, Part 4

The Finance Commission of Texas has completed its review and re-adopts without revision, Texas Administrative Code, Title 7, Part 4:

Savings and Loan Rules:

Chapter 51, §§51.1 - 51.15, relating to Charter Applications;

Chapter 53, §§53.1 - 53.5 and 53.7 - 53.18, relating to Additional Offices;

Chapter 57, §§57.1 - 57.4, relating to Change of Office Location or Name;

Chapter 59, §59.1, relating to Foreign Building and Loan Association;

Chapter 61, §§61.1 - 61.3, relating to Hearings;

Chapter 63, §§63.1 - 63.15, relating to Fees and Charges;

Chapter 64, §§64.1 - 64.10, relating to Books, Records, Accounting Practices, Financial Statements, Reserves, Net Worth, Examinations, Consumer Complaints;

Chapter 65, §§65.1 - 65.24, relating to Loans and Investments;

Chapter 67, §§67.1 - 67.4 and 67.6 - 67.17, relating to Savings and Deposit Accounts;

Chapter 69, §§69.1 - 69.11, relating to Reorganization, Merger, Consolidation, Acquisition, and Conversion;

Chapter 71, §§71.1 - 71.8, relating to Change of Control;

Chapter 73, §§73.1 - 73.6, relating to Subsidiary Corporations;

Mortgage Banker Rules:

Chapter 81, §81.1, relating to Definitions; and §81.2, relating to Loan Status Forms.

The Finance Commission of Texas has completed its review and re-adopts with revisions, Texas Administrative Code, Title 7, Part 4:

Savings Bank Rules:

Chapter 75. Applications.

Subchapter A, §§75.1 - 75.10, relating to Charter Applications;

Subchapter B, §§75.25 - 75.27, relating to Expedited Applications;

Subchapter C, §§75.31 - 75.39 and 75.41, relating to Additional Offices;

Subchapter D, §§75.81 - 75.91, relating to Reorganization, Merger, Consolidation, Conversion, Purchase, and Assumption and Acquisition;

Subchapter E, §§75.121 - 75.127, relating to Change of Control;

Chapter 77. Loans, Investments, Savings, and Deposits.

Subchapter A, §§77.1 - 77.11, 77.31 - 77.33, 77.35, 77.51, 77.71 - 77.74, and 77.91 - 77.96, relating to Authorized Loans and Investments; and

Subchapter B, §§77.101 - 77.113 and 77.115 - 77.116, relating to Savings and Deposits;

Chapter 79. Miscellaneous.

Subchapter A, §§79.1 - 79.7 and 79.12, relating to Books, Records, Accounting Practices, Financial Statements and Reserves;

Subchapter B, §§79.21 - 79.26, relating to Capital and Capital Obligations;

Subchapter C, §§79.41 - 79.47, relating to Holding Companies;

Subchapter D, §79.61, relating to Foreign Savings Banks;

Subchapter E, §§79.71 - 79.73, relating to Hearings;

Subchapter F, §§79.91 - 79.103 and 79.105 - 79.110, relating to Fees and Charges;

Subchapter G, §79.121, relating to Statements of Policy; and

Subchapter H, §79.122, relating to Consumer Complaints Procedures; and

Mortgage Broker Licensing Rules:

Chapter 80. Mortgage Broker and Loan Officer Licensing.

Subchapter A, §§80.1 - 80.7, relating to Licensing;

Subchapter B, §§80.8 - 80.11, relating to Professional Conduct;

Subchapter C, §§80.12 - 80.14, relating to Administration and Records;

Subchapter D, §80.15, relating to Complaints and Investigations;

Subchapter E, §80.16, relating to Hearings and Appeals;

Subchapter F, §80.17, relating to Interpretations;

Subchapter G, §80.18, relating to Enforcement of Liens;

Subchapter H, §80.19, relating to Savings Clause;

Subchapter I, §§80.20 and 80.21, relating to Inspections and Investigations;

Subchapter J, §80.22, relating to Forms; and

Subchapter K, §80.23, relating to Annual Reports.

The proposal of these revisions was published in the August 22, 2008, issue of the *Texas Register* (33 TexReg 6659). The adoption of these revisions was published in the October 31, 2008, issue of the *Texas Register* (33 TexReg 8907).

These reviews were done pursuant to Texas Government Code §2001.039. The notice of review was published in the June 6, 2008, issue of the *Texas Register* (33 TexReg 4531).

The Commission assessed whether the reason(s) for adopting or re-adopting these chapters continued to exist. Each section of the chapters was reviewed to determine whether they were obsolete, reflected current legal and policy considerations, reflected current procedures and practices of the Department, and/or whether they were in compliance with Chapter 2001 of the Texas Government Code (Administrative Procedures Act).

The following comments were received in response to the proposed rule review: One commenter asked the Finance Commission to adopt a new rule permitting a state savings bank to purchase or sell a bulk of assets, up to a certain percentage of capital. The Finance Commission does not consider a new rule of this nature to be appropriate due to the following: 1) if a purchase or sale is bulk enough not to be considered "in the ordinary course of business", the Commissioner needs the authority to review for safety and soundness, and 2) if the state savings

bank desiring the purchase or sale is in good condition, use of an expedited application is available and not burdensome.

One commenter asked us to adopt a new rule that would permit a state savings bank to establish a financial education program in schools without considering it a branch. The Department does not consider a new rule to be necessary because the FDIC has adopted a revision to its regulations to allow such activity.

TRD-200805864  
Jane M. Black  
General Counsel  
Texas Department of Savings and Mortgage Lending  
Filed: November 7, 2008



# TABLES &

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# GRAPHICS

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.

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**Figure: 10 TAC §80.100(b)(8)**

Texas Department of Housing and Community Affairs  
MANUFACTURED HOUSING DIVISION  
P. O. BOX 12489 Austin, Texas 78711-2489  
(800) 500-7074, (512) 475-2200 FAX (512) 475-1109  
Internet Address: [www.tdhca.state.tx.us/mh/index.htm](http://www.tdhca.state.tx.us/mh/index.htm)

**MAKING AN INFORMED DECISION ABOUT BUYING A  
MANUFACTURED HOME**

**IF YOU HAVE QUESTIONS CALL 1-800-500-7074**

**WWW.TDHCA.STATE.TX.US/MH**

Ownership of ANY home brings many responsibilities. Buying a manufactured home involves many important and unique considerations. This disclosure is to assist you in recognizing and understanding many of those factors. Please read it carefully.

**CHOOSING A MANUFACTURED HOME AS YOUR HOME:** Manufactured homes come in a variety of sizes, styles, design features, amenities, and price ranges. All manufactured homes are built to federal standards established by the federal Department of Housing and Urban Development (HUD). Also, the federal government and the state of Texas requires manufacturers, retailers and installers to give certain warranties on manufactured homes. The type of warranties you receive will depend on whether you are purchasing a new or used manufactured home. You have the right to see the manufacturer’s warranty and the retailer’s warranty before entering into a binding agreement to purchase a manufactured home.

\_\_\_\_\_  
*initials*

**CHOOSING A MANUFACTURED HOME RETAILER:** The State of Texas licenses and oversees manufacturers, retailers, brokers, salespersons, rebuilders, and installers of manufactured homes. The agency responsible for this licensing and oversight is the Texas Department of Housing and Community Affairs, Manufactured Housing Division (the “Department”). Your properly licensed manufactured home retailer should display, or be willing to show you, its license in its sales office. **Dealing with licensed parties can provide important consumer protections.**

\_\_\_\_\_  
*initials*

**DEPOSITS:** You may be required by a manufactured home retailer to place a deposit on a home, regardless of whether the home is on the retailer's sales lot, is being sold at another location, or will be ordered from a factory. The amount of the deposit is determined between you and your retailer. The deposit becomes a down payment upon execution of a binding written purchase agreement. You have the right to demand a refund of the deposit or down payment, and receive that refund within 15 days thereafter, if you timely and properly rescind the purchase agreement.

\_\_\_\_\_  
*initials*

**FINANCING OPTIONS:** A manufactured home in Texas has tremendous flexibility when it comes to financing because it can be financed as personal property (typically a consumer loan secured by the home only) or, if you own the land the home is on (or have a qualifying long term lease on the land) as real property (typically a mortgage loan secured by the home and the land). You should talk to possible lenders about the terms they can offer. If you think one lender is offering too high a rate, talk to another lender.

Consumer lenders must generally be registered with the Office of the Consumer Credit Commissioner. Mortgage loans are usually originated by mortgage brokers (licensed with the Savings and Mortgage Lending Department), mortgage bankers (registered with the Savings and Mortgage Lending Department), or financial institutions (regulated by state and/or federal regulators, depending on the type of financial institution).

**WHEN YOU MAKE A DECISION ABOUT BUYING A  
MANUFACTURED HOME, PLAN FOR FLEXIBILITY AND CHANGE.**

**YOUR LOAN WILL BE A MAJOR FACTOR IN DETERMINING YOUR PAYMENTS, BUT THERE ARE OTHER IMPORTANT FACTORS YOU SHOULD ALSO THINK ABOUT, SUCH AS:**

- Adjustable rate loans – If rates go up, your loan payments will go up.
- Property taxes – Changes in property valuation and changes in tax rate can result in changes in your payments.
- Insurance – If premiums increase, your payments will go up.
- Lot rent – If you are renting the lot your home is on, your rent may be subject to increase.

\_\_\_\_\_  
*initials*

**LOCAL RESTRICTIONS AND REQUIREMENTS (ZONING):** Depending on where a home is to be located it may be subject to special local requirements, including zoning and deed restrictions. These local requirements may affect where the home can be placed and may also involve other related requirements (and expenses) such as size requirements, construction requirements, Contact the local municipality, county, and subdivision manager to find out what, if any, requirements of this sort may apply to any site where you are going to place a manufactured home.

\_\_\_\_\_  
*initials*

**SITE PREPARATION:** A consumer is responsible for proper preparation of the site. If you do not think you can prepare your site properly, consider hiring someone else with the right experience and equipment to do it for you. Proper site preparation includes a site for placement of the home that has good drainage so that water will not collect or run under or around the home; and firm compacted soil with no stumps, debris, or other matter. The site that is selected and prepared also needs to meet any setback or other placement requirements and have access to any required water, septic system, and utilities.

**PROPER SITE PREPARATION IS ESSENTIAL!**

\_\_\_\_\_  
*initials*

**INSTALLATION:** If you are purchasing a NEW manufactured home. Installation must be included. If you are purchasing a USED manufactured home, installation may or may not be included. If installation is not included and you arrange for it yourself, remember, ONLY A LICENSED INSTALLER may install a manufactured home. The installer who actually installs the home must also provide a warranty.

**PROPER INSTALLATION BY A LICENSED INSTALLER IS  
REQUIRED BY LAW IN ORDER FOR A HOME TO BE OCCUPIED.**

If you are buying a home that has already been installed, you should ask the selling retailer if they will check the leveling, check for the presence (if required) and condition of any vapor retarder, check anything else regarding the foundation/stabilization system, or provide any other installation-related services.

If you acquire a used manufactured home that is already installed in a Wind Zone II county but the home is a Wind Zone I home, which means that home was not designed or constructed to withstand a hurricane force wind occurring in a Wind Zone II or III area, the home cannot be installed in a Wind Zone II area unless it was constructed before September 1, 1997.

\_\_\_\_\_  
*initials*

**UPKEEP AND MAINTENANCE:** ANY home requires regular upkeep and maintenance -- things like periodic checking of and repairs to the roof, keeping vents and filters clear, maintaining septic systems and wells in safe and sanitary working order, caulking to prevent leaks, and periodic painting. Also, depending on the foundation system you choose, a manufactured home may require periodic checking to be sure that it is still level and that the anchors and straps are secure.

\_\_\_\_\_  
*initials*

**FOUNDATION MAINTENANCE:** You must accept all responsibility for maintenance of the site upon closing. These responsibilities include: maintaining good drainage around the home, preventing soil erosion, periodic inspections of foundation supports and anchorage, and any leveling or adjustment that may be required unless contractually agreed otherwise. Homes located in areas that have soils with high clay content that expands and contracts must maintain consistent moisture levels. This may include watering around the foundation during dry summer months and managing the size and proximity of the vegetation near the foundation.

\_\_\_\_\_  
*initials*

**LOT RENT:** If you rent the lot your home is on, in addition to the possibility of rent increases, it is possible that the property owner could decide to change the use of the land and not renew your lease. Although you would be given advance notice, this would mean that you would have to move your home and have it installed somewhere else.

\_\_\_\_\_  
*initials*

**WATER AND UTILITIES:** Be sure that your lot has access to water. If you must drill a well, consider contacting several drillers for bids. If water is available through a municipality, utility district, water district, or cooperative, you should inquire about the rates you will have to pay and the costs necessary to join the water system. Be sure that any utilities you will need are available at your site and, if they are not, find out what will be involved in getting them delivered and connected.

\_\_\_\_\_  
*initials*

**SEWER CONNECTIONS OR SEPTIC SYSTEMS:** If your lot is not serviced by a municipal sewer system or utility district, you will have to install an on-site sewer facility (commonly known as a septic system). There are a number of concerns or restrictions that will determine if your lot is adequate to support a septic system. Check with the local county or a licensed private installer to determine the requirements that apply to your lot and the cost to install such a system.

\_\_\_\_\_  
*initials*

**HOMEOWNERS ASSOCIATIONS AND FEES:** Many subdivisions have mandatory assessments and fees that lot owners must pay. Check with the manager of the subdivision in which your lot is located to determine if any fees apply to your lot.

\_\_\_\_\_  
*initials*

**PROPERTY TAXES:** Manufactured homes are appraised and subject to property taxes. Depending on the type of loan you have, your lender may escrow for these taxes, and this will increase your monthly payments. Whether you select personal property or real property status for your home may impact any homestead exemption that you may obtain to reduce your tax liability. Talk with the county tax office if you have any questions. Failing to pay your taxes or make arrangements with the tax assessor-collector may place you at risk of having tax liens recorded on your home and, possibly, having the home foreclosed for non-payment of taxes. If you do not have a lender that escrows for the taxes, the tax assessor-collector will work out an escrow arrangement with you if requested.

\_\_\_\_\_  
*initials*

**INSURANCE:** Your lender will almost certainly require you to obtain insurance. You should request quotes from the agent of your choice to obtain the insurance. Even if you do not have a lender, it is a good idea to obtain insurance to protect your home and yourself.

\_\_\_\_\_  
*initials*

**THE TEXAS MANUFACTURED HOMEOWNERS' RECOVERY TRUST FUND (the "FUND"):** The Fund is established by law to protect consumers who incur certain actual damages arising from specified violations of law involving acts or omissions of licensees. To learn more about the Fund you can check the Department's website at: [www.tdhca.state.tx.us/mh](http://www.tdhca.state.tx.us/mh) or call the Department for a printed description of the Fund and how it works. Claims on the Fund must be verified and must be made within two years from the date of the act or omission or when it was discovered or reasonably should have been discovered.

\_\_\_\_\_  
*initials*

**RIGHT OF RESCISSION:** Once you enter into a contract with a selling retailer to acquire a manufactured home, you have a right to rescind the contract. You may, not later than the third day after the applicable contract is signed, rescind the contract without penalty or charge. The right to rescind may be modified or waived only if you have a *bona fide* emergency. The Department has rules about the detailed requirements for waivers and modifications. If you grant someone other than the retailer a lien on the home you are buying, the right of rescission automatically goes away when the lien is recorded with the TDHCA.

\_\_\_\_\_  
*initials*

This **Six Page Disclosure** was provided to me/us by the retailer and/or lender shown below on this date. It was provided to me/us before I/we completed a credit application (if a financed transaction), or before I/we signed a contract to purchase, exchange, or lease-purchase a manufactured home.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
RETAILER or LENDER

\_\_\_\_\_  
LICENSE NUMBER (if a retailer)

\_\_\_\_\_  
CUSTOMER signature

\_\_\_\_\_  
CUSTOMER signature

\_\_\_\_\_  
Customer printed name

\_\_\_\_\_  
Customer printed name

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Texas Department of Housing and Community Affairs  
**MANUFACTURED HOUSING DIVISION**  
 P. O. BOX 12489 Austin, Texas 78711-2489  
 (800) 500-7074, (512) 475-2200 FAX (512) 475-1109  
 Internet Address: [www.tdhea.state.tx.us/mh/index.htm](http://www.tdhea.state.tx.us/mh/index.htm)

**APPLICATION FOR STATEMENT OF OWNERSHIP AND LOCATION**

The filing of an application for the issuance of a Statement of Ownership and Location, later than sixty (60) days after the date of a sale, to a consumer for residential use, may result in a fee of up to one hundred dollars (\$100). Any such application that is submitted late may be delayed until the fee is paid in full.

BLOCK 1: Transaction Identification	
This application is for: <input type="checkbox"/> New home application <input type="checkbox"/> Used home application <input type="checkbox"/> Other _____	(For Department Use Only) Coding:  Lien on file: Y / N      Lienholder Code _____ County Code: _____      Right of Surv.: Y / N Retailer #: _____      Manufacturer #: _____

BLOCK 2(a): Home Information (required)			
Manufacturer Name:		Model:	
Address:		Date of Manufacture:	
City, State, Zip:		Total Square Feet:	
License Number:		Wind Zone:	

	Label/Seal Number	Complete Serial Number	Weight	Size*	
Section 1:				X	*NOTE: Size must be reported as the outside dimensions (length and width) of the home as measured to the nearest 1/2 foot at the base of the home, exclusive of the tongue or other towing device.
Section 2:				X	
Section 3:				X	
Section 4:				X	

<b>2(b)</b>	Is home being sold? <input type="checkbox"/> No <input type="checkbox"/> Yes If yes, and <b>if there is/are no HUD Label(s) or Texas Seal(s)</b> on your home, a Texas Seal will need to be purchased and will be issued to each section of your home at an <b>additional cost</b> of \$35.00 per section. <i>Single - \$35 Double - \$70 Triple - \$105</i>
-------------	--

BLOCK 3: Home Location (required)					
Physical Location of Home: <i>(or 911 address)</i>	Physical Address (cannot be a Rt. or P. O. Box)      City      State      ZIP      County				
Was home moved for this sale? <input type="checkbox"/> No <input type="checkbox"/> Yes					
Was Home Installed for this sale? <input type="checkbox"/> No <input type="checkbox"/> Yes If yes, provide installer information below, if known					
Installer Name, address and phone: _____					

BLOCK 4: Ownership Information (required)			
4(a) Seller(s) or Transferor(s)		4(b) Purchaser(s), Transferee(s), or Owner(s)	
Name	License # if Retailer:	Name	License # if Retailer:
Name		Name	
Mailing Address		Mailing Address	
City/State/Zip		City/State/Zip	
Daytime Phone Number ( ) -		Daytime Phone Number ( ) -	

<b>4(c)</b>	Date of sale, transfer or ownership change: _____
<b>4(d)</b>	Did the buyer trade-in a home to purchase this home? <input type="checkbox"/> No <input type="checkbox"/> Yes If yes, the application transferring the ownership to the Retailer must be attached to this application. Provide the following information on the home traded in:  HUD Label _____, Serial No. _____

<b>HUD Label #:</b>	<b>Serial #:</b>	<b>GF# (for title co.):</b>
<b>BLOCK 5: Right of Survivorship (if no box is checked, joint owners will NOT have right of survivorship)</b>		
<p><i>If joint owners desire right of survivorship, check the applicable box below:</i></p> <p><input type="checkbox"/> <b>Husband and wife</b> will be the only owners and agree that the ownership of the above described manufactured home shall, from this day forward, be held jointly and in the event of death, shall pass to the surviving owner.</p> <p><input type="checkbox"/> Joint owners are <u>other than</u> husband and wife, desire right of survivorship, <b>and</b> have attached a completed Affidavit of Fact for Right of Survivorship or other affidavits as necessary to meet the requirements of §1201.213 of the Standards Act.</p>		
<b>BLOCK 6: Personal/Real Property Election - Purchaser(s)/Transferee(s)/Owner(s) check one election type:</b>		
<p><input type="checkbox"/> Personal Property – Applicant elects to treat this home as personal property. All documents affecting title to the home will be filed in the records of the Department.</p> <p><input type="checkbox"/> Real Property – I (we) elect to treat this home as real property and certify that I am (we are) entitled to make this election in accordance with Section 1201.2055 of the Occupations Code because <b>(one box must be checked)</b>:</p> <p style="margin-left: 20px;"><input type="checkbox"/> I (we) own the real property that the home is attached to.    <input type="checkbox"/> I (we) have a qualifying long-term lease for the land that the home is attached to.</p> <p>I (We) understand that the home will not be considered to be real property until a certified copy of the SOL has been filed in the real property records of the county in which the home is located AND a copy stamped "Filed" has been submitted to the Department.</p> <p><b>Legal description must be provided for real property:</b> _____</p> <p>_____</p> <p>If a title company, list your file or GF #: _____</p> <p><input type="checkbox"/> <b>Inventory – (FOR RETAILER USE ONLY)</b> Retailer number must be provided in Block 4b if this election is checked.</p>		
<b>BLOCK 7: Designated Use - to be designated by purchaser(s), transferee(s), or owner(s)</b>		
<p><input type="checkbox"/> Residential Use (as a dwelling) OR</p> <p><input type="checkbox"/> Non-Residential - Check <b>one</b> of the following:    <input type="checkbox"/> <i>Business Use</i>    <input type="checkbox"/> <i>Salvage</i></p>		
<b>BLOCK 8: Liens – Will there be any liens on the home?    <input type="checkbox"/> No    <input type="checkbox"/> Yes</b> If yes, the Notice of Lien form <b>MUST</b> be completed and attached. To prevent an SOL from being issued without a lien, in the event the Notice of Lien is detached, indicate name and phone number of lienholder's contact person and phone number.		
Lienholder's Representative: _____ Phone: _____		
<b>BLOCK 9: Special Mailing Instructions.</b>		
<p><b>IF</b> a copy of an SOL is to be mailed to anyone other than the owner or lienholder of record (such as a closing agent), please provide that mailing address here and enclose the additional fee.</p>	Name:	
	Company:	
	Street Address:	
	City, State, Zip:	
	Area Code/Phone	
<b>BLOCK 10: Certification and Notarization - The statements set forth herein are made under oath and are true and correct.</b>		
<p><input type="checkbox"/> Seller certifies that any required habitability warranty has been delivered (consumer to consumer sales are exempt).</p> <p><input type="checkbox"/> Seller certifies that the purchaser has been given a written disclosure on a form prescribed by the Department describing the condition of the home and of any appliances that are included in the home.</p>		
<b>10(a) Notarized signature of each seller/transfereor</b>	<b>10(b) Notarized signature of each purchaser/transferee or owner</b>	
<p>_____ <i>Signature of owner or authorized seller</i></p> <p>Sworn and subscribed before me this ____ day of _____, 20__</p> <p>_____ <i>Signature of Notary</i></p> <p>SEAL</p>	<p>_____ <i>Signature of purchaser/transferee or owner</i></p> <p>Sworn and subscribed before me this ____ day of _____, 20__</p> <p>_____ <i>Signature of Notary</i></p> <p>SEAL</p>	
<p>_____ <i>Signature of owner or authorized seller</i></p> <p>Sworn and subscribed before me this ____ day of _____, 20__</p> <p>_____ <i>Signature of Notary</i></p> <p>SEAL</p>	<p>_____ <i>Signature of purchaser/transferee or owner</i></p> <p>Sworn and subscribed before me this ____ day of _____, 20__</p> <p>_____ <i>Signature of Notary</i></p> <p>SEAL</p>	



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

MANUFACTURED HOUSING DIVISION

P. O. BOX 12489 Austin, Texas 78711-2489

(800) 500-7074, (512) 475-2200 FAX (512) 475-1109

Internet Address: www.tdhca.state.tx.us/mh/index.htm

STATEMENT FROM TAX ASSESSOR-COLLECTOR
To meet the requirements of Texas Occupations Code 1201.206(g)

BLOCK 1: Home Information

Manufacturer: \_\_\_\_\_ Model: \_\_\_\_\_
Serial Number: \_\_\_\_\_ Label # and/or Seal #: \_\_\_\_\_
Tax Roll Account No.: \_\_\_\_\_ Physical Address: \_\_\_\_\_

BLOCK 2: Statement of Facts

Used to confirm that taxes have been paid and/or escrowed enabling the transfer of ownership of a used manufactured home (providing all other requirements are met).

Check either A, B, or C:

Date of Sale: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

[ ] A. Not on the tax roll

This home is not on the tax roll for this county.

[ ] B. The present tax year has been billed:

The present and previous year's taxes have been billed and paid. There are NO PERSONAL PROPERTY TAXES DUE.

[ ] C. The present tax year has NOT BEEN billed:

The previous tax year has been billed and paid in full. No taxes are due.

The current tax year has not been billed (levied), but taxes have been estimated, paid and placed in escrow and any difference owed will be due when taxes are billed.

BLOCK 3: Signature (Notarization is optional)

(Signature of tax assessor-collector's authorized representative)

(Name of County making this statement)

(Printed name and title of authorized representative)

Before me personally appeared the person (s) whose signature (s) appear above, who by being sworn, upon oath, say that the statements set forth hereinabove are true and correct. Subscribed and sworn before me this \_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_.

(Name of Notary)

(Notary Public)

(Commission Expires)

SEAL

Notary Public State of Texas

Figure: 30 TAC §113.2171(a)

$$C_{7\%} = C_{unc} * (13.9) * \left( \frac{1}{(20.9 - CO_2)} \right) \text{ (Eq. 1)}$$

Where:

$C_{7\%}$  = concentration corrected to 7 percent oxygen.

$C_{unc}$  = uncorrected pollutant concentration.

$CO_2$  = concentration of oxygen (percent).

Figure: 30 TAC §113.2171(b)

$$\%P_{Hg} = (E_i - E_o) * \left( \frac{100}{E_i} \right) \text{ (Eq. 2)}$$

Where:

$\%P_{Hg}$  = percent reduction of potential mercury emissions

$E_i$  = mercury emission concentration as measured at the air pollution control device inlet, corrected to 7 percent oxygen, dry basis

$E_o$  = mercury emission concentration as measured at the air pollution control device outlet, corrected to 7 percent oxygen, dry basis

Figure: 30 TAC §113.2171(c)

$$\%P_{HCl} = (E_i - E_o) * \left( \frac{100}{E_i} \right) \text{ (Eq. 3)}$$

Where:

$\%P_{HCl}$  = percent reduction of the potential hydrogen chloride emissions

$E_i$  = hydrogen chloride emission concentration as measured at the air pollution control device inlet, corrected to 7 percent oxygen, dry basis

$E_o$  = hydrogen chloride emission concentration as measured at the air pollution control device outlet, corrected to 7 percent oxygen, dry basis

Figure: 30 TAC §113.2171(f)(1)

$$C = \sum_{i=1}^n f_i * h_i \text{ (Eq. 4)}$$

Where:

C = required quarterly carbon usage for the plant in kilograms (or pounds).

$f_i$  = required carbon feed rate for the municipal waste combustion unit in kilograms (or pounds) per hour. That is the average carbon feed rate during the most recent mercury or dioxins/furans stack tests (whichever has a higher feed rate).

$h_i$  = number of hours the municipal waste combustion unit was in operation during the calendar quarter (hours).

n = number of municipal waste combustion units, i, located at your plant.

Figure: 30 TAC §113.2171(f)(2)

$$C = f * h \text{ (Eq. 5)}$$

Where:

C = required quarterly carbon usage for the unit in kilograms (or pounds).

f = required carbon feed rate for the municipal waste combustion unit in kilograms (or pounds) per hour. That is the average carbon feed rate during the most recent mercury or dioxins/furans stack tests (whichever has a higher feed rate).

h = number of hours the municipal waste combustion unit was in operation during the calendar quarter (hours).

**Table 1. Compliance Schedules and Increments of Progress**

Affected Units	Increment 1 (Submit Final Control Plan)	Increment 2 (Award Contracts)	Increment 3 (Begin Onsite Construction)	Increment 4 (Complete Onsite Construction)	Increment 5 (Final Compliance)
1. All Class I Units <sup>a b</sup>	Within 60 days from the date the TCEQ publishes notice in the <i>Texas Register</i> of state plan approval	No later than 18 months from the date the TCEQ publishes notice in the <i>Texas Register</i> of state plan approval	No later than 24 months from the date the TCEQ publishes notice in the <i>Texas Register</i> of state plan approval	No later than 34 months from the date the TCEQ publishes notice in the <i>Texas Register</i> of state plan approval	No later than 36 months from the date the TCEQ publishes notice in the <i>Texas Register</i> of state plan approval <sup>b</sup>
2. All Class II Units <sup>c</sup>	Within 60 days from the date the TCEQ publishes notice in the <i>Texas Register</i> of state plan approval	N/A	N/A	N/A	No later than 36 months from the date the TCEQ publishes notice in the <i>Texas Register</i> of state plan approval

<sup>a</sup>Class I units mean small municipal waste combustion units subject to this division that are located at municipal waste combustion plants with an aggregate plant combustion capacity greater than 250 tons per day of municipal solid waste. See §113.2100 of this title for definitions.

<sup>b</sup>For Class I units that began construction, reconstruction, or modification after June 26, 1987, comply with the dioxins/furans and mercury limits by the later of two dates:

1. One year after the effective date of state plan approval.
2. One year after the issuance of a revised construction or operating permit, if a permit modification is required.
3. Final compliance with the dioxins/furans limits must be achieved no later than December 6, 2005, even if the date one year after the issuance of a revised construction or operating permit is after December 6, 2005.

<sup>c</sup>Class II units mean all small municipal combustion units subject to this division that are located at municipal waste combustion plants with aggregate plant combustion capacity less than or equal to 250 tons per day of municipal solid waste. See §113.2100 of this title for definitions.

Figure: 30 TAC §113.2174(b)

**Table 2. Class I Emission Limits for Existing Small Municipal Waste Combustion Units<sup>a</sup>**

Pollutant	Emission Limits <sup>b</sup>	Averaging Times	Compliance Method
1. Organics: Dioxins/Furans (total mass basis)	30 nanograms per dry standard cubic meter for municipal waste combustion units that do not employ an electrostatic precipitator-based emission control system -or- 60 nanograms per dry standard cubic meter for municipal waste combustion units that employ an electrostatic precipitator-based emission control system	3-run average (minimum run duration is 4 hours)	Stack test
2. Metals: Cadmium	0.040 milligrams per dry standard cubic meter	3-run average (run duration specified in test method)	Stack test
Lead	0.490 milligrams per dry standard cubic meter	3-run average (run duration specified in test method)	Stack test
Mercury	0.080 milligrams per dry standard cubic meter 85 percent reduction of potential mercury emissions	3-run average (run duration specified in test method)	Stack test
Opacity	10 percent	Thirty 6-minute averages	Stack test
Particulate Matter	27 milligrams per dry standard cubic meter	3-run average (run duration specified in test method)	Stack test
3. Acid Gases: Hydrogen Chloride	31 parts per million by dry volume 95 percent reduction of potential hydrogen chloride emissions	3-run average (minimum run duration is 1 hour)	Stack test
Sulfur Dioxide	31 parts per million by dry volume 75 percent reduction of potential sulfur dioxide emissions	24-hour daily block geometric average concentration percent reduction	Continuous emission monitoring system
4. Other: Fugitive Ash	Visible emissions for no more than 5 percent of hourly observation period	Three 1-hour observation periods	Visible emission test

<sup>a</sup>Class I units mean small municipal waste combustion units subject to this division that are located at municipal waste combustion plants with an aggregate plan combustion capacity greater than 250 tons per day of municipal solid waste. See §113.2100 of this title for definitions.

<sup>b</sup>All emission limits (except for opacity) are measured at 7 percent oxygen.

Figure: 30 TAC §113.2174(c)

**Table 3. Class I Nitrogen Oxides Emission Limits for Existing Small Municipal Waste Combustion Units<sup>a,b,c</sup>**

Municipal Waste Combustion Technology	Limits for Class I Municipal Waste Combustion Units
1. Mass burn waterwall	200 parts per million by dry volume
2. Mass burn rotary waterwall	170 parts per million by dry volume
3. Refuse-derived fuel	250 parts per million by dry volume
4. Fluidized bed	220 parts per million by dry volume
5. Mass burn refractory	350 parts per million by dry volume
6. Modular excess air	190 parts per million by dry volume
7. Modular starved air	380 parts per million by dry volume

<sup>a</sup>Class I units mean small municipal waste combustion units subject to this division that are located at municipal waste combustion plants with an aggregate plant combustion capacity greater than 250 tons per day of municipal solid waste. See §113.2100 of this title for definitions.

<sup>b</sup>Nitrogen oxides limits are measured at 7 percent oxygen.

<sup>c</sup>All limits are 24-hour daily block arithmetic average concentration. Compliance is determined for Class I units by continuous emission monitoring systems.

Figure: 30 TAC §113.2174(d)

**Table 4. Class II Emission Limits for Existing Small Municipal Waste Combustion Unit<sup>a</sup>**

Pollutant	Emission Limits <sup>b</sup>	Averaging Times	Compliance Method
1. Organics: Dioxins/Furans (total mass basis)	125 nanograms per dry standard cubic meter	3-run average (minimum run duration is 4 hours)	Stack test
2. Metals: Cadmium	0.10 milligrams per dry standard cubic meter	3-run average (run duration specified in test method)	Stack test
Lead	1.6 milligrams per dry standard cubic meter	3-run average (run duration specified in test method)	Stack test
Mercury	0.080 milligrams per dry standard cubic meter  85 percent reduction of potential mercury emissions	3-run average (run duration specified in test method)	Stack test
Opacity	10 percent	Thirty 6-minute averages	Stack test
Particulate Matter	70 milligrams per dry standard cubic meter	3-run average (run duration specified in test method)	Stack test
3. Acid Gases: Hydrogen Chloride	250 parts per million by volume  -or- 50 percent reduction of potential hydrogen chloride emissions	3-run average (minimum run duration is 1 hour)	Stack test
Sulfur Dioxide	77 parts per million by dry volume  -or- 50 percent reduction of potential sulfur dioxide emissions	24-hour daily block geometric average concentration  -or- percent reduction	Continuous emission monitoring system
4. Other: Fugitive Ash	Visible emissions for no more than 5 percent of hourly observation period	Three 1-hour observation periods	Visible emission test

<sup>a</sup>Class II units mean all small municipal combustion units subject to this division that are located at municipal waste combustion plants with aggregate plant combustion capacity less than or equal to 250 tons per day of municipal solid waste. See §113.2100 of this title for definitions.

<sup>b</sup>All emission limits (except for opacity) are measured at 7 percent oxygen.

<sup>c</sup>No monitoring, testing, recordkeeping or reporting is required to demonstrate compliance with the nitrogen oxides limit for Class II units.



Figure: 30 TAC §113.2174(e)

**Table 5. Carbon Monoxide Emission Limits for Existing Small Municipal Waste Combustion Units**

Municipal Waste Combustion Unit	Carbon Monoxide Limits <sup>a</sup>	Averaging Times <sup>b</sup>
1. Fluidized bed	100 parts per million by dry volume	4-hour
2. Fluidized bed, mixed fuel, (wood/refuse-derived fuel)	200 parts per million by dry volume	24-hour <sup>c</sup>
3. Mass burn rotary refractory	100 parts per million by dry volume	4-hour
4. Mass burn rotary waterwall	250 parts per million by dry volume	24-hour
5. Mass burn waterwall and refractory	100 parts per million by dry volume	4-hour
6. Mixed fuel-fired, (pulverized coal/refuse-derived fuel)	150 parts per million by dry volume	4-hour
7. Modular starved-air and excess air	50 parts per million by dry volume	4-hour
8. Spreader stoker, mixed fuel-fired (coal/refuse-derived fuel)	200 parts per million by dry volume	24-hour daily
9. Stoker, refuse-derived fuel	200 parts per million by dry volume	24-hour daily

<sup>a</sup>All emission limits (except for opacity) are measured at 7 percent oxygen. Compliance is determined by continuous emission monitoring systems.

<sup>b</sup>Block averages, arithmetic mean. See §113.2100 of this title for definitions.

<sup>c</sup>24-hour block average, geometric mean.

Figure: 30 TAC §113.2174(f)

**Table 6. Requirements for Validating Continuous Emission Monitoring Systems (CEMS)**

Continuous Emission Monitoring Systems	Method in 40 CFR Part 60, Appendix A to Validate Pollutant Concentration Levels	Method in 40 CFR Part 60, Appendix A to Measure Oxygen (or Carbon Dioxide)
1. Nitrogen Oxides (Class I units only) <sup>a</sup>	Method 7, 7A, 7B, 7C, 7D, or 7E	Method 3 or 3A
2. Sulfur Dioxide	Method 6 or 6C	Method 3 or 3A
3. Carbon Monoxide	Method 10, 10A, or 10B	Method 3 or 3A

<sup>a</sup>Class I units mean small municipal waste combustion units subject to this division that are located at municipal waste combustion plants with an aggregate plant combustion capacity greater than 250 tons per day of municipal solid waste. See §113.2100 of this title for definitions.

Figure: 30 TAC §113.2174(g)

**Table 7. Requirements for Continuous Emission Monitoring Systems (CEMS)**

Pollutant	Span Values for CEMS	Performance Specifications (P.S.) in 40 CFR Part 60, Appendix B for your CEMS	If Needed to Meet Minimum Data Requirements, use the Following Alternate Methods in 40 CFR Part 60, Appendix A to Collect Data
1. Opacity	100 percent opacity	P.S. 1	Method 9
2. Nitrogen Oxides (Class I units only)	Control device outlet: 125 percent of the maximum expected hourly potential nitrogen oxides emissions of the municipal waste combustion unit	P.S. 2	Method 7E
3. Sulfur Dioxide	Inlet to control device: 125 percent of the maximum expected hourly potential sulfur dioxide emissions of the municipal waste combustion unit  Control device outlet: 50 percent of the maximum expected hourly potential sulfur dioxide emissions of the municipal waste combustion unit	P.S. 2	Method 6C
4. Carbon Monoxide	125 percent of the maximum expected hourly potential carbon monoxide emissions of the municipal waste combustion unit	P.S. 4A	Method 10 with alternative interference trap
5. Oxygen or Carbon Dioxide	25 percent oxygen or 25 percent carbon dioxide	P.S. 3	Method 3A or 3B

Figure: 30 TAC §113.2174(h)

**Table 8. Requirements for Stack Tests**

Pollutant	Method in 40 CFR Part 60, Appendix A to Determine Sampling Location	Method in 40 CFR Part 60, Appendix A to Measure Pollutant Concentration	Also Note the Following Information
1. Organics: Dioxins/Furans	Method 1	Method 23 <sup>a</sup>	The minimum sampling time must be 4 hours per test run while the municipal waste combustion unit is operating at full load
2. Metals: Cadmium	Method 1	Method 29 <sup>a</sup>	Compliance testing must be performed while the municipal waste combustion unit is operating at full load
Lead	Method 1	Method 29 <sup>a</sup>	Compliance testing must be performed while the municipal waste combustion unit is operating at full load
Mercury	Method 1	Method 29 <sup>a</sup>	Compliance testing must be performed while the municipal waste combustion unit is operating at full load
Opacity	Method 9	Method 9	Use Method 9 to determine compliance with opacity limits. 3-hour observation period (thirty 6-minute averages)
Particulate Matter	Method 1	Method 5 or 29	The minimum sample volume must be 1.0 cubic meters. The probe and filter holder heating systems in the sample train must be set to provide a gas temperature no greater than 160 ±14°C. The minimum sampling time is 1 hour
3. Acid Gases <sup>b</sup> Hydrogen Chloride	Method 1	Method 26 or 26A <sup>a</sup>	Test runs must be at least 1 hour long while the municipal waste combustion unit is operating at full load
4. Other <sup>b</sup> Fugitive Ash	Not applicable	Method 22 (visible emissions)	The three 1-hour observation period must include periods when the facility transfers fugitive ash from the municipal waste combustion unit to the area where the fugitive ash is stored or loaded into containers or trucks

<sup>a</sup>Must simultaneously measure oxygen (or carbon dioxide) using Method 3A or 3B in 40 CFR Part 60, Appendix A.

<sup>b</sup>Use CEMS to test sulfur dioxide, nitrogen oxide, and carbon monoxide. Stack tests are not required except for quality assurance requirements in 40 CFR Part 60, Appendix F.

Figure: 30 TAC §113.2224(f)

$$C_{adj} = C_{meas} \frac{(20.9 - 7)}{(20.9 - \%O_2)} \quad (\text{Eq. 1})$$

Where:

$C_{adj}$  = pollutant concentration adjusted to 7 percent oxygen;

$C_{meas}$  = pollutant concentration measured on a dry basis;

$(20.9-7)$  = 20.9 percent oxygen-7 percent oxygen (defined oxygen correction basis);

20.9 = oxygen concentration in air, percent; and

$\%O_2$  = oxygen concentration measured on a dry basis, percent.

Figure: 30 TAC §113.2261(a)

**Table 1. Increments of Progress and Compliance Schedules**

Increments of Progress	Compliance Dates
Increment 1: Submit Final Control Plan	No later than 12 months from the date the TCEQ publishes notice in the <i>Texas Register</i> of state plan approval
Increment 2: Final Compliance	No later than 36 months from the date the TCEQ publishes notice in the <i>Texas Register</i> of state plan approval

Figure: 30 TAC §113.2261(b)

**Table 2. Emission Limitations**

Pollutant	Emission Limitation <sup>a</sup>	Averaging Time	Method to Determine Compliance
Cadmium	0.004 milligrams per dry standard cubic meter	3-run average (1 hour minimum sample time per run)	Performance test (Method 29 of 40 CFR Part 60, Appendix A)
Carbon monoxide	157 parts per million by dry volume	3-run average (1 hour minimum sample time per run)	Performance test (Method 10, 10A, or 10B, of 40 CFR Part 60, Appendix A)
Dioxins/furans (toxic equivalency basis)	0.41 nanograms per dry standard cubic meter	3-run average (1 hour minimum sample time per run)	Performance test (Method 23 of 40 CFR Part 60, Appendix A)
Hydrogen chloride	62 parts per million by dry volume	3-run average (1 hour minimum sample time per run)	Performance test (Method 26A of 40 CFR Part 60, Appendix A)
Lead	0.04 milligrams per dry standard cubic meter	3-run average (1 hour minimum sample time per run)	Performance test (Method 29 of 40 CFR Part 60, Appendix A)
Mercury	0.47 milligrams per dry standard cubic meter	3-run average (1 hour minimum sample time per run)	Performance test (Method 29 of 40 CFR Part 60, Appendix A)
Opacity	10 percent	6-minute averages	Performance test (Method 9 of 40 CFR Part 60, Appendix A)
Oxides of nitrogen	388 parts per million by dry volume	3-run average (1 hour minimum sample time per run)	Performance test (Methods 7, 7A, 7C, 7D, or 7E of 40 CFR Part 60, Appendix A)
Particulate matter	70 milligrams per dry standard cubic meter	3-run average (1 hour minimum sample time per run)	Performance test (Method 5 or 29 of 40 CFR Part 60, Appendix A)
Sulfur dioxide	20 parts per million by dry volume	3-run average (1 hour minimum sample time per run)	Performance test (Method 6 or 6C of 40 CFR Part 60, Appendix A)

<sup>a</sup>All emission limitations (except for opacity) are measured at 7 percent oxygen, dry basis at standard conditions.

Figure: 30 TAC §113.2261(c)

**Table 3. Operating Limits for Wet Scrubbers**

For these operating parameters	You must establish these operating limits	And monitor using these minimum frequencies		
		Data Measurement	Data Recording	Averaging Time
Charge rate	Maximum charge rate	Continuous	Every hour	Daily (batch units). 3-hour rolling (continuous and intermittent units) <sup>a</sup>
Pressure drop across the wet scrubber or amperage to wet scrubber	Minimum pressure drop or amperage	Continuous	Every 15 minutes	3-hour rolling <sup>a</sup>
Scrubber liquor flow rate	Minimum flow rate	Continuous	Every 15 minutes	3-hour rolling <sup>a</sup>
Scrubber liquor pH	Minimum pH	Continuous	Every 15 minutes	3-hour rolling <sup>a</sup>

<sup>a</sup>Calculated each hour as the average of the previous 3 operating hours.

Figure: 30 TAC §113.2261(d)

**Table 4. Toxic Equivalency Factors**

Dioxin/Furan Congener	Toxic Equivalency Factor
2,3,7,8-tetrachlorinated dibenzo-p-dioxin	1
1,2,3,7,8-pentachlorinated dibenzo-p-dioxin	0.5
1,2,3,4,7,8-hexachlorinated dibenzo-p-dioxin	0.1
1,2,3,7,8,9-hexachlorinated dibenzo-p-dioxin	0.1
1,2,3,6,7,8-hexachlorinated dibenzo-p-dioxin	0.1
1,2,3,4,6,7,8-heptachlorinated dibenzo-p-dioxin	0.01
octachlorinated dibenzo-p-dioxin	0.001
2,3,7,8-tetrachlorinated dibenzofuran	0.1
2,3,4,7,8-pentachlorinated dibenzofuran	0.5
1,2,3,7,8-pentachlorinated dibenzofuran	0.05
1,2,3,4,7,8-hexachlorinated dibenzofuran	0.1
1,2,3,6,7,8-hexachlorinated dibenzofuran	0.1
1,2,3,7,8,9-hexachlorinated dibenzofuran	0.1
2,3,4,6,7,8-hexachlorinated dibenzofuran	0.1
1,2,3,4,6,7,8-heptachlorinated dibenzofuran	0.01
1,2,3,4,7,8,9-heptachlorinated dibenzofuran	0.01
octachlorinated dibenzofuran	0.001

Figure: 30 TAC §113.2261(e)

**Table 5. Summary of Reporting Requirements <sup>a</sup>**

Report	Due Date	Contents	Reference
Waste Management Plan	No later than the date specified in Table 1 for submittal of the final control plan	<ul style="list-style-type: none"> <li>Waste management plan</li> </ul>	§113.2237 of this title (relating to When must I submit my waste management plan?)
Initial Test Report	No later than 60 days following the initial performance test	<ul style="list-style-type: none"> <li>Complete test report for the initial performance test</li> <li>The values for the site-specific operating limits</li> <li>Installation of bag leak detection systems for fabric filters</li> </ul>	§113.2238 of this title (relating to What information must I submit following my initial performance test?)
Annual Report	No later than 12 months following the submittal of the initial test report. Subsequent reports are to be submitted no more than 12 months following the previous report	<ul style="list-style-type: none"> <li>Name and address</li> <li>Statement and signature by responsible official</li> <li>Date of report</li> <li>Values for the operating limits</li> <li>If no deviations or malfunctions were reported, a statement that no deviations occurred during the reporting period</li> <li>Highest recorded 3-hour average and the lowest 3-hour average, as applicable, for each operating parameter recorded for the calendar year being reported</li> <li>Information for deviations or malfunctions recorded under §113.2234(2)(F) and (3) through (5)</li> <li>If a performance test was conducted during the reporting period, the results of the test</li> <li>If a performance test was not conducted during the reporting period, a statement that the requirements of 40 CFR §60.2155(a) or (b) were met</li> </ul>	§113.2239 and §113.2240 of this title (relating to When must I submit my annual report? and What information must I include in my annual report?)

Emission Limitation or Operating Limit Deviation Report	By August 1 of that year for data collected during the first half of the calendar year. By February 1 of the following year for data collected during the second half of the calendar year	<ul style="list-style-type: none"> <li>• Documentation of periods when all qualified CISWI unit operators were unavailable for more than 8 hours but less than 2 weeks</li> <li>• Dates and times of deviations</li> <li>• Averaged and recorded data for these dates</li> <li>• Duration and causes for each deviation and the corrective actions taken</li> <li>• Copy of operating limit monitoring data and any test reports</li> <li>• Dates, times, and causes for monitor downtime incidents</li> <li>• Whether each deviation occurred during a period of startup, shutdown, or malfunction</li> </ul>	§113.2241 and §113.2242 of this title (relating to What else must I report if I have a deviation from the operating limits or the emission limitations? and What must I include in the deviation report?)
Qualified Operator Deviation Notification	Within 10 days of deviation	<ul style="list-style-type: none"> <li>• Statement of cause of deviation</li> <li>• Description of efforts to have an accessible qualified operator</li> <li>• The date a qualified operator will be accessible</li> </ul>	§113.2243(a)(1) of this title (relating to What else must I report if I have a deviation from the requirement to have a qualified operator accessible?)
Qualified Operator Deviation Status Report	Every 4 weeks following deviation	<ul style="list-style-type: none"> <li>• Description of efforts to have an accessible qualified operator</li> <li>• The date a qualified operator will be accessible</li> <li>• Request for approval to continue operation</li> </ul>	§113.2243(a)(2) of this title
Qualified Operator Deviation Notification of Resumed Operation	Prior to resuming operation	<ul style="list-style-type: none"> <li>• Notification that you are resuming operation</li> </ul>	§113.2243(b) of this title

<sup>a</sup>This table is only a summary, see the referenced sections of the rule for the complete requirements.



Figure: 30 TAC §113.2356(a)

$$C_{adj} = C_{meas} * \frac{(20.9 - 7)}{(20.9 - \%O_2)} \quad (\text{Eq.1})$$

Where:

$C_{adj}$  = pollutant concentration adjusted to 7 percent oxygen

$C_{meas}$  = pollutant concentration measured on a dry basis

$(20.9-7)$  = 20.9 percent oxygen–7 percent oxygen (defined oxygen correction basis)

20.9 = oxygen concentration in air, percent

$\%O_2$  = oxygen concentration measured on a dry basis, percent

Figure: 30 TAC §113.2356(d)

$$E_a = \frac{1}{12} \sum_{j=1}^{12} E_{hj} \quad (\text{Eq. 2})$$

Where:

$E_a$  = Average carbon monoxide pollutant rate for the 12-hour period, ppm corrected to 7 percent oxygen.

$E_{hj}$  = Hourly arithmetic average pollutant rate for hour "j,"

Figure: 30 TAC §113.2357(a)

**Table 1. Compliance Schedule**

Compliance Action	Date
Final Compliance <sup>a</sup>	December 16, 2010

<sup>a</sup>Final compliance means that you complete all process changes and retrofit of control devices so that, when the incineration unit is brought on line, all process changes and air pollution control devices necessary to meet the emission limitations operate as designed.

Figure: 30 TAC §113.2357(b)

**Table 2. Emission Limitations**

Pollutant	Emission Limitation <sup>a</sup>	Averaging Time	Method to Determine Compliance
1. Cadmium	18 micrograms per dry standard cubic meter	3-run average (1 hour minimum sample time per run)	Method 29 of 40 CFR Part 60, Appendix A
2. Carbon monoxide	40 parts per million by dry volume	3-run average (1 hour minimum sample time per run during performance test), and 12-hour rolling averages measured using CEMS <sup>b</sup>	Method 10, 10A, or 10B of 40 CFR Part 60, Appendix A and CEMS
3. Dioxins/furans (total basis)	33 nanograms per dry standard cubic meter	3-run average (1 hour minimum sample time per run)	Method 23 of 40 CFR Part 60, Appendix A
4. Hydrogen chloride	15 parts per million by dry volume	3-run average (1 hour minimum sample time per run)	Method 26A of 40 CFR Part 60, Appendix A
5. Lead	226 micrograms per dry standard cubic meter	3-run average (1 hour minimum sample time per run)	Method 29 of 40 CFR Part 60, Appendix A
6. Mercury	74 micrograms per dry standard cubic meter	3-run average (1 hour minimum sample time per run)	Method 29 of 40 CFR Part 60, Appendix A
7. Opacity	10 percent	6-run average (1 hour minimum sample time per run)	Method 9 of 40 CFR Part 60, Appendix A
8. Oxides of nitrogen	103 parts per million by dry volume	3-run average (1 hour minimum sample time per run)	Method 7, 7A, 7C, 7D, or 7E of 40 CFR Part 60, Appendix A or ANSI/ASME PTC 19.10-1981 (IBR, see 40 CFR §60.17(h)) in lieu of Methods 7 and 7C only
9. Particulate matter	0.013 grains per dry standard cubic foot	3-run average (1 hour minimum sample time per run)	Method 5 or 29 of 40 CFR Part 60, Appendix A
10. Sulfur dioxide	3.1 parts per million by dry volume	3-run average (1 hour minimum sample time per run)	Method 6 or 6C of 40 CFR Part 60, Appendix A or ANSI/ASME PTC 19.10-1981 (IBR, see 40 CFR §60.17(h)) in lieu of Method 6 only

<sup>a</sup>All emission limitations (except for opacity) are measured at 7 percent oxygen, dry basis at standard conditions.

<sup>b</sup>Calculated each hour as the average of the previous 12 operating hours.

Figure: 30 TAC §113.2357(c)

**Table 3. Operating Limits for Incinerators and Wet Scrubbers**

For these operating parameters	You must establish operating limits	And monitoring using these minimum frequencies		
		Data Measurement	Data Recording	Averaging Time
1. Charge rate	Maximum charge rate	Continuous	Every hour	Daily for batch units. 3-hour rolling for continuous and intermittent units <sup>a</sup>
2. Pressure drop across the wet scrubber or amperage to wet scrubber	Minimum pressure drop or amperage	Continuous	Every 15 minutes	3-hour rolling <sup>a</sup>
3. Scrubber liquor flow rate	Minimum flow rate	Continuous	Every 15 minutes	3-hour rolling <sup>a</sup>
4. Scrubber liquor pH	Minimum pH	Continuous	Every 15 minutes	3-hour rolling <sup>a</sup>

<sup>a</sup>Calculated each hour as the average of the previous 3 operating hours.

Figure: 30 TAC §113.2357(d)

**Table 4. Requirements for Continuous Emission Monitoring Systems (CEMS)**

Pollutant	Span Values for your CEMS	Performance Specifications (P.S.) in 40 CFR Part 60, Appendix B for your CEMS	If Needed to Meet Minimum Data Requirements, use the Following Alternate Methods in 40 CFR Part 60, Appendix A to Collect Data
1. Carbon Monoxide	125 percent of the maximum hourly potential carbon monoxide emissions of the waste combustion unit	P.S. 4A	Method 10
2. Oxygen	25 percent oxygen	P.S. 3	Method 3A or 3B, or ANSI/ASME PTC 19.10-1981 (IBR, see 40 CFR §60.17(h)) in lieu of Method 3B only

Figure: 30 TAC §113.2357(e)

**Table 5. Summary of Reporting Requirements**

Report	Due Date	Contents	Reference
1. Initial Test Report	No later than 60 days following the initial performance test	Complete test report for the initial performance test The values for the site-specific operating limits	§113.2336 of this title (relating to What information must I submit following my initial performance test?)
2. Waste Management Plan	No later than 60 days following the initial performance test	Reduction or separation of recyclable materials Identification of additional waste management measures and how they will be implemented	§§113.2304 through 113.2306 of this title (relating to What is a waste management plan? When must I submit my waste management plan? and What should I include in my waste management plan?)

<p>3. Annual Report</p>	<p>No later than 12 months following the submittal of the initial test report. Subsequent reports are to be submitted no more than 12 months following the previous report</p>	<p>Company Name and address; Statement and signature by the owner or operator; Date of report and beginning and ending dates of the reporting period; Values for the operating limits; If no deviations or malfunctions were reported, a statement that no deviations occurred during the reporting period; Highest and lowest recorded 12-hour averages, as applicable, for carbon monoxide emissions and highest and lowest recorded 3-hour averages, as applicable, for each operating parameter recorded for the calendar year being reported; Information for deviations or malfunctions recorded under 40 CFR §60.2949(b)(6) and (c) through (e); If a performance test was conducted during the reporting period, the results of the test; If a performance test was not conducted during the reporting period, a statement that the requirements of 40 CFR §60.2934(a) or (b) were met; Documentation of periods when all qualified OSWI unit operators were unavailable for more than 12 hours but less than 2 weeks</p>	<p>§113.2337 and §113.2338 of this title (relating to When must I submit my annual report? and What information must I include in my annual report?)</p>
<p>4. Emission Limitation or Operating Limit Deviation Report</p>	<p>By August 1 of that year for data collected during the first half of the calendar year. By February 1 of the following year for data collected during the second half of the calendar year</p>	<p>Dates and times of deviation from the emission limitations or operating limit requirements; Averaged and recorded data for those dates; Duration and causes of each deviation and the corrective actions taken; Copy of operating limit monitoring data during each deviation and any test report that documents the emission levels; Dates, times, and causes for monitor downtime incidents; Whether each deviation occurred during a period of startup, shutdown, or malfunction; and Dates, times, and duration of any bypass of the control device</p>	<p>§113.2339 and §113.2340 of this title (relating to What else must I report if I have a deviation from the operating limits or the emission limitations? and What must I include in the deviation report?)</p>

5. Qualified Operator Deviation Notification	Within 10 days of deviation	Statement of cause of deviation; Description of efforts to have an accessible qualified operator; and The date a qualified operator will be accessible	§113.2341(a)(1) of this title (relating to What else must I report if I have a deviation from the requirement to have a qualified operator operator accessible?)
6. Qualified Operation Deviation Status Report	Every 4 weeks following deviation	Description of efforts to have an accessible qualified operator; The date a qualified operator will be accessible; and Request to continue operation	§113.2341(a)(2) of this title
7. Qualified Operator Deviation Notification of Resumed Operation	Prior to resuming operation	Notification that you are resuming operation	§113.2341(b) of this title

**Note:** This table is only a summary, see the referenced sections of the rule for the complete requirements.

### TIER 1: EXCLUSION CRITERIA CHECKLIST

This exclusion criteria checklist is intended to aid the person and the TCEQ in determining whether or not further ecological evaluation is necessary at an affected property where a response action is being pursued under the Texas Risk Reduction Program (TRRP). Exclusion criteria refer to those conditions at an affected property which preclude the need for a formal ecological risk assessment (ERA) because there are **incomplete or insignificant ecological exposure pathways** due to the nature of the affected property setting and/or the condition of the affected property media. This checklist (and/or a Tier 2 or 3 ERA or the equivalent) must be completed by the person for all affected property subject to the TRRP. The person should be familiar with the affected property but need not be a professional scientist in order to respond, although some questions will likely require contacting a wildlife management agency (i.e., Texas Parks and Wildlife Department or U.S. Fish and Wildlife Service). The checklist is designed for general applicability to all affected property; however, there may be unusual circumstances which require professional judgement in order to determine the need for further ecological evaluation (e.g., cave-dwelling receptors). In these cases, the person is strongly encouraged to contact TCEQ before proceeding.

Besides some preliminary information, the checklist consists of three major parts, **each of which must be completed unless otherwise instructed**. PART I requests affected property identification and background information. PART II contains the actual exclusion criteria and supportive information. PART III is a qualitative summary statement and a certification of the information provided by the person. **Answers should reflect existing conditions and should not consider future remedial actions at the affected property**. Completion of the checklist should lead to a logical conclusion as to whether further evaluation is warranted. Definitions of terms used in the checklist have been provided and users are strongly encouraged to familiarize themselves with these definitions before beginning the checklist.

Name of Facility:

Affected Property Location:

Mailing Address:

TCEQ Case Tracking #s:

Solid Waste Registration #s:

Voluntary Cleanup Program #:

EPA I.D. #s:

#### **Definitions<sup>1</sup>**

**Affected property** - The entire area (i.e., on-site and off-site; including all environmental media) which contains releases of chemicals of concern at concentrations equal to or greater than the assessment level applicable for residential land use and groundwater classification.

**Assessment level** - A critical protective concentration level for a chemical of concern used for affected property assessments where the human health protective concentration level is established under a Tier 1 evaluation as described in §350.75(b) of this title (relating to Tiered Human Health Protective Concentration Level Evaluation), except for the protective concentration level for the soil-to-groundwater exposure pathway which may be established under Tier 1, 2, or 3 as described in §350.75(i)(7) of this title, and ecological protective concentration levels which are developed, when necessary, under Tier 2 and/or 3 in accordance with §350.77(c) and/or (d), respectively, of this title (relating to Ecological Risk Assessment and Development of Ecological Protective Concentration Levels).

**Bedrock** - The solid rock (i.e., consolidated, coherent, and relatively hard naturally formed material that cannot normally be excavated by manual methods alone) that underlies gravel, soil or other surficial material.

**Chemical of concern** - Any chemical that has the potential to adversely affect ecological or human receptors due to its concentration, distribution, and mode of toxicity. Depending on the program area, chemicals of concern may include the following: solid waste, industrial solid waste, municipal solid waste, and hazardous waste as defined in Texas Health and Safety Code, §361.003, as amended; hazardous constituents as listed in 40 Code of Federal Regulations Part 261, Appendix VIII, as amended; constituents on the groundwater monitoring list in 40 Code of Federal Regulations Part 264, Appendix IX, as amended; constituents as listed in 40 CFR Part 258 Appendices I and II, as amended; pollutant as defined in Texas Water Code, §26.001, as amended; hazardous substance as defined in Texas Health and Safety Code, §361.003, as amended, and the Texas Water Code, §26.263, as amended; ~~regulated substance as defined in Texas Water Code, §26.342, as amended and §334.2 of this title (relating to Definitions), as amended; petroleum product as defined in Texas Water Code, §26.342, as amended and §334.122(b)(12) of this title (relating to Definitions for ASTs), as amended;~~ other substances as defined in Texas Water Code, §26.039(a), as amended; and daughter products of the aforementioned constituents.

**Community** - An assemblage of plant and animal populations occupying the same habitat in which the various species interact via spatial and trophic relationships (e.g., a desert community or a pond community).

**Complete exposure pathway** - An exposure pathway where a human or ecological receptor is exposed to a chemical of concern via an exposure route (e.g., incidental soil ingestion, inhalation of volatiles and particulates, consumption of prey, etc).

**De minimus** - The description of an area of affected property comprised of one acre or less where the ecological risk is considered to be insignificant because of the small extent of contamination, the absence of protected species, the availability of similar unimpacted habitat nearby, and the lack of adjacent sensitive environmental areas.

**Ecological protective concentration level** - The concentration of a chemical of concern at the point of exposure within an exposure medium (e.g., soil, sediment, groundwater, or surface water) which is determined in accordance with §350.77(c) or (d) of this title (relating to Ecological Risk Assessment and Development of Ecological Protective Concentration Levels) to be protective for ecological receptors. These concentration levels are primarily intended to be protective for more mobile or wide-ranging ecological receptors and, where appropriate, benthic invertebrate communities within the waters in the state. These concentration levels are not intended to be directly protective of receptors with limited mobility or range (e.g., plants, soil invertebrates, and small rodents), particularly those residing within active areas of a facility, unless these receptors are threatened/endangered species or unless impacts to these receptors result in disruption of the ecosystem or other unacceptable consequences for the more



mobile or wide-ranging receptors (e.g., impacts to an off-site grassland habitat eliminate rodents which causes a desirable owl population to leave the area).

**Ecological risk assessment** - The process that evaluates the likelihood that adverse ecological effects may occur or are occurring as a result of exposure to one or more stressors; however, as used in this context, only chemical stressors (i.e., COCs) are evaluated.

**Environmental medium** - A material found in the natural environment such as soil (including non-waste fill materials), groundwater, air, surface water, and sediments, or a mixture of such materials with liquids, sludges, gases, or solids, including hazardous waste which is inseparable by simple mechanical removal processes, and is made up primarily of natural environmental material.

**Exclusion criteria** - Those conditions at an affected property which preclude the need to establish a protective concentration level for an ecological exposure pathway because the exposure pathway between the chemical of concern and the ecological receptors is not complete or is insignificant.

**Exposure medium** - The environmental medium or biologic tissue in which or by which exposure to chemicals of concern by ecological or human receptors occurs.

**Facility** - The installation associated with the affected property where the release of chemicals of concern occurred.

**Functioning cap** - A low permeability layer or other approved cover meeting its design specifications to minimize water infiltration and chemical of concern migration, and prevent ecological or human receptor exposure to chemicals of concern, and whose design requirements are routinely maintained.

**Landscaped area** - An area of ornamental, or introduced, or commercially installed, or manicured vegetation which is routinely maintained.

**Off-site property (off-site)** - All environmental media which is outside of the legal boundaries of the on-site property.

**On-site property (on-site)** - All environmental media within the legal boundaries of a property owned or leased by a person who has filed a self-implementation notice or a response action plan for that property or who has become subject to such action through one of the agency's program areas for that property.

**Physical barrier** - Any structure or system, natural or manmade, that prevents exposure or prevents migration of chemicals of concern to the points of exposure.

**Point of exposure** - The location within an environmental medium where a receptor will be assumed to have a reasonable potential to come into contact with chemicals of concern. The point of exposure may be a discrete point, plane, or an area within or beyond some location.

**Protective concentration level** - The concentration of a chemical of concern which can remain within the source medium and not result in levels which exceed the applicable human health risk-based exposure limit or ecological protective concentration level at the point of exposure for that exposure pathway.

**Release** - Any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, with the exception of:

(A) A release that results in an exposure to a person solely within a workplace, concerning a claim that the person may assert against the person's employer;

(B) An emission from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine;

(C) A release of source, by-product, or special nuclear material from a nuclear incident, as those terms are defined by the Atomic Energy Act of 1954, as amended (42 U.S.C. §2011 *et seq.*), if the release is subject to requirements concerning financial protection established by the Nuclear Regulatory Commission under §170 of that Act;

(D) For the purposes of the environmental response law §104, as amended, or other response action, a release of source, by-product, or special nuclear material from a processing site designated under §102(a)(1) or §302(a) of the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. §7912 and §7942), as amended; and

(E) The normal application of fertilizer.

**Sediment** - Non-suspended particulate material lying below surface waters such as bays, the ocean, rivers, streams, lakes, ponds, or other similar surface water body (including intermittent streams). Dredged sediments which have been removed from below surface water bodies and placed on land shall be considered soils.

**Sensitive environmental areas** - Areas that provide unique and often protected habitat for wildlife species. These areas are typically used during critical life stages such as breeding, hatching, rearing of young, and overwintering. Examples include critical habitat for threatened and endangered species, wilderness areas, parks, and wildlife refuges.

**Source medium** - An environmental medium containing chemicals of concern which must be removed, decontaminated and/or controlled in order to protect human health and the environment. The source medium may be the exposure medium for some exposure pathways.

**Stressor** - Any physical, chemical, or biological entity that can induce an adverse response; however, as used in this context, only chemical entities apply.

**Subsurface soil** - For human health exposure pathways, the portion of the soil zone between the base of surface soil and the top of the groundwater-bearing unit(s). For ecological exposure pathways, the portion of the soil zone between 0.5 feet and 5 feet in depth.

**Surface cover** - A layer of artificially placed utility material (e.g., shell, gravel).

**Surface soil** - For human health exposure pathways, the soil zone extending from ground surface to 15 feet in depth for residential land use and from ground surface to 5 feet in depth for commercial/industrial land use; or to the top of the uppermost groundwater-bearing unit or bedrock, whichever is less in depth. For ecological exposure pathways, the soil zone extending from ground surface to 0.5 feet in depth.

**Surface water** - Any water meeting the definition of surface water in the state as defined in §307.3 of this title (relating to Abbreviations and Definitions), as amended.



Is the water body listed as a State classified segment in Appendix C of the current Texas Surface Water Quality Standards; §§307.1 - 307.10?

Yes Segment # \_\_\_\_\_ Use Classification:

No

If the water body is not a State classified segment, identify the first downstream classified segment.

Name:

Segment #:

Use Classification:

As necessary, provide further description of surface waters in the vicinity of the affected property:

## **PART II. Exclusion Criteria and Supportive Information**

### **Subpart A. Surface Water/Sediment Exposure**

1) Regarding the affected property where a response action is being pursued under the TRRP, have COCs migrated and resulted in a release or imminent threat of release to either surface waters or to their associated sediments via surface water runoff, air deposition, groundwater seepage, etc.? Exclude wastewater treatment facilities and storm water conveyances/impoundments authorized by permit. Also exclude conveyances, decorative ponds, and those portions of process facilities which are:

a. Not in contact with surface waters in the State or other surface waters which are ultimately in contact with surface waters in the State; and

b. Not consistently or routinely utilized as valuable habitat for natural communities including birds, mammals, reptiles, etc.

Yes  No

Explain:

If the answer is Yes to Subpart A above, the affected property does not meet the exclusion criteria. However, complete the remainder of Part II to determine if there is a complete and/or significant soil exposure pathway, then complete PART III - Qualitative Summary and Certification. If the answer is No, go to Subpart B.

### **Subpart B. Affected Property Setting**

In answering "Yes" to the following question, it is understood that the affected property is not attractive to wildlife or livestock, including threatened or endangered species (i.e., the affected property does not serve as valuable habitat, foraging area, or refuge for ecological communities). (May require consultation with wildlife management agencies.)

1) Is the affected property wholly contained within contiguous land characterized by: pavement, buildings, landscaped area, functioning cap, roadways, equipment storage area, manufacturing or process area, other surface cover or structure, or otherwise disturbed ground?

Yes  No

Explain:

If the answer to Subpart B above is Yes, the affected property meets the exclusion criteria, assuming the answer to Subpart A was No. Skip Subparts C and D and complete PART III - Qualitative Summary and Certification. If the answer to Subpart B above is No, go to Subpart C.

### **Subpart C. Soil Exposure**

1) Are COCs which are in the soil of the affected property solely below the first 5 feet beneath ground surface **or** does the affected property have a physical barrier present to prevent exposure of receptors to COCs in surface soil?

Yes  No

Explain:

If the answer to Subpart C above is Yes, the affected property meets the exclusion criteria, assuming the answer to Subpart A was No. Skip Subpart D and complete PART III - Qualitative Summary and Certification. If the answer to Subpart C above is No, proceed to Subpart D.

### **Subpart D. *De Minimus* Land Area**

In answering "Yes" to the question below, it is understood that all of the following conditions apply:

The affected property is not known to serve as habitat, foraging area, or refuge to threatened/endangered or otherwise protected species. (Will likely require consultation with wildlife management agencies.)

Similar but unimpacted habitat exists within a half-mile radius.

The affected property is not known to be located within one-quarter mile of sensitive environmental areas (e.g., rookeries, wildlife management areas, preserves). (Will likely require consultation with wildlife management agencies.)

There is no reason to suspect that the COCs associated with the affected property will migrate such that the affected property will become larger than one acre.

1) Using human health protective concentration levels as a basis to determine the extent of the COCs, does the affected property consist of one acre or less and does it meet all of the conditions above?

Yes  No

Explain how conditions are met/not met:

If the answer to Subpart D above is Yes, then no further ecological evaluation is needed at this affected property, assuming the answer to Subpart A was No. Complete PART III - Qualitative Summary and Certification. If the answer to Subpart D above is No, proceed to Tier 2 or 3 or comparable ERA.

**PART III. Qualitative Summary and Certification (Complete in all cases.)**

Attach a brief statement (not to exceed 1 page) summarizing the information you have provided in this form. This summary should include sufficient information to verify that the affected property meets or does not meet the exclusion criteria. The person should make the initial decision regarding the need for further ecological evaluation (i.e., Tier 2 or 3) based upon the results of this checklist. After review, TCEQ will make a final determination on the need for further assessment. **Note that the person has the continuing obligation to re-enter the ERA process if changing circumstances result in the affected property not meeting the Tier 1 exclusion criteria.**

Completed by: \_\_\_\_\_ *(Typed/Printed Name)*

\_\_\_\_\_ *(Title)*

\_\_\_\_\_ *(Date)*

I believe that the information submitted is true, accurate, and complete, to the best of my knowledge.

\_\_\_\_\_ *(Typed/Printed Name of Person)*

\_\_\_\_\_ *(Title of Person)*

\_\_\_\_\_ *(Signature of Person)*

\_\_\_\_\_ *(Date Signed)*

\_\_\_\_\_ **1 These definitions were taken from 30 TAC §350.4 and may have both ecological and human health applications. For the purpose of this checklist, it is understood that only the ecological applications are of concern.**

# IN

# ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

## Ark-Tex Council of Governments

Request for Proposal for Training Contractor

### Overview:

The trainer will work with Ark-Tex Council of Governments (ATCOG) and partners to provide EPA/HUD training course as specified in the newly awarded Lead Outreach and Training program. The goal of this training is to increase awareness of safety guidelines, rules, and other environmental concerns dealing with lead base paint to local contractors and "do it yourself" workers in remodeling and renovation. The training prepared by the contractor will include but not limited to the below listed curriculum:

- Protection of Workers
- Rules of safety involving abatement, remodeling, and renovation
- Paint Stabilization and/or Standard treatment

The trainer will also conduct training for local realtors on real estate disclosure requirements of Toxic Substances Control Act (TSCA) section 1018.

### Partner Participation and Assistance:

ATCOG will coordinate preparation and advertizing efforts for training with the below listed community partners:

- American Chapter American Chemical Society at Texarkana College
- City of Texarkana, Arkansas
- City of Texarkana, Texas
- ATCOG board and advisors

Advertizing for training to include:

- Develop PSAs
- Provide program information to TV, newspapers, radio stations, and cable.
- Update partner web site pages with training scheduling and registration information.

Event Preparation:

- Procure adequate space for training
- Prepare and advertize registration guidelines via newspaper, ATCOG, Texarkana College and city web sites.
- Assist trainer with copies of materials for training sessions
- Assist trainer with distribution of materials
- Assist trainer as needed

Finance:

- ATCOG will be responsible for all financial management and disbursements through the EPA Lead Outreach and Training Program grant funds.

### Trainer - Scope of Responsibilities:

The trainer will conduct an 8 hour EPA/HUD Lead Based Paint training session every quarter for local contractors and "do it yourself" workers in remodeling and renovation.

The trainer will conduct training for local realtors concerning real estate disclosure requirements of TSCA Section 1018.

Training sessions will be offered periodically during the grant FY starting in the first quarter (October 2008 through December 2008) and ending September 2009.

Additional specific training to meet community needs as determined by the two Cities will be provided by the contractor.

An estimated 200 individuals will receive training.

### Trainer Position Specifications:

Specific working knowledge of lead hazards and safety rules as well as Federal and State mandated laws to local contractors and "do-it yourself" remodelers and renovators. Ability to conduct training of real estate disclosure requirements to local realtors. Ability to conduct training of lead hazard information to diverse groups in the Texarkana area.

Procure training specific materials for distribution for each specific training session.

### Training Program Outcome Measurements:

- The outcome measurements for the EPA/HUD Renovation Training Curriculum, Lead Safety for Remodeling, Repair, and painting will be an increased number of contractors and do-it-yourself workers that participate and reported in the training given on a quarterly basis. The qualitative outcome will be the behavioral changes of the workers themselves.

- The outcome measurements of the awareness training for local realtors will be an increased number of realtors who are aware of the real estate disclosure requirements of TSCA Section 1018 through training attendance and mail-outs.

- After each training session a post-training evaluation will be given to each participant concerning the specific training received. These evaluations will be analyzed and shared with trainer and partners in order to concentrate efforts for additional training sessions.

TRD-200805868

L.D. Williamson

Executive Director

Ark-Tex Council of Governments

Filed: November 7, 2008

## Cancer Prevention and Research Institute of Texas

Request for Applications

Texans Conquer Cancer Patient Support Services Program

### Introduction:

The Cancer Prevention and Research Institute of Texas (Institute) announces the availability of state funds to be awarded to support the *Texans Conquer Cancer Patient Support Services Program*. The Institute awards grants to organizations that provide support services to cancer patients and their families. Funding for these grants is derived from the sale of "Texans Conquer Cancer" specialty license plates through the Texas Department of Transportation.

Funds will be awarded to the selected organizations in the maximum amount of \$2,000 per organization per fiscal year. Applicants may apply again in future funding years.

**Purpose:**

The purpose of this Request for Applications (RFA) is to solicit statewide applications for projects that will provide direct support services to cancer patients and their families.

**Eligibility requirements:**

Only nonprofit organizations located in Texas that provide support services for cancer patients and their families are eligible for funding under this program. Funds may be used to provide the following allowable services, which include but are not limited to:

- A) Transportation
- B) Childcare
- C) Medical equipment
- D) Consumable supplies for cancer care
- E) Lodging for patients and/or family during active treatment
- F) Medications and equipment required for symptom control
- G) Rent assistance during active treatment
- H) Food assistance during active treatment

Funds may not be used to provide the following disallowable services, which include but are not limited to:

- A) Hospitalization
- B) Surgery
- C) Outpatient care, including laboratory tests and physician visits
- D) Chemotherapy
- E) Radiation
- F) Health insurance deductibles

Operating expenses for grantee such as utilities, salaries, office equipment, and entertainment are also not allowed.

**Application requirements:**

Applications and instructions for completing the application can be obtained from the Institute by calling (512) 438-3060, or online at the Institute website at <http://www.cprit.state.tx.us>. Applications are due at the Institute office by 5 pm on January 9, 2009. Applications must be submitted according to the Patient Support Services application instructions and form. The application may be expanded to a maximum of two pages, however, please provide only the requested information.

**Project requirements:**

Projects funded under this initiative must provide:

- Support services for cancer patients and their families.
- Documentation of previous successful experience in providing effective patient support services.

- Assurances that the project does not duplicate existing services or resources in the community.

- Documentation of an in-kind contribution of at least ten percent. In-kind contributions may include applicant funds committed to the project, donated services, indirect expenses, or other in-kind contributions. The Institute reserves the right to waive this requirement, on a case-by-case basis.

- A process for collecting performance data and providing an annual report that describes the number of people served and the services provided.

**Funding awards:**

The Texans Conquer Cancer Advisory Committee and CPRIT staff will review applications for completeness and technical merit. The Cancer Prevention and Research Institute of Texas is expected to make final funding decisions in late February 2009. All applicants will receive written notification of the Institute's decisions regarding their applications.

The Institute's funding decision will be based on:

- The scope of the project, including reaching a maximum number of people;
- Innovative aspects of the proposed project;
- Applicant's successful collaboration with other relevant organizations;
- Applicant's qualifications to conduct the proposed project;
- Reasonableness of budgeted amounts and appropriateness of budget justifications;
- Completeness and clarity of the application; and
- Applicant's ability to reach patients in greatest need.

The Cancer Prevention and Research Institute of Texas has sole discretion and reserves the right to reject any or all applications received in response to this funding announcement. This announcement does not constitute a commitment by the Institute to award a contract or to pay costs incurred in the preparation of an application.

It is anticipated that up to five (5) projects will be selected under this initiative to receive *Texans Conquer Cancer Patient Support Services Program* funding. The *Program* may fund more, or fewer projects, based on the merit of applications received and the availability of funding. The Institute reserves the right to take the needs of geographic locations into consideration when selecting projects.

**Additional information:**

For additional information about this funding announcement, contact Sandra Balderrama, Interim Administrative Director, or Marcie Moberbe ([moberbe@cprit.state.tx.us](mailto:moberbe@cprit.state.tx.us)), Program Specialist, Cancer Prevention and Research Institute of Texas, P.O. Box 12097, Austin, Texas 78711, (512) 463-3190.

TRD-200805899  
Sandra Balderrama  
Interim Administrative Director  
Cancer Prevention and Research Institute of Texas  
Filed: November 12, 2008

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**Comptroller of Public Accounts**  
Notice of Contract Amendment



The Comptroller of Public Accounts (Comptroller) State Energy Conservation Office (SECO) announces the amendment of the following contracts:

The notice of request for proposals (RFP #180e) was published in the September 14, 2007, issue of the *Texas Register* (32 TexReg 6431). The notice of award was published in the January 18, 2008, issue of *Texas Register* (33 TexReg 604).

The contractors provide energy engineering services for the Schools and Local Government Program.

The amended contracts are as follows:

1. Estes, McClure and Associates, Inc., 3608 West Way, Tyler, Texas 75703. The original amount of the contract was not to exceed \$210,000. The original term of the contract was January 3, 2008 through December 31, 2008. The amendment adds \$190,000 to the amount for a new total amount not to exceed \$400,000 and extends the term of the contract through August 31, 2009;
2. Energy Systems Associates, Inc., 100 East Main, Suite 201, Round Rock, Texas 78664. The original amount of the contract was not to exceed \$230,000. The original term of the contract was January 3, 2008 through December 31, 2008. The amendment adds \$248,333 to the amount for a new total amount not to exceed \$473,333 and extends the term of the contract through August 31, 2009; and
3. Texas Energy Engineering Services, Inc., 1301 S. Capital of Texas Highway, #B325, Austin, Texas 78746. The original amount of the contract was not to exceed \$160,000. The original term of the contract was January 3, 2008 through December 31, 2008. The amendment adds \$172,000 to the amount for a new total amount not to exceed \$332,000 and extends the term of the contract through August 31, 2009.

TRD-200805874

William Clay Harris

Assistant General Counsel, Contracts

Comptroller of Public Accounts

Filed: November 7, 2008

## 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 11/10/08 - 11/16/08 is 18% for Consumer<sup>1</sup>/Agricultural/Commercial<sup>2</sup>/credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 11/10/08 - 11/16/08 is 18% for Commercial over \$250,000.

The monthly ceiling as prescribed by §303.005<sup>3</sup> for the period of 11/01/08 - 11/30/08 is 18% for Consumer/Agricultural/Commercial/credit through \$250,000.

The monthly ceiling as prescribed by §303.005 for the period of 11/01/08 - 11/30/08 is 18% for Commercial over \$250,000.

<sup>1</sup>Credit for personal, family or household use.

<sup>2</sup>Credit for business, commercial, investment or other similar purpose.

<sup>3</sup>For variable rate commercial transactions only.

TRD-200805828

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: November 5, 2008

## Commission on State Emergency Communications

### Statutory Annual Review of Rule 255.4, Definition of a Local Exchange Access Line or an Equivalent Local Exchange Access Line

The Commission on State Emergency Communications (CSEC) is conducting its annual review of Rule 255.4, concerning the definitions of the terms "local exchange access line and equivalent local exchange access line" as required by Health and Safety Code §771.063(c). CSEC has initially determined that the current definitions sufficiently define the terms.

Persons wishing to comment on CSEC's initial determination or recommend amendments to §255.4 may do so by submitting written comments within 30 days following publication of this notice in the *Texas Register* to Patrick Tyler, General Counsel, Commission on State Emergency Communications, 333 Guadalupe Street, Suite 2-212, Austin, Texas 78701-3942; by facsimile to (512) 305-6937; or by email to csecinfo@csec.state.tx.us. Comments should include in the subject line "Comments on CSEC's Annual Review of Rule 255.4."

TRD-200805909

Patrick Tyler

General Counsel

Commission on State Emergency Communications

Filed: November 12, 2008

## Employees Retirement System of Texas

### Request for Applications - Texas Employees Group Benefits Program Health Maintenance Organizations

In accordance with §1551.213 and §1551.214 of the Texas Insurance Code, the Employees Retirement System of Texas ("ERS") is issuing a Request for Application ("RFA") from qualified Health Maintenance Organizations ("HMOs") to provide services within their approved service areas in Texas under the Texas Employees Group Benefits Program ("GBP"), during Fiscal Year 2010, beginning September 1, 2009 through August 31, 2010. The locations in Texas for which applications may be made are included in the RFA. HMOs shall provide the level of benefits required in the RFA and meet other requirements.

ERS may consider offering a Medicare Advantage HMO plan to provide a healthcare option to members and their dependents eligible for Medicare. Medicare Advantage HMOs shall provide the level of benefits required by the Center for Medicare and Medicaid, and meet other requirements as specifically outlined in the RFA and Contractual Agreement.

An HMO wishing to submit an application to this request must meet at least the following minimum qualifications: 1) have a current Certificate of Authority from the Texas Department of Insurance, 2) have been providing managed care services in the service area for which the application is made at least since March 1, 2008, and 3) demonstrate that it has a provider network in the proposed service area, as of the due date of the application, adequate to provide health care to GBP participants. The RFA will be available on or after December 4, 2008 from the ERS' website, and all applications must be received at

ERS by 12:00 Noon (CT) on January 8, 2009. To access the RFA from the website, qualified HMOs shall email their request to: ivendorquestions@ers.state.tx.us. The email request shall include the HMO's full legal name, street address, as well as phone and fax numbers of an immediate HMO contact. Upon receipt of your emailed request, a user ID and password will be issued to the requesting HMO that will permit access to the secured RFA. General questions concerning the RFA shall be emailed to: ivendorquestions@ers.state.tx.us. Inquiries and responses, if applicable, are frequently updated. The RFA will be discussed at an HMO web-based bidder's conference on December 16, 2008, beginning at 3:00 p.m. (CT). The registration deadline for conference participation is 4:00 p.m. (CT) on December 11, 2008. HMOs may access ERS' website for details regarding the web-based conference by selecting the Vendor link.

The ERS Board of Trustees is not required to select the lowest bid but shall take into consideration other relevant criteria, including ability to service contracts, past experience, and financial ability. ERS reserves the right to select none, one, or more than one HMO per service area when it is determined that such action would be in the best interest of ERS, the GBP, its participants or the state of Texas. ERS reserves the right to reject any or all applications and call for new applications if deemed by ERS to be in the best interests of the GBP, its participants or the state of Texas. ERS also reserves the right to reject any application submitted that does not fully comply with the RFA's instructions and criteria. ERS is under no legal requirement to execute a contract on the basis of this notice or upon issuance of the RFA and will not pay any costs incurred by any entity in responding to this notice or the RFA or in connection with the preparation thereof. ERS specifically reserves the right to vary all provisions set forth in the RFA and/or contract at any time prior to execution of a contract where ERS deems it to be in the best interest of ERS, the GBP, its participants or the state of Texas.

TRD-200805872

Paula A. Jones

General Counsel

Employees Retirement System of Texas

Filed: November 7, 2008

## Texas Commission on Environmental Quality

### Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **December 22, 2008**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Build-

ing C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on December 22, 2008**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: Addison Enterprises, Inc. dba C Store Royal; DOCKET NUMBER: 2008-1101-PST-E; IDENTIFIER: RN102755287; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 Texas Administrative Code (TAC) §115.245(2) and Texas Health and Safety Code (THSC), §382.085(b), by failing to verify proper operation of the Stage II equipment; and 30 TAC §115.252(3)(A) and THSC, §382.085(b), by failing to maintain the Stage II vapor recovery system; PENALTY: \$5,821; ENFORCEMENT COORDINATOR: Tom Greimel, (512) 239-5690; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Santos Barcenas dba Buckets Convenience store; DOCKET NUMBER: 2008-1207-PST-E; IDENTIFIER: RN101446680; LOCATION: San Angelo, Tom Green County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor underground storage tanks (USTs) for releases; 30 TAC §334.50(d)(1)(B)(ii) and the Code, §26.3475(c)(1), by failing to conduct reconciliation of inventory control records; 30 TAC §334.7(d)(3) and (f), by failing to notify the agency of any change or addition; 30 TAC §334.8(c)(4)(C) and (5)(B)(ii), by failing to renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form; 30 TAC §334.8(c)(5)(A)(i) and the Code, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate; and 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: \$11,130; ENFORCEMENT COORDINATOR: Tom Greimel, (512) 239-5690; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(3) COMPANY: Campbell Soup Supply Company, L.L.C.; DOCKET NUMBER: 2008-0981-IWD-E; IDENTIFIER: RN100216753; LOCATION: Paris, Lamar County; TYPE OF FACILITY: canning operation with a wastewater treatment plant; RULE VIOLATED: 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System Permit Number 01012, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with permit effluent limits for biochemical oxygen demand and oil and grease; PENALTY: \$3,480; ENFORCEMENT COORDINATOR: Steve Villatoro, (512) 239-4930; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(4) COMPANY: Caprock Dairy, L.L.C.; DOCKET NUMBER: 2008-1171-AGR-E; IDENTIFIER: RN101524999; LOCATION: Lamb County; TYPE OF FACILITY: dairy farm; RULE VIOLATED: 30 TAC §321.33(a), by failing to obtain authorization to operate a concentrated animal feeding operation (CAFO); and the Code, §26.121(a)(1), by failing to prevent the unauthorized discharge of agricultural waste; PENALTY: \$4,080; ENFORCEMENT COORDINATOR: Steve Villatoro, (512) 239-4930; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(5) COMPANY: Century Export Company, Inc. dba Humberto Saldivar; DOCKET NUMBER: 2008-1008-WQ-E; IDENTIFIER: RN104061817; LOCATION: Laredo, Webb County; TYPE OF FACILITY: warehouse for curing animal hides; RULE VIOLATED: 30 TAC §281.25(a)(4), 40 Code of Federal Regulations §122.26(c), and the Code, §26.121(a), by failing to obtain authorization to discharge storm water associated with the activities of curing raw animal hides and discharging the process water runoff to water in the state; PENALTY: \$1,070; ENFORCEMENT COORDINATOR: Steve Villatoro, (512) 239-4930; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(6) COMPANY: Delta County Municipal Utility District; DOCKET NUMBER: 2008-1028-PWS-E; IDENTIFIER: RN101205243; LOCATION: Cooper, Delta County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(f)(3)(A)(i)(II), (ii)(II), and (iv), by failing to provide the water system's operating records for commission review during inspections; 30 TAC §290.46(n)(2) and §290.212(a), by failing to provide an accurate, and up-to-date map of the distribution system, and an up-to-date chemical and microbiological monitoring plan; 30 TAC §290.45(b)(1)(D)(ii) and THSC, §341.0315(a)(1), by failing to provide a total storage capacity of 200 gallons per connection; 30 TAC §290.42(j), by failing to use or provide certification that all chemicals and any additional or replacement process media used in treatment of water supplied by public water systems conform to American National Standards Institute/National Sanitation Foundation Standard 60; 30 TAC §290.43(c)(3), by failing to provide an overflow cover that fits no more than a 1/16 inch gap on all ground storage tanks; 30 TAC §290.46(m)(6), by failing to ensure that pumps, motors, valves, and other mechanical devices are maintained in good working condition; 30 TAC §290.43(e) and §290.46(m), by failing ensure all potable water storage tanks and pressure maintenance facilities are installed in lockable buildings that are designed to prevent intruder access or enclosed by intruder-resistant fences with lockable gates; 30 TAC §290.46(m)(1)(A), by failing to conduct annual inspections on the water system's elevated storage tanks; 30 TAC §290.46(m)(1)(B), by failing to conduct annual inspections on the water system's pressure tanks and interior inspections; 30 TAC §290.43(d)(3), by failing to equip all air compressor injector lines with filters or other devices to prevent compressor lubricants or other contaminants from entering the pressure tank; and 30 TAC §290.43(c)(1), by failing to provide 16-mesh or finer corrosion resistant screen for the vents on the ground storage tanks; PENALTY: \$2,210; ENFORCEMENT COORDINATOR: Andrea Linson-Mgbeoduru, (512) 239-1482; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(7) COMPANY: Equistar Chemicals, LP; DOCKET NUMBER: 2008-0923-AIR-E; IDENTIFIER: RN102926920; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: petrochemical plant; RULE VIOLATED: 30 TAC §116.115(c), Air New Source Permit Number 6257E, Special Condition (SC) Number 1, and THSC, §382.085(b), by failing to prevent the release of unauthorized air contaminants into the atmosphere; PENALTY: \$5,575; Supplemental Environmental Project (SEP) offset amount of \$2,230 applied to Texas Association of Resource Conservation and Development Areas, Inc. - Clean School Buses; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(8) COMPANY: Flying Star Transport, L.L.C.; DOCKET NUMBER: 2008-1242-MSW-E; IDENTIFIER: RN104517180; LOCATION: Amarillo, Potter County; TYPE OF FACILITY: fuel transport business; RULE VIOLATED: 30 TAC §327.5(a)(6), by failing to properly manage waste generated from a spill or discharge; PENALTY: \$1,200; ENFORCEMENT COORDINATOR: Ross Fife, (512) 239-2541; RE-

REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(9) COMPANY: Formosa Plastics Corporation, Texas; DOCKET NUMBER: 2008-0973-AIR-E; IDENTIFIER: RN100218973; LOCATION: Point Comfort, Calhoun County; TYPE OF FACILITY: inorganic chemical plant; RULE VIOLATED: 30 TAC §101.211(a) and THSC, §382.085(b), by failing to notify the TCEQ prior to conducting a reportable maintenance activity; and 30 TAC §116.115(c), Air Permit Number 7699 and PSD-TX-226M6, SC Number 1, and THSC, §382.085(b), by failing to prevent the unauthorized release of air contaminants into the atmosphere; PENALTY: \$8,814; SEP offset amount of \$3,526 applied to City of Point Comfort - Wastewater Treatment Plant Repair; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(10) COMPANY: IH-10/Loop 1604 Partners, Ltd.; DOCKET NUMBER: 2008-1241-EAQ-E; IDENTIFIER: RN105504161; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: mixed use development site; RULE VIOLATED: 30 TAC §213.4(a)(1) and §213.23(a)(1), by failing to obtain approval of a water pollution abatement plan (WPAP); PENALTY: \$10,500; ENFORCEMENT COORDINATOR: Lanae Foard, (512) 239-2554; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(11) COMPANY: INEOS USA LLC dba INEOS Polyethylene North America; DOCKET NUMBER: 2008-1121-AIR-E; IDENTIFIER: RN100229905; LOCATION: Deer Park, Harris County; TYPE OF FACILITY: polyethylene manufacturing plant; RULE VIOLATED: 30 TAC §116.715(a), Flexible Air Permit Number 49823, SC Number 2, and THSC, §382.085(b), by failing to prevent the unauthorized release of air contaminants into the atmosphere; PENALTY: \$4,450; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(12) COMPANY: Jon Klemme dba Klemme Dairy; DOCKET NUMBER: 2008-1020-AGR-E; IDENTIFIER: RN104479043; LOCATION: Hutchinson County; TYPE OF FACILITY: confined animal feeding operation; RULE VIOLATED: 30 TAC §321.39(f) and TPDES Permit Number TXG920425, Part III, Section B.4, by failing to roof, cover with an impermeable material, or berm the manure and dead animal composting area; 30 TAC §321.39(e) and TPDES Permit Number TXG920425, Part III, Section A.8.(b), by failing to store manure, litter, or sludge within the drainage area of an retention control structure (RCS); 30 TAC §321.39(b)(5) and TPDES Permit Number TXG920425, Part III, Section A.9.(b)(2), by failing to prevent the growth of trees on the embankments of RCS Number 1; 30 TAC §321.40(k)(3) and TPDES Permit Number TXG920425, Part III, Section A.11.(a), by failing to develop and implement a nutrient management plan; and 30 TAC §321.46(e)(1) and TPDES Permit Number TXG920425, Part IV, Section B.1, by failing to submit an annual report; PENALTY: \$4,430; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(13) COMPANY: Lonzo Gale dba Lass Utility Service Company; DOCKET NUMBER: 2008-0853-MLM-E; IDENTIFIER: RN102691995; LOCATION: Waller County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(b)(1)(A)(ii), TCEQ Agreed Order Docket Number 2006-1595-MLM-E, Ordering Provision 2.e.ii, by failing to provide a minimum pressure tank capacity of 50 gallons per connection; 30 TAC §290.45(b)(1)(A)(i), TCEQ Agreed Order Docket Number 2006-1595-MLM-E, Ordering Provision 2.e.i, by failing to provide a well capacity of 1.5 gallons per minute (gpm) per connection; 30

TAC §290.41(c)(1)(F) and TCEQ Agreed Order Docket Number 2006-1595-MLM-E, Ordering Provision 2.c, by failing to provide a sanitary control easement; and 30 TAC §291.93(3), TCEQ Agreed Order Docket Number 2006-1595-MLM-E, Ordering Provision 2.a.i, and the Code, §13.139(d), by failing to submit a planning report to the executive director for the Tara Park Water System that clearly explains how the retail public utility will provide the expected service demands to the remaining areas within the boundaries of its certificated area when the system has reached 85% of its capacity; PENALTY: \$8,356; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (210) 490-3096; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(14) COMPANY: City of Lawn; DOCKET NUMBER: 2008-0988-PWS-E; IDENTIFIER: RN101406916; LOCATION: Lawn, Taylor County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the consumer confidence report (CCR) to each bill paying customer by July 1 of each year and by failing to submit a copy of the annual CCR and certification that the CCR has been distributed to the customers of the water systems and that the information in the CCR is correct and consistent with compliance monitoring data; PENALTY: \$1,645; ENFORCEMENT COORDINATOR: Christopher Keffer, (512) 239-5610; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(15) COMPANY: Lucite International, Inc.; DOCKET NUMBER: 2008-0822-AIR-E; IDENTIFIER: RN102736089; LOCATION: Nederland, Jefferson County; TYPE OF FACILITY: industrial organic chemical manufacturing plant; RULE VIOLATED: 30 TAC §116.115(b)(2)(F) and (c), New Source Review (NSR) Permit Number 19003, SC Number 3, and THSC, §382.085(b), by failing to maintain an emission rate below the allowable emission limits; and 30 TAC §116.115(c), Federal Operating Permit Number O-1437, Special Terms and Conditions Number 1, NSR Permit Number 19004, SC Number 4, and THSC, §382.085(b), by failing to monitor the acetone cyanohydrin cooling tower on a monthly basis for volatile organic compounds (VOCs); PENALTY: \$31,600; SEP offset amount of \$12,640 applied to Jefferson County: Retrofit/Replacement of Heavy Equipment and Vehicles with Alternative Fueled Equipment and Vehicles; ENFORCEMENT COORDINATOR: James Nolan, (512) 239-6634; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(16) COMPANY: Jafar Hakimzadeh dba Memorial Park Texaco; DOCKET NUMBER: 2008-1235-PST-E; IDENTIFIER: RN101444073; LOCATION: Houston, Harris 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; 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form; and 30 TAC §334.8(c)(5)(A)(i) and the Code, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate; PENALTY: \$8,044; ENFORCEMENT COORDINATOR: Wallace Myers, (512) 239-6580; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(17) COMPANY: Bert and Heidi Velson dba Mike Schouten Feedlot; DOCKET NUMBER: 2008-1178-AGR-E; IDENTIFIER: RN102805132; LOCATION: Erath County; TYPE OF FACILITY: feedlot; RULE VIOLATED: 30 TAC §321.47(c)(1), by failing to locate, construct, and manage the control facilities in a manner that will protect surface and groundwater quality; PENALTY: \$850;

ENFORCEMENT COORDINATOR: Lauren Smitherman, (512) 239-5223; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(18) COMPANY: Mooney Aircraft Corporation; DOCKET NUMBER: 2008-0882-MLM-E; IDENTIFIER: RN100214758; LOCATION: Kerrville, Kerr County; TYPE OF FACILITY: aircraft manufacturing; RULE VIOLATED: 30 TAC §335.4 and §327.5(a) and the Code, §26.121, by failing to prevent the unauthorized discharge of industrial solid waste and by failing to immediately abate and contain a spill or discharge; and 30 TAC §335.8(b)(3), by failing to demonstrate in writing to the executive director that closure or remediation has been completed; PENALTY: \$5,450; ENFORCEMENT COORDINATOR: Clinton Sims, (512) 239-6933; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(19) COMPANY: City of Mount Vernon; DOCKET NUMBER: 2008-1280-PWS-E; IDENTIFIER: RN101391399; LOCATION: Mount Vernon, Franklin County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.110(b)(4), by failing to maintain a residual disinfectant concentration in the water within the distribution system of at least 0.5 milligrams per liter chloramine; PENALTY: \$300; ENFORCEMENT COORDINATOR: Christopher Keffer, (512) 239-5610; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(20) COMPANY: Overwraps Packaging, L.P.; DOCKET NUMBER: 2008-1116-AIR-E; IDENTIFIER: RN100804657; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: flexographic printing and packaging plant; RULE VIOLATED: 30 TAC §122.146(2) and THSC, §382.085(b), by failing to submit the annual compliance certification; PENALTY: \$2,375; SEP offset amount of \$950 applied to Texas Parent Teacher Association - *Clean School Bus Program*; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(21) COMPANY: Pasadena Refining System, Inc.; DOCKET NUMBER: 2008-0050-AIR-E; IDENTIFIER: RN100716661; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §116.115(c), TCEQ Permit Number 76192, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$10,000; ENFORCEMENT COORDINATOR: Roshondra Lowe, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(22) COMPANY: Julie Ann Thames dba Primrose Mobile Home Park; DOCKET NUMBER: 2008-1238-PWS-E; IDENTIFIER: RN101228005; LOCATION: Johnson County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(b)(1)(A)(i) and THSC, §341.0315(c), by failing to meet the minimum well capacity requirement of 1.5 gpm per connection; 30 TAC §290.45(b)(1)(A)(ii) and THSC, §341.0315(c), by failing to provide a minimum pressure tank capacity of 50 gallons per connection; 30 TAC §290.46(f)(3)(E)(i), by failing to maintain public water system monthly operating reports for at least ten years; and 30 TAC §290.46(s)(1), by failing to calibrate the water system's well meter; PENALTY: \$588; ENFORCEMENT COORDINATOR: Tom Jecha, (512) 239-2576; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(23) COMPANY: Southwest Convenience Stores, LLC; DOCKET NUMBER: 2008-1135-AIR-E; IDENTIFIER: RN102056835, RN101695088, and RN102390028; LOCATION: Fabens and El Paso, El Paso County; TYPE OF FACILITY: convenience stores with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.252(2)

and THSC, §382.085(b), by allowing the transfer of gasoline which may be used in a motor vehicle in the El Paso area with a Reid vapor pressure greater than seven pounds per square inch absolute; PENALTY: \$5,885; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5800; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(24) COMPANY: State Service Company, Inc.; DOCKET NUMBER: 2008-1112-MLM-E; IDENTIFIER: RN102566429; LOCATION: Ingleside, San Patricio County; TYPE OF FACILITY: surface coating and abrasive blasting; RULE VIOLATED: 30 TAC §335.4 and the Code, §26.121(a)(1), by failing to prevent the unauthorized discharge of industrial waste; 30 TAC §101.4 and THSC, §382.085(b), by failing to prevent an unauthorized discharge of air contaminants; 30 TAC §116.115(c), Permit Number 33959, SC Number 5, and THSC, §382.085(b), by failing to adhere to permit limitations for VOCs; and 30 TAC §106.452(2)(A) and §116.110(a) and THSC, §382.085(b), by failing to adhere to permit limitations for abrasive cleaning material; PENALTY: \$5,775; ENFORCEMENT COORDINATOR: John Muennink, (361) 825-3100; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(25) COMPANY: Klaas Talsma dba Talsma Dairy; DOCKET NUMBER: 2008-1146-AGR-E; IDENTIFIER: RN102313384; LOCATION: Erath County; TYPE OF FACILITY: dairy farm; RULE VIOLATED: 30 TAC §321.31(a) and the Code, §26.121(a), by failing to prevent an unauthorized discharge of wastewater from a CAFO; and 30 TAC §321.33(a), by failing to obtain authorization to construct control facilities and operate a CAFO under a water quality general permit or individual permit; PENALTY: \$10,815; ENFORCEMENT COORDINATOR: Tom Jecha, (512) 239-2576; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(26) COMPANY: Trinity Industries, Inc.; DOCKET NUMBER: 2008-1384-AIR-E; IDENTIFIER: RN100225226; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: rail car manufacturing plant; RULE VIOLATED: 30 TAC §116.115(c), Permit Number 8524, SC Number 8, and THSC, §382.085(b), by failing to maintain an exterior coating usage rate below the maximum permitted limit of 48,000 gallons per year; and 30 TAC §122.146(2) and THSC, §382.085(b), by failing to timely submit the required federal permit compliance certification; PENALTY: \$4,000; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(27) COMPANY: City of Victoria; DOCKET NUMBER: 2008-1221-MLM-E; IDENTIFIER: RN102352168; LOCATION: Victoria, Victoria County; TYPE OF FACILITY: brush site; RULE VIOLATED: 30 TAC §111.201, by failing to prevent outdoor burning at the site; 30 TAC §106.496(4), by failing to operate the trench burner between the hours of 8:00 a.m. and 6:00 p.m.; 30 TAC §106.496(6), by failing to keep the blower on until all material in the pit is consumed; 30 TAC §106.496(9), by failing to limit the material being burned to trees, brush, and lumber; and 30 TAC §330.15(a)(3) and (c), by failing to prevent the unauthorized disposal of municipal solid waste; PENALTY: \$3,850; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

TRD-200805889

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: November 12, 2008

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## Executive Director's Response to Public Comment on TCEQ General Permit Number WQG200000

The executive director of the Texas Commission on Environmental Quality (commission or TCEQ) files this Response to Public Comment Discharge from Manure Compost Facilities General Permit Number WQG2000000. As required by Texas Water Code (TWC), §26.040(d) and 30 TAC §205.3(e), 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. No comments were received.

### BACKGROUND

#### Introduction

The TCEQ adopted a general permit for the disposal of wastewater from manure compost facilities that was to expire on October 1, 2007. The executive director now proposes, with the reissuance and amendment of this proposed general permit, to continue to authorize these eligible discharges under TCEQ General Permit Number WQG200000. Consistent with 30 TAC §205.2, issuance of this permit is allowable, since qualifying composting operations engage in substantially similar operations and would discharge the same type of waste. The general permit, if issued, would establish the same operating conditions and similar monitoring requirements for these facilities. These types of discharges are more appropriately regulated under a general permit based upon the requirements of §205.2(a)(5), inasmuch as the TCEQ can readily enforce the general permit and can monitor compliance of the terms of the permit. The permit would establish monitoring, record keeping, and reporting requirements. The permit also establishes requirements for the protection of underlying groundwater, prohibits any discharge into surface water, and thus, is not expected to result in an adverse effect on the quality of either resource.

#### Procedural Background

The Office of the Chief Clerk received the permit file on August 6, 2007. In accordance with 30 TAC §205.3(a)(2), the Notice of Proposed Amendment of General Permit Authorizing the Discharge of Wastewater was published in the *Texas Register* on August 17, 2007 (32 TexReg 5207); *Dallas Morning News*, August 14, 2007; *Amarillo Globe-News*, August 14, 2007; *El Paso Times*, August 14, 2007; *Houston Chronicle*, August 14, 2007; *The Monitor*, August 14, 2007; *Stephenville Empire-Tribune*, August 14, 2007; and *San Antonio Express News*, August 14, 2007. Mailed notice was also provided in accordance with 30 TAC §205.3(b). The original comment period ended on September 17, 2007. No comments were received. Subsequently, the general permit was re-noticed to clarify there were additional changes being made to the 2002 version of the general permit. Notice of the general permit was published in the *Texas Register* on February 8, 2008 (33 TexReg 1171); *Dallas Morning News*, February 4, 2008; *Amarillo Globe-News*, February 4, 2008; *El Paso Times*, February 4, 2008; *Houston Chronicle*, February 4, 2008; *The Monitor*, February 4, 2008; *Stephenville Empire-Tribune*, February 4, 2008; and *San Antonio Express News*, February 4, 2008. The comment period ended on March 7, 2008. No comments were received during the second comment period.

TRD-200805890

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: November 12, 2008

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Notice of Addendum to Agreed Order, Docket Number 2007-1536-PST-E

In the November 14, 2008, issue of the *Texas Register* (33 TexReg 9301), the Texas Commission on Environmental Quality published a Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions.

Concerning Item Number 4, Loveladdy Oil Company, Inc.; Docket Number: 2007-1536-PST-E; the commission inadvertently omitted the following violation notice as part of the initial notice.

(4) COMPANY: Loveladdy Oil Company, Inc.; DOCKET NUMBER: 2007-1536-PST-E; TCEQ ID NUMBER: RN101751592; LOCATION: United States Highway 87 East, Joaquin, Shelby County; TYPE OF FACILITY: former gasoline retail service station; RULES VIOLATED: 30 TAC §334.47(a) and (a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, four USTs for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; PENALTY: \$21,000; STAFF ATTORNEY: Anna Cox, Litigation Division, MC 175, (512) 239-0974; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

TRD-200805891  
Kathleen C. Decker  
Director, Litigation Division  
Texas Commission on Environmental Quality  
Filed: November 12, 2008



Notice of a Public Hearing on Proposed Revisions to 30 TAC Chapter 334 and 350

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony regarding proposed repeals and additions to 30 Texas Administrative Code (TAC) Chapter 334, UNDERGROUND AND ABOVEGROUND STORAGE TANKS and Chapter 350, TEXAS RISK REDUCTION PROGRAM.

The proposed rulemaking would remove applicability of Chapter 350, Texas Risk Reduction Program, to the remediation of Leaking Petroleum Storage Tank (LPST) sites, and it would reinstate the applicability of Chapter 334.

A public hearing on this proposal will be held in Austin on December 16, 2008, 10:00 a.m. at the Texas Commission on Environmental Quality complex located at 12100 Park 35 Circle in Building E, Room 201S. The hearing will be structured for the receipt of oral or written comments. Registration begins 30 minutes prior to the hearing. Individuals may present oral statements when called upon in order of registration. A time limit may be established to assure enough time is allowed for every interested person to speak. There will be no open discussion during the hearing; however, commission staff members will be available for discussion 30 minutes prior to the hearing and will answer questions before and after the hearing.

Persons planning to attend the hearing, who have special communication or other accommodation needs, should contact Michael Parrish, Office of Legal Services, at (512) 239-2548. Requests should be made as far in advance as possible.

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.state.tx.us/rules/ecomments>. File size restrictions

may apply to comments submitted through the eComments system. All comments should reference Rule Project Number 2009-003-350-PR. The comment period closes January 5, 2009. To view rules, please visit [http://www.tceq.state.tx.us/nav/rules/propose\\_adopt.html](http://www.tceq.state.tx.us/nav/rules/propose_adopt.html). For further information or questions concerning this proposal, please contact Anton E. Rozsypal, Jr., P.E., Remediation Division, at (512) 239-5755.

TRD-200805862  
Kathleen C. Decker  
Director, Litigation Division  
Texas Commission on Environmental Quality  
Filed: November 7, 2008



Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 113 and to the State Plan

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony concerning proposed revisions to 30 TAC Chapter 113, Standards of Performance for Hazardous Air Pollutants and for Designated Facilities and Pollutants; Subchapter D, Designated Facilities and Pollutants; new Divisions 3 - 5; and to the Federal Clean Air Act (FCAA), §111(d)/129 State Plan, under the requirements of Texas Health and Safety Code, §382.017; Texas Government Code, Chapter 2001, Subchapter B; and 40 Code of Federal Regulations (CFR) §60.23, concerning adoption and submittal of state plans.

The proposed rulemaking would implement federal emission guidelines contained in 40 CFR Part 60, Subparts BBBB, DDDD, and FFFF for incineration and combustion units. The content of the model rules that are contained in the emission guidelines, as promulgated by the United States Environmental Protection Agency, would be proposed to be included as new divisions of 30 TAC Chapter 113 with minor administrative changes.

The proposed FCAA, §111(d)/129 State Plan is required under the FCAA, §129 and the emission guidelines contained in 40 CFR Part 60, Subparts BBBB, DDDD, and FFFF for incineration and combustion units. States must adopt and submit to the United States Environmental Protection Agency for approval, a state plan to implement and enforce the emission guidelines.

The commission will hold a public hearing on this proposal and the FCAA, §111(d)/129 State Plan in Austin on January 5, 2009, at 2:00 p.m. at the Texas Commission on Environmental Quality Complex located at 12100 Park 35 Circle in Building B, Room 201A. The hearing will be structured for the receipt of oral or written comments by interested persons. Registration will begin 30 minutes prior to the hearing. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, commission staff members will be available to informally discuss the proposal 30 minutes before the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Michael Parrish, Office of Legal Services, at (512) 239-2548.

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.state.tx.us/rules/ecomments>. File size restrictions may apply to comments submitted through the eComments system. All comments should reference Rule Project Number 2008-007-113-PR. The comment period closes January 7, 2009. Copies of the pro-

posed rules can be obtained from the commission's Web site at [http://www.tceq.state.tx.us/nav/rules/propose\\_adopt.html](http://www.tceq.state.tx.us/nav/rules/propose_adopt.html). For further information, please contact Lisa Martin, Air Permits Division, (512) 239-1966.

TRD-200805855

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: November 7, 2008



#### Notice of Receipt of Application for a New Municipal Solid Waste Permit Number 2359

**APPLICATION:** Doucet Plumbing, Inc. - D's Recycling Compost Facility, 6474 Highway 87 N Sideview Road, San Angelo, Tom Green County, Texas 76901, has applied to the Texas Commission on Environmental Quality (TCEQ) for a new Type V permit. The applicant is requesting a permit in order to accept various types of waste as a compost facility. The facility is located at 4275 Pruitt Drive, San Angelo, Tom Green County, Texas. The TCEQ received the application on September 9, 2008. The permit application is available for viewing and copying at the Tom Green County Library, Main Library, 113 W. Beauregard Avenue, San Angelo, Tom Green County, Texas.

**ADDITIONAL NOTICE:** TCEQ's Executive Director has determined the application is administratively complete and will conduct a technical review of the application. After technical review of the application is complete, the Executive Director may prepare a draft permit and will issue a preliminary decision on the application. Notice of the Application and Preliminary Decision will be published and mailed to those who are on the county-wide mailing list and to those who are on the mailing list for this application. That notice will contain the deadline for submitting public comments.

**PUBLIC COMMENT / PUBLIC MEETING:** You may submit public comments or request a public meeting on this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ will hold a public meeting if the Executive Director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

**OPPORTUNITY FOR A CONTESTED CASE HEARING:** After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material or significant public comments. Unless the application is directly referred for a contested case hearing, the response to comments, and the Executive Director's decision on the application, will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting reconsideration of the Executive Director's decision and for requesting a contested case hearing. A person who may be affected by the facility is entitled to request a contested case hearing from the commission. A contested case hearing is a legal proceeding similar to a civil trial in state district court.

**TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST:** your name, address, phone number; applicant's name and permit number; the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; and, the statement "[I/we] request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the

request must designate the group's representative for receiving future correspondence; identify an individual member of the group who would be adversely affected by the facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose.

Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

The Commission will only grant a contested case hearing on disputed issues of fact that are relevant and material to the Commission's decision on the application. Further, the Commission will only grant a hearing on issues that were raised in timely filed comments that were not subsequently withdrawn.

**MAILING LIST:** If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director(s) decision, you will be added to the mailing list for this specific application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. If you wish to be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

**AGENCY CONTACTS AND INFORMATION:** All written public comments and requests must be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. If you need more information about this permit application or the permitting process, please call TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. Si desea información en Español, puede llamar al 1-800-687-4040. General information about TCEQ can be found at our web site at [www.tceq.state.tx.us](http://www.tceq.state.tx.us).

Further information may also be obtained from Doucet Plumbing, Inc. - D's Recycling Compost Facility at the address stated above or by calling Mr. Wayne Doucet, President at (325) 653-4975.

TRD-200805904

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: November 12, 2008



#### Notice of Water Quality Applications

The following notices were issued during the period of October 30, 2008 through November 6, 2008.

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

AQUA DEVELOPMENT INC has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014910001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 450,000 gallons per day. The facility was previously permitted under TPDES Permit No.

WQ0014129001, which expired December 01, 2006. The facility will be located approximately two miles south of the intersection of Highway 81/287 and Highway 114 in Wise and Tarrant Counties, Texas.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO 278 has applied for a major amendment to TPDES Permit No. WQ0013037002 to authorize an increase in the discharge of treated domestic wastewater from an annual average flow not to exceed 1,800,000 gallons per day to an annual average flow not to exceed 2,700,000 gallons per day. The facility will be located approximately 2,000 feet east of the intersection of Atascocita Road and Wilson Road in Harris County, Texas.

HEDWIG FRANCISCA LEYENDEKKER has applied for a Renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0003745000, for a Concentrated Animal Feeding Operation (CAFO), to authorize the applicant to operate an existing dairy cattle facility at a maximum capacity of 750 head of which 750 head are milking cows. The facility is located on the south side of County Road 231, approximately 1.5 miles east of the intersection of County Road 231 and U.S. Highway 281 in Erath County, Texas.

HOUSTON MARINE SERVICES INC which operates the Houston Marine Services Baytown Terminal, a petroleum storage and barge service facility, has for a renewal of TPDES Permit No. WQ0002842000, which authorizes the discharge of storm water on an intermittent and flow variable basis via Outfall 001; and treated tank bottom wastewater, bilge water, other petroleum product contaminated waters; and boiler blowdown at a daily average flow not to exceed 233,000 gallons per day via Outfall 002. The facility is located at 850 S. Lynchburg Road, in the City of Baytown, Harris County, Texas.

JANNES STOKER AND JOHAN RUDIE STOKER has applied for a Major Amendment, and conversion to an individual permit, of Texas Pollutant Discharge Elimination System (TPDES) Registration No. WQ0003238000, for a Concentrated Animal Feeding Operation (CAFO), to authorize the applicant to expand an existing dairy cattle facility from 650 head to a maximum capacity of 990 head, of which 990 head are milking cows. The facility is located on the north side of County Road 185 approximately 1.5 miles east of the intersection of County Road 185 and U. S. Highway 281 in Erath County, Texas.

JOHAN GERRIT KOKE AND KRANENBURG DAIRY FARMS LLC has applied for a renewal of an individual permit, Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0003301000, for a Concentrated Animal Feeding Operation (CAFO), to authorize the applicant to operate an existing dairy cattle facility at a maximum capacity of 990 head of which all are milking cows. The facility is located on the east side of Farm-to-Market Road 219, approximately 2 miles south of the intersection of Farm-to-Market Road 219 and Farm-to-Market Road 8 in Lingleville, in Erath County, Texas.

KEITH SHERDON BROUMLEY has applied for a Major Amendment of Permit No. WQ0003699000, for a Concentrated Animal Feeding Operation (CAFO), to authorize the applicant to expand and convert an existing 600 head dairy cattle facility to a 1,500 head Dairy Heifer Replacement facility with zero head milking. The facility is located on the east side of Farm-to-Market Road 219 at the intersection of County Road 120 and Farm-to-Market Road 219 in Hamilton County, Texas.

QUAIL VALLEY UTILITY DISTRICT has applied for a renewal of TPDES Permit No. WQ0011046001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 4,000,000 gallons per day. The facility is located at 2939 Blue Lakes Lane, approximately 600 feet south of the terminus of Nancy Belle Lane, at the confluence of Stafford Run and Oyster Creek in Missouri City in Fort Bend County, Texas.

ROEL STOKER has applied for a Major Amendment of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0004028000, for a Concentrated Animal Feeding Operation (CAFO), to authorize the applicant to expand an existing dairy cattle facility from 600 head to a maximum capacity of 999 head of which 999 head are milking cows. The facility is located on the north side of Farm-to-Market Road 913 approximately 1/2 mile southwest of the intersection of Farm-to-Market Road 913 and US Highway 67. This intersection is approximately seven (7.0) miles southeast of Stephenville in Erath County, Texas.

TEXAS WESTMORELAND COAL CO which operates the Jewett Lignite Surface Mine, has applied for a major amendment to TPDES Permit No. WQ0002653000 to authorize the addition of storm water Outfalls 005, and 006. The current permit authorizes the discharge of mine water, dewatering wells groundwater, and surface water runoff from active mine sedimentation ponds on an intermittent and flow variable basis via Outfalls 001, 002, and 003; storm water from the office/shop complex and previously monitored effluent on an intermittent and flow variable basis via Outfall 004; and post mining area runoff from post mining sedimentation ponds on an intermittent and flow variable basis via Outfalls 101, 102, and 103. The facility is located at 4336 Farm-to-Market Road 39 South, approximately six miles northwest of the City of Jewett in, Leon, Limestone, and Freestone County, Texas.

THE CITY OF JUNCTION has applied for a renewal of TPDES Permit No. WQ0010199001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 280,000 gallons per day. The facility is located north of and adjacent to Farm-to-Market Road 2169, approximately 0.4 mile northeast of the intersection of Farm-to-Market 2169 and Interstate Highway 10 in Kimble County, Texas.

TOWN OF BAYSIDE has applied for a renewal of TPDES Permit No. WQ0013892001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 64,200 gallons per day. The facility is located between Autry Road and Vega Road approximately 1.1 miles southwest of the intersection of 3rd Street and State Route 136 in Refugio County, Texas.

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](http://www.tceq.state.tx.us). Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200805903  
LaDonna Castañuela  
Chief Clerk  
Texas Commission on Environmental Quality  
Filed: November 12, 2008



#### Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on November 5, 2008, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Issa Ahmad dba Houston Mart; SOAH Docket No. 582-07-4067; TCEQ Docket No. 2005-1144-PST-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Issa Ahmad dba Houston Mart 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-200805905

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: November 12, 2008

## Texas Facilities Commission

### Request for Proposals #303-9-10104-A

The Texas Facilities Commission (TFC), on behalf of the Department of Assistive and Rehabilitative Services (DARS), announces the issuance of Request for Proposals (RFP) #303-9-10104-A. TFC seeks a five or ten year lease of approximately 4,948 square feet of office space in Southwest Tarrant County, Texas.

The deadline for questions is December 1, 2008 and the deadline for proposals is December 16, 2008 at 3:00 p.m. The award date is January 21, 2009. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of a RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TFC Purchaser Sandy Williams at (512) 475-0453. A copy of the RFP may be downloaded from the Electronic State Business Daily at [http://esbd.cpa.state.tx.us/bid\\_show.cfm?bidid=79788](http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=79788).

TRD-200805906

Kay Molina

General Counsel

Texas Facilities Commission

Filed: November 12, 2008

### Request for Proposals #303-9-10158-A

The Texas Facilities Commission (TFC), on behalf of the Texas Department of Criminal Justice (TDCJ), announces the issuance of Request for Proposals (RFP) #303-9-10158-A. TFC seeks a 10 year lease of approximately 5,545 square feet of office space in Williamson County, Texas.

The deadline for questions is December 1, 2008 and the deadline for proposals is December 10, 2008 at 3:00 p.m. The award date is January 21, 2009. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of a RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TFC Purchaser Sandy Williams at (512) 475-0453. A copy of the RFP may be downloaded from the Electronic State Business Daily at [http://esbd.cpa.state.tx.us/bid\\_show.cfm?bidid=79789](http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=79789).

TRD-200805901

Kay Molina

General Counsel

Texas Facilities Commission

Filed: November 12, 2008

## Office of the Governor

### Request for Grant Applications for General Victim Assistance - Direct Services Programs

The Criminal Justice Division (CJD) of the Governor's Office is soliciting applications for projects that provide services to victims of crime under the state fiscal year 2010 grant cycle.

Purpose: The purpose of this program is to provide services and assistance directly to victims of crime to speed their recovery and aid them through the criminal justice process. Services may include the following:

- (1) responding to the emotional and physical needs of crime victims;
- (2) assisting victims in stabilizing their lives after a victimization;
- (3) assisting victims to understand and participate in the criminal justice system; and
- (4) providing victims with safety and security.

Available Funding: Federal funding is authorized for these projects under the Victims of Crime Act of 1984 (VOCA) as amended, 42 U.S.C. 10601 et seq. and under the Violence Against Women Act of 2005 (VAWA 2005) as amended, U.S.C. §§3796gg - 3796gg-5. Congress has not finalized federal appropriations for federal fiscal year 2009. All awards are subject to the availability of appropriated federal funds and any modifications or additional requirements that may be imposed by law.

Funding Levels: Minimum grant award - \$5,000.

Required Match: Grantees, other than Native American Tribes, may be required to provide matching funds of at least twenty percent (20%) of total project expenditures. Native American Tribes may be required to provide a five percent (5%) match. This requirement may be met through either cash or in-kind contributions or a combination of both.

Standards: Grantees must comply with the standards applicable contained in the *Texas Administrative Code*, Title 1, Part 1, Chapter 3 (1 TAC Chapter 3) and the requirements of the federal statutes that authorize this funding.

Prohibitions: Grant funds may not be used to support the following services, activities, and costs:

- (1) proselytizing or sectarian worship;
- (2) lobbying and administrative advocacy;
- (3) perpetrator rehabilitation and counseling or services to incarcerated individuals;
- (4) needs assessments, surveys, evaluations, and studies;
- (5) prosecution activities;
- (6) reimbursing crime victims for expenses incurred as a result of the crime;
- (7) most medical costs. Grantees may not use grant funds for nursing-home care (except for short-term emergency), home health-care costs, in-patient treatment costs, hospital care, or other types of emergency or non-emergency medical or dental treatment. Grant funds cannot support medical costs resulting from a crime, except for forensic medical examinations for sexual assault victims;
- (8) relocation expenses. Grant funds may not support relocation expenses for crime victims such as moving expenses, security deposits on housing, rent, and mortgage payments;

(9) administrative staff expenses. Grantees may not use grant funds to pay salaries, fees and reimbursable expenses associated with administrators, board members, executive directors, consultants, coordinators, and other individuals unless the grantee incurs the expense while providing direct services to crime victims;

(10) costs of sending individual crime victims to conferences;

(11) activities exclusively related to crime prevention or community awareness;

(12) non-emergency legal representation such as for divorces or civil restitution recovery efforts;

(13) victim-offender meetings that serve to replace criminal justice proceedings;

(14) management and administrative training for executive directors, board members, and other individuals that do not provide direct services;

(15) training to persons or groups outside the applicant agency;

(16) indirect organization costs;

(17) any activities or related costs for diligent search;

(18) job skills training;

(19) alcohol and drug abuse treatment;

(20) fundraising activities;

(21) property loss. Grant funds may not be used to reimburse crime victims for expenses incurred as a result of a crime, such as insurance deductibles, replacement of stolen property, funeral expenses, lost wages, and medical bills;

(22) any portion of the salary of, or any other compensation for, an elected or appointed government official. Grants that fund juvenile courts or drug courts, regardless of the funding source, are exempt from this subsection;

(23) vehicles or equipment for governmental agencies that are for general agency use;

(24) admission fees or tickets to any amusement park, recreational activity, or sporting event;

(25) promotional gifts;

(26) food, meals, beverages, or other refreshments unless the expense is for a working event where full participation by participants mandates the provision of food and beverages and that event is not related to amusement and/or social activities in any way; and

(27) membership dues for individuals.

Eligible Applicants:

(1) State agencies;

(2) Units of local government;

(3) Hospital districts;

(4) Nonprofit corporations;

(5) Native American tribes;

(6) Crime control and prevention districts;

(7) Universities;

(8) Colleges;

(9) Community supervision and corrections departments;

(10) Councils of governments that offer direct services to victims of crime;

(11) Hospital and emergency medical facilities that offer crisis counseling, support groups, and/or other types of victims services; and

(12) Faith-based organizations that provide direct services to victims of crime. Faith-based organizations must be tax-exempt nonprofit entities as certified by the Internal Revenue Service.

Project Requirements: Grant funds can support the following services, activities, and costs:

(1) Crisis services;

(2) Forensic interviews;

(3) Legal Advocacy;

(4) Multi-disciplinary teams and case coordination;

(5) Peer support groups;

(6) Professional therapy and counseling;

(7) Protective order assistance;

(8) Public presentations;

(9) Shelter; and

(10) Victim-offender meetings.

Project Period: Grant-funded projects may begin on or after September 1, 2009, and expire on or before August 31, 2010.

Application Process: Applicants can access CJD's eGrants website at <https://cjdonline.governor.state.tx.us> to register, submit, and certify to apply for funding.

Preferences: Preference will be given to applicants that promote comprehensive victim restoration while incorporating an emphasis on cultural competency in underserved populations. Applicants are also encouraged to streamline administrative and reporting processes by consolidating grant requests whenever possible in lieu of submitting multiple applications.

Closing Date for Receipt of Applications: All applications must be certified via CJD's grant management website on or before January 9, 2009.

Selection Process:

(1) For eligible local and regional projects:

(a) Applications are forwarded by CJD to the appropriate regional council of governments (COG).

(b) The COG's criminal justice advisory committee will prioritize all eligible applications based on identified community priorities and program effectiveness.

(c) CJD will accept priority listings that are approved by the COG's executive committee.

(d) CJD will make all final funding decisions based upon approved COG priorities, reasonableness of the project, availability of funding, and cost-effectiveness.

(2) For state discretionary projects, applications will be reviewed by CJD staff members or a group selected by the executive director of CJD. CJD will make all final funding decisions based on eligibility, reasonableness of the project, availability of funding, and cost-effectiveness.

Contact Person: If additional information is needed, contact Lori Melcher at [lmelcher@governor.state.tx.us](mailto:lmelcher@governor.state.tx.us) or (512) 463-1919.



**Request for Grant Applications for Law Enforcement, Prosecution, Court, and Training Programs Targeting Victims of Domestic Violence, Sexual Assault, and Stalking**

The Criminal Justice Division (CJD) of the Governor's Office is soliciting applications for projects that promote a coordinated, multidisciplinary approach to improving the criminal justice system's response to violent crimes against women during the state fiscal year 2010 grant cycle.

**Purpose:** The purpose of this funding is to assist in developing and strengthening effective law enforcement and prosecution strategies to combat violent crimes against women and to develop and strengthen victim services in such cases.

**Available Funding:** Federal funding is authorized for these projects under the Violence Against Women Act of 2005 (VAWA 2005) as amended, U.S.C. §§3796gg - 3796gg-5. Congress has not finalized federal appropriations for federal fiscal year 2009. All awards are subject to the availability of appropriated federal funds and any modifications or additional requirements that may be imposed by law.

**Funding Levels:** Minimum grant award - \$5,000.

**Required Match:** Grantees, other than Native American tribes and non-profit, non-governmental victim service providers, must provide matching funds of at least thirty-five percent (35%) of total project expenditures. This requirement may be met through either cash or in-kind contributions or a combination of both.

**Standards:** Grantees must comply with the standards applicable contained in the *Texas Administrative Code* (1 TAC Chapter 3) and all statutes, requirements, and guidelines applicable to this funding.

**Prohibitions:** Grantees may not use grant funds or program income to support the following services, activities, and costs:

- (1) proselytizing or sectarian worship;
- (2) lobbying;
- (3) any portion of the salary of, or any other compensation for, an elected or appointed government official;
- (4) purchase of vehicles;
- (5) admission fees or tickets to any amusement park, recreational activity, or sporting event;
- (6) promotional gifts;
- (7) food, meals, beverages, or other refreshments unless the expense is for a working event where full participation by participants mandates the provision of food and beverages and that event is not related to amusement and/or social activities in any way;
- (8) membership dues for individuals;
- (9) any expense or service that is readily available at no cost to the grant project or that is provided by other federal, state, or local funds (e.g., supplanting), including the Texas Crime Victims Compensation Fund;
- (10) fundraising;
- (11) overtime;

- (12) cash payments to victims;
- (13) legal assistance and representation in civil matters other than protective orders;
- (14) legal defense services for perpetrators of violence against women;
- (15) liability insurance on buildings;
- (16) major maintenance on buildings;
- (17) property loss. Grant funds may not be used to reimburse victims for expenses incurred as a result of a crime, such as insurance deductibles, replacement of stolen property, funeral expenses, lost wages, and medical bills;
- (18) services for programs that focus on children and/or men;
- (19) activities exclusively related to violence prevention, such as media campaigns to educate the general public about violence against women;
- (20) criminal defense work, including women who assault kill, or otherwise injure their abusers;
- (21) to serve any person incarcerated for committing a crime of domestic violence, dating violence, sexual assault, or stalking;
- (22) relocation expenses. Grant funds may not support expenses for victims of domestic violence, sexual assault, or stalking such as moving household goods to a new location in another State or acquiring furniture or housing in a new location;
- (23) creation of a voucher program. Grant funds may not support the creation of a voucher program where victims are directly given vouchers for such services as housing or counseling; and
- (24) Grant funds may not be used to pay for the prosecution of child sexual abuse when the victim is now an adult.

**Eligible Applicants:**

- (1) State agencies;
- (2) Units of local government;
- (3) Nonprofit corporations;
- (4) Indian tribal governments;
- (5) Community supervision and corrections departments; and
- (6) Councils of governments (COGs).

**Project Requirements:** Grant funds can support the following services, activities, and costs:

- (1) Court services/improvements (including specialized courts except drug courts);
- (2) Investigation;
- (3) Legal advocacy;
- (4) Protective order assistance; and
- (5) Training and technology.

**Requirements:** All applicants must meet the following criteria:

- (1) Promote collaboration and coordination among local service systems that involve multiple disciplines and support a seamless delivery of a continuum of services that focus on each individual's return to full physical, mental, and emotional health. An example of this type of approach is advocacy, law enforcement, prosecution, and other government and non-government services working together in a professional environment of cooperation and respect among service providers.

Project Period: Grant-funded projects must begin on or after September 1, 2009, and will expire on or before August 31, 2010.

Application Process: Applicants can access CJD's eGrants website at <https://cjdonline.governor.state.tx.us> to register, submit, and certify to apply for funding.

Preferences: Preference will be given to applicants that promote comprehensive victim restoration while incorporating an emphasis on cultural competency in underserved populations. Applicants are also encouraged to streamline administrative and reporting processes by consolidating grant requests whenever possible in lieu of submitting multiple applications.

Closing Date for Receipt of Applications: All applications must be certified via CJD's eGrants website on or before January 9, 2009.

Selection Process:

(1) For eligible local and regional projects:

(a) Applications will be forwarded by CJD to the appropriate regional council of governments (COG).

(b) The COG's criminal justice advisory committee will prioritize all eligible applications based on identified community priorities and program effectiveness.

(c) CJD will accept priority listings that are approved by the COG's executive committee.

(d) CJD will make all final funding decisions based on eligibility, approved COG priorities, reasonableness of the project, availability of funding, and cost-effectiveness.

(2) For state discretionary projects, applications will be reviewed by CJD staff members or a group selected by the executive director of CJD. CJD will make all final funding decisions based on eligibility, reasonableness of the project, availability of funding, and cost-effectiveness.

Contact Person: If additional information is needed, contact Lori Melcher at [lmelcher@governor.state.tx.us](mailto:lmelcher@governor.state.tx.us) or (512) 463-1919.

TRD-200805908  
David Zimmerman  
Assistant General Counsel  
Office of the Governor  
Filed: November 12, 2008

◆ ◆ ◆  
**Texas Health and Human Services Commission**

**Notification of Consulting Procurement**

Pursuant to Chapter 2254, Subchapter B, Texas Government Code, the Health and Human Services Commission (HHSC) announces the intent to renew the contracts entered into as a result of its Request for Proposals (RFP) for a pool of multiple pre-qualified and readily accessible consultants. The Multiple Consultant Services Blanket Contract (RFP #529-06-0425) involves maintaining a pool of highly skilled professional consultants who provide comprehensive and professional services to assist the State in meeting Federal and State legislative mandates and other program requirements with more efficiency.

The primary objectives for this procurement included the following:

Administrative time, paperwork, and scheduling were reduced and streamlined through the blanket consultant contracting process.

HHSC was enabled to respond to and/or meet Federal and State legislative mandates and other program requirements in a progressively timely manner.

HHSC has the ability to plan, manage, and deliver health and human services to Texans in a more productive, effective, and efficient manner.

The original RFP is located in full on HHSC's Business Opportunities Page under "Contracting Opportunities" link at [http://www.hhsc.state.tx.us/Contract/529060425/rfp\\_home.html](http://www.hhsc.state.tx.us/Contract/529060425/rfp_home.html). HHSC also posted notice of the procurement on the Texas Marketplace on August 18, 2006. A listing of the vendors who were allowed into the Blanket Pool is also listed on that website.

Task orders awarded to consultants within the pool have totaled approximately \$4,500,000 to date. As allowed in the original RFP, HHSC intends to renew the existing contracts for an additional three year period unless it receives better offers from additional respondents. If equal or better offers are received, HHSC will add those consultants to the list of current vendors in the Blanket Pool. Total task orders anticipated under the renewal terms are estimated at \$10,000,000. Consultants wishing to submit competing offers must submit proposals in accordance with the requirements of the RFP to the contact identified below by the deadline set forth below.

Any offers received will be evaluated on the basis of demonstrated competence, knowledge, and qualifications and on the reasonableness of the proposed fee for the services. Exercise of this option to extend is contingent upon receipt of a finding of fact from the Governor's Office of Budget and Planning that the requested consulting services are necessary. All questions regarding this notice must be sent in writing to the Sole Point-of-Contact listed below by 4 p.m. Central Time on December 1, 2008.

The Health and Human Services Commission's Sole Point-of-Contact for this amendment notification is:

Peggie J. Laser, Procurement Project Manager  
Texas Health and Human Services Commission  
P.O. Box 85200-5200  
Austin, Texas 78708-5200  
(512) 491-1195  
[Peggie.laser@hhsc.state.tx.us](mailto:Peggie.laser@hhsc.state.tx.us)

All competing proposals must be received at the above-referenced address on or before 3:00 p.m. Central Time on December 15, 2008. Proposals received after this time and date will not be considered.

HHSC is under no legal or other obligation to execute any contracts on the basis of this notice. HHSC will not pay for costs incurred by any entity in responding to this notification.

TRD-200805847  
David Brown  
Assistant General Counsel  
Texas Health and Human Services Commission  
Filed: November 6, 2008

◆ ◆ ◆  
**Texas Department of Insurance**

**Company Licensing**

Application for admission to the State of Texas by Louisiana Medical Mutual Insurance Company, a foreign fire and casualty company. The home office is in Metairie, LA.

Application for admission to the State of Texas by Maxum Casualty Insurance Company, a foreign fire and casualty company. The home office is in Wilmington, Delaware.

Application to change the name of American Century Casualty Company to ACCC Insurance Company, a domestic fire and casualty company. The home office is in Houston, Texas.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200805902  
Gene C. Jarmon  
Chief Clerk and General Counsel  
Texas Department of Insurance  
Filed: November 12, 2008



### Third Party Administrator Applications

The following third party administrator applications have been filed with the Texas Department of Insurance and are under consideration.

Application of TPA OF TEXAS INVESTMENTS, LLC (using the assumed name of SBS ADMINISTRATIVE SERVICES), a domestic third party administrator. The home office is SAN ANTONIO, TEXAS.

Application of THF, LLC, a domestic third party administrator. The home office is LEWISVILLE, TEXAS.

Application of REINSURANCE ASSOCIATES, INC., a foreign third party administrator. The home office is FENTON, MISSOURI.

Application of CORVEL ENTERPRISE COMP, INC., a foreign third party administrator. The home office is WILMINGTON, DELAWARE.

Any objections must be filed within 20 days after this notice is published in the *Texas Register*, addressed to the attention of David Moskowitz, MC 305-2E, 333 Guadalupe, Austin, Texas 78701.

TRD-200805898  
Gene C. Jarmon  
Chief Clerk and General Counsel  
Texas Department of Insurance  
Filed: November 12, 2008



### Texas Lottery Commission

### Instant Game Number 1090 "\$250,000 Bingo"

#### 1.0 Name and Style of Game.

A. The name of Instant Game No. 1090 is "\$250,000 BINGO". The play style for the game SLOTS is "key symbol match". The play style for the game INSTANT BONUS is "auto win" The play style for the game BINGO is "bingo".

#### 1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1090 shall be \$10.00 per ticket.

#### 1.2 Definitions in Instant Game No. 1090.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are CHERRIES SYMBOL, LEMON SYMBOL, STACK OF BILLS SYMBOL, CROWN SYMBOL, HORSESHOE SYMBOL, SHAMROCK SYMBOL, POT OF GOLD SYMBOL, GOLD BAR SYMBOL, BELL SYMBOL, \$10.00, \$20.00, \$50.00, \$100, \$500, TEN DOLLARS SYMBOL, TWENTY DOLLARS SYMBOL, FIFTY DOLLARS SYMBOL, SVY FIV DOLLARS SYMBOL, ONE HUN DOLLARS SYMBOL, TWO FTY DOLLARS SYMBOL, FIV HUN DOLLARS SYMBOL, TRY AGAIN SYMBOL, PLAY AGAIN SYMBOL, B01, B02, B03, B04, B05, B06, B07, B08, B09, B10, B11, B12, B13, B14, B15, I16, I17, I18, I19, I20, I21, I22, I23, I24, I25, I26, I27, I28, I29, I30, N31, N32, N33, N34, N35, N36, N37, N38, N39, N40, N41, N42, N43, N44, N45, G46, G47, G48, G49, G50, G51, G52, G53, G54, G55, G56, G57, G58, G59, G60, O61, O62, O63, O64, O65, O66, O67, O68, O69, O70, O71, O72, O73, O74, O75, 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75 and FREE.

D. Play Symbol Caption - the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1090 - 1.2D

PLAY SYMBOL	CAPTION
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LEMON SYMBOL	LEMON
STACK OF BILLS SYMBOL	BILLS
CROWN SYMBOL	CROWN
HORSESHOE SYMBOL	HRSHOE
SHAMROCK SYMBOL	SHMRCK
POT OF GOLD SYMBOL	GOLD
GOLD BAR SYMBOL	BAR
BELL SYMBOL	BELL
\$10.00	TEN\$
\$20.00	TWENTY
\$50.00	FIFTY
\$100	ONE HUN
\$500	FIV HUN
TEN SYMBOL	DOLLARS
TWENTY SYMBOL	DOLLARS
FIFTY SYMBOL	DOLLARS
SVY FIV SYMBOL	DOLLARS
ONE HUN SYMBOL	DOLLARS
TWO FTY SYMBOL	DOLLARS
FIV HUN SYMBOL	DOLLARS
TRY SYMBOL	AGAIN
PLAY SYMBOL	AGAIN

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$10.00, or \$20.00.

G. Mid-Tier Prize - A prize of \$30.00, \$50.00, \$75.00, \$100, \$125, \$175, \$250 or \$500.

H. High-Tier Prize - A prize of \$750, \$1,000, \$2,500, \$10,000 or \$250,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1159), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 050 within each pack. The format will be: 1090-0000001-001.

K. Pack - A pack of "\$250,000 BINGO" Instant Game tickets contains 50 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket back 001 and 050 will both be exposed. All packs will be tightly shrinkwrapped. There will be no breaks between the tickets in a pack.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "\$250,000 BINGO" Instant Game No. 1090 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in

Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "\$250,000 BINGO" Instant Game is determined once the latex on the ticket is scratched off to expose 193 (one hundred ninety-three) play symbols. For the game SLOTS, if a player reveals 3 matching play symbols in any one PULL, the player wins PRIZE for that pull. For the game INSTANT BONUS, if a player reveals a prize amount play symbol, the player wins that amount instantly. For the game BINGO, the player must scratch off the CALLER'S CARD area to reveal 30 (thirty) Bingo Numbers. The player must scratch all the Bingo Numbers on CARDS 1 through 6 that match the Bingo Numbers on the CALLER'S CARD. Each "CARD" has a corresponding prize box. Players win by matching those same numbers on the six Player's Cards. If the player finds a diagonal, vertical or horizontal straight line, the four corners of the grid, or an X pattern, the player wins a prize according to the legend of the respective playing grid. Examples of play: If a player matches all bingo numbers plus the Free Space in a complete horizontal, vertical or diagonal line pattern in any one card, the player wins prize according to the legend of the respective playing card. If the player matches all bingo numbers in all four (4) corners pattern in any one card, the player wins prize according to the legend of the respective playing card. If the player matches all bingo numbers plus Free Space to make a complete "X" pattern in any one card, the player wins prize according to the legend of the respective playing card. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

#### 2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 193 (one hundred ninety-three) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 193 (one hundred ninety-three) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one

Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 193 (one hundred ninety-three) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 193 (one hundred ninety three) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

#### 2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets within a pack will not have identical patterns.

B. A ticket can win up to three times.

C. There will never be more than one win on a single Bingo Card.

D. The highest prize won per card will be paid.

E. No duplicate numbers will appear on the CALLER'S CARD.

F. No duplicate numbers will appear on each individual Bingo Card.

G. The number range used for each letter (B, I, N, G, O) will be as follows: B (1-15), I (16-30), N (31-45), G (46-60), O (61-75).

H. Each Player's Card on the same ticket must be unique.

I. The 30 CALLER'S CARD numbers will match 53 to 83 numbers per ticket.

J. The majority of the tickets will have unique configurations.

K. There will be at least one (1) 'near win' on each of the six (6) Player's Cards on each non-winning ticket.

L. A 'near win' is one number short of a complete horizontal, vertical, diagonal line or 4 corners, except for the 'X' where there are two numbers less, one in each diagonal line (one of which must be a corner).

M. SLOTS: The Play area consists of nine (9) play symbols and three (3) PRIZE symbols.

N. SLOTS: There will never be three (3) identical symbols in a vertical or diagonal line.

O. No prize amount will appear more than once in this play area except as required on multiple win tickets.

P. SLOTS: Non-winning tickets will never contain more than two (2) of the same play symbols over the entire play area.

Q. SLOTS: Consecutive non-winning tickets within a pack will not have identical PULLS. For instance if the first ticket contains CHERRIES, CROWN, POT OF GOLD in any PULL then the next ticket may not contain CHERRIES, CROWN and POT OF GOLD in any row in any order.

R. SLOTS: Non-winning tickets will not have identical games. For example if PULL 1 is CHERRIES, CROWN, and POT OF GOLD then PULL 2 and PULL 3 will not contain CHERRIES, CROWN, and POT OF GOLD in any order.

S. SLOTS: Winning tickets will contain three (3) matching Play Symbols in a horizontal row.

T. SLOTS: On winning tickets, non-winning games will have different prize amounts from the winning prize amounts in this play area.

U. INSTANT BONUS: The Play area consists of one (1) Play Symbol.

V. INSTANT BONUS: Winning tickets will display a prize amount: TEN DOLLARS, TWENTY DOLLARS, FIFTY DOLLARS, SVY FIV DOLLARS, ONE HUN DOLLARS, TWO FTY DOLLARS OR FIV HUN DOLLARS.

### 2.3 Procedure for Claiming Prizes.

A. To claim a "\$250,000 BINGO" Instant Game prize of \$10.00, \$20.00, \$30.00, \$50.00, \$75.00, \$100, \$125, \$175, \$250, or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, required to, pay a \$30.00, \$50.00, \$75.00, \$100, \$125, \$175, \$250 or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "\$250,000 BINGO" Instant Game prize of \$750, \$1,000, \$2,500, \$10,000 or \$250,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "\$250,000 BINGO" Instant Game prize, the claimant must sign the winning ticket, thoroughly

complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General; or
3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;
4. in default on a loan made under Chapter 52, Education Code; or
5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "\$250,000 BINGO" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "\$250,000 BINGO" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players

whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 3,120,000 tickets in the Instant Game No. 1090. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1090 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$10	686,400	4.55
\$20	187,200	16.67
\$30	13,000	240.00
\$50	67,600	46.15
\$75	7,800	400.00
\$100	13,000	240.00
\$125	5,200	600.00
\$175	5,200	600.00
\$250	4,225	738.46
\$500	3,055	1,021.28
\$750	143	21,818.18
\$1,000	18	173,333.33
\$2,500	5	624,000.00
\$10,000	4	780,000.00
\$250,000	5	624,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 3.14. The individual odds of winning for a particular prize level may vary based on sales, distribution, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1090 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1090, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200805863

Kimberly L. Kiplin  
 General Counsel  
 Texas Lottery Commission  
 Filed: November 7, 2008

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**Texas Parks and Wildlife Department**

**Notice of Hearing and Opportunity for Public Comment**

This is a notice of an opportunity for public comment and a public hearing on the application of Sand Supply, a Division of Campbell Concrete and Materials (Booth Project), for renewal of a Texas Parks and Wildlife Department (TPWD) permit to dredge state-owned sand and gravel from the Brazos River in Fort Bend County at a location approximately 1.7 miles downstream from the Highway 59 crossing of

the Brazos River and approximately 30 miles upstream from the Highway F.M. 1462 crossing of the Brazos River.

The hearing will be held at 10:00 a.m. on Wednesday, December 17, 2008 at Texas Parks and Wildlife Headquarters, located at 4200 Smith School Rd., Austin, Texas 78744.

The hearing is not a contested case hearing under the Administrative Procedure Act.

Written comments must be submitted within 30 days of the publication of this notice in the *Texas Register* or the newspaper, whichever is later, or at the public hearing.

Submit written comments, questions, or requests to review the application to: Beth Hilliard, TPWD, by mail: 4200 Smith School Rd., Austin, Texas 78744; fax: (512) 389-4482; or e-mail: beth.hilliard@tpwd.state.tx.us.

TRD-200805841

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Filed: November 6, 2008



## Public Utility Commission of Texas

### Notice of Application for Amendment to Certificated Service Area Boundary

Notice is given to the public of an application filed on November 4, 2008, with the Public Utility Commission of Texas for an amendment to a certificated service area boundary in Collin County, Texas.

Docket Style and Number: Application of AT&T Texas to Amend a Certificate of Convenience and Necessity for a Minor Boundary Amendment between its McKinney and Princeton Exchanges, Docket Number 36351.

The Application: The minor boundary amendment is being filed to realign the boundary between AT&T Texas' McKinney and Princeton Exchanges to create more clearly-defined physical boundaries using major roads between the two exchanges.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas by December 1, 2008, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) at 1-800-735-2989. All comments should reference Docket Number 36351.

TRD-200805870

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: November 7, 2008



### Notice of Application for Approval of Revised Depreciation Rates

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on November 7, 2008, for approval of new and formalized depreciation rates pursuant to §52.252 and §53.056 of the Public Utility Regulatory Act, Texas Utilities Code Annotated (Vernon 2007 & Supp. 2008). A summary of the application follows.

Docket Title and Number: Application of XIT Rural Telephone Cooperative, Inc. for Approval of Revised Depreciation Rates Pursuant to P.U.C. Subst. R. §26.206, Docket Number 36367.

The Application: XIT Rural Telephone Cooperative, Inc. (XIT Rural) filed an application for approval of revised depreciation rates for Account 2212 - COE - Digital Switching and Account 2124.0 - General Purpose Computers. XIT Rural also seeks to formalize the depreciation rate for Account 2423.1 - Cable & Wire - Buried Nonmetallic (Fiber Cable). XIT Rural proposed an effective date beginning January 1, 2008.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 36367.

TRD-200805897

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: November 12, 2008



### Notice of Application for Designation as an Eligible Telecommunications Carrier

Notice is given to the public of an application filed with the Public Utility Commission of Texas on November 3, 2008, for designation as an eligible telecommunications carrier (ETC) pursuant to P.U.C. Substantive Rule §26.418.

Docket Title and Number: Application of New Cingular Wireless PCS, LLC for Designation as an Eligible Telecommunications Carrier in Lieu of Dobson Cellular Systems, Inc. Pursuant to 47 U.S.C. §214(e) and P.U.C. Substantive Rule §26.418. Docket Number 36346.

The Application: New Cingular Wireless PCS, LLC (AT&T Mobility) is requesting ETC designation in order to be eligible to receive federal and state universal service funding to assist it in providing universal service in Texas. Pursuant to 47 U.S.C. §214(e), the commission, either upon its own motion or upon request, shall designate qualifying common carriers as ETCs for service areas set forth by the commission. AT&T Mobility seeks ETC designation in the non-rural exchanges served by Verizon and AT&T Texas and the entire study areas of four rural incumbent local exchange carriers, Colorado Valley Telephone Cooperative, Inc., Comanche County Telephone Company, Inc., Ganado Telephone Company, Inc., and Industry Telephone Company.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by December 11, 2008. Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the Public Utility Commission's Customer Protection Division at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas at 1-800-735-2989 to reach the commission's toll free number at 1-888-782-8477. All comments should reference Docket Number 36346.

TRD-200805871

Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: November 7, 2008

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**Notice of Application for Sale, Transfer, or Merger**

Notice is given to the public of a joint application for sale, transfer, or merger filed with the Public Utility Commission of Texas on November 7, 2008, pursuant to the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.101 and §37.154 (Vernon 2007 & Supp. 2008) (PURA).

Docket Style and Number: Joint Application of Concho Valley Electric Cooperative, Inc. and Golden Spread Electric Cooperative, Inc. to Transfer Certificate Rights, Docket Number 36359.

The Application: This transaction involves the approval of the sale of the remaining portion of transmission facilities and associated certificate of convenience and necessity rights from Concho Valley Electric Cooperative, Inc. (Concho Valley) to Golden Spread Electric Cooperative, Inc. (Golden Spread). Concho Valley has agreed to sell its remaining transmission facilities located in Sterling and Tom Green Counties to Golden Spread. Specifically, Concho Valley, one of Golden Spread's member distribution cooperatives and a full requirements wholesale power customer of Golden Spread, has agreed to sell the Rollans and Schkade substations and associated Supervisory Control and Data Acquisition (SCADA) equipment. The Concho Valley facilities are valued at approximately \$2.8 million. In conjunction with this sale, Golden Spread will assume certain of Concho Valley's notes that are secured by its facilities. As a generation and transmission cooperative, Golden Spread will then be eligible to enter into a new mortgage with the National Rural Electric Cooperative Financing Corporation.

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) 1-800-735-2989. All correspondence should refer to Docket Number 36359.

TRD-200805896  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: November 12, 2008

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**Notice of Application for Service Area Exception within Dallas County, Texas**

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on November 3, 2008, for an amendment to certificated service area for a service area exception within Dallas County, Texas.

Docket Style and Number: Application of Garland Power & Light to Amend a Certificate of Convenience and Necessity for Electric Service Area Exception within Dallas County. Docket Number 36344.

The Application: Garland Power & Light (Garland) filed an application for a service area boundary exception to allow Garland to provide service to a specific customer located within the certificated service area

of Oncor Electric Delivery Company (Oncor). Oncor has provided a letter of concurrence for the proposed change.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than December 1, 2008 by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) at 1-800-735-2989. All comments should reference Docket Number 36344.

TRD-200805869  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: November 7, 2008

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**South East Texas Regional Planning Commission**

**Request for Proposals**

**Background**

The South East Texas Regional Planning Commission (SETRPC) has been working with its Southeast Texas Rideshare Advisory Committee to meet the request of the growing demand of residents and business community leaders for alternatives to single occupant vehicles for daily commute trips.

**Objectives**

The objectives of the project are to successfully operate and market a commuter vanpool program and carpool matching service which will reduce the number of single occupant vehicles on the highway during rush hour and provide an alternative means of commuting to and from work. The program will provide for trips that have an origin or a destination in Jefferson, Orange and Hardin Counties of southeast Texas. The Goals of the program are to: reduce vehicle miles (VMTs) traveled in the SETRPC service area, improve mobility and safety by utilizing the existing infrastructure, and improve regional air quality. It is desired that this request for proposals will: establish a park and pool network, establish a formal rideshare (carpool and vanpool program), maximize use of existing transit capabilities, educate and inform the business community of commute options, and create a marketing and outreach campaign targeted at employers, employees, residents, students and the transit-dependent community members.

If your firm is interested and qualified to complete this Management, Operation, and Marketing of A Commuter Vanpool and Carpool Program, please contact our office to express your interest:

Bob Dickinson, Director, Transportation and Environmental Resources  
South East Texas Regional Planning Commission  
2210 Eastex Freeway, Beaumont, Texas 77703

Fax: (409) 729-6511  
Email: bdickinson@setrpc.org

All responding firms will receive a complete Request for Proposal package.

**Final proposals will be due by 12 noon CST on Friday, December 19, 2008.**

TRD-200805873

Shaun Davis  
Executive Director  
South East Texas Regional Planning Commission  
Filed: November 7, 2008



## The University of Texas System

### Award of Consultant Contract Notification

The University of Texas System (University), in accordance with the provisions of *Texas Government Code*, Chapter 2254, entered into a contract for consulting services (Contract) with Kurt Salmon Associates Inc. (Consultant) for an assessment of the strategic future of The University of Texas Medical Branch at Galveston (UTMB) and other related, necessary and appropriate services. On October, 29, 2008, Governor Perry granted an emergency waiver of *Texas Government Code*, §§2254.027(2), 2254.028 and 2254.029, based on the significant damage and disruption to UTMB by Hurricane Ike and the necessity to make an immediate assessment of the market, the facility, and the financial needs of UTMB.

#### Project Description:

Consultant will provide University with an assessment of the strategic future of UTMB. Components of the work plan include a market assessment, a financial assessment, a facility assessment, and scenario development to define the relevant range of options for consideration by The University of Texas System Board of Regents.

Name and Address of Consultant:

Kurt Salmon Associates Inc.  
1355 Peachtree Street NE, Suite 900  
Atlanta, GA 30309

Total Value of Contract:

The contract amount is capped at \$342,000.

Contract Dates:

The Contract was executed by Consultant on November 7, 2008 and by University on November 6, 2008, and dated effective November 4, 2008.

Due Dates for Contract Products:

The consulting services will be completed and delivered to University no later than December 23, 2008, for consideration by The University of Texas System Board of Regents in January, 2009.

The term of the Contract expires on January 31, 2009, but may be extended for up to an additional seven months.

TRD-200805887

Francie A. Frederick

General Counsel to the Board of Regents

The University of Texas System

Filed: November 12, 2008



### 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 33 (2008) is cited as follows: 33 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 "33 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 33 TexReg 3."

**How to Research:** The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online through the Internet. The address is: <http://www.sos.state.tx.us>. The *Register* is available in an .html

version as well as a .pdf (portable document format) version through the Internet. For website subscription information, call the Texas Register at (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 *Table of TAC Titles Affected*. The table 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 one or more *Texas Register* page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

*Part I. Texas Department of Human Services*

40 TAC §3.704.....950, 1820

The *Table of TAC Titles Affected* is cumulative for each volume of the *Texas Register* (calendar year).